

Research Paper

2010/02



**‘What judges think about prostitution’**

**Assessing the considerations and measures  
employed by members of the judiciary for  
sentencing women who sell sex**

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## Acknowledgements

This research was made possible through invaluable contributions from the following individuals and organisations.

Tim Ahern, Jon Birch, Louise Clark, Wendy Cranmer, Peter Dunn, Eaves, Sue Green, Paul Greeno, Griffins Society Council, Liz Hales, Mary Hancock, Marianne Hester, Roma Hooper, Chris Leeson, Lilith R&D, London School of Economics and Political Science, Mannheim Centre for Criminology, Melvyn Marks, Diane Martin, Kevin McHale, Miriam Merkova, Michael Shiner, Anne Snow, John Thornhill.

## 1. Introduction

Criminal justice responses to prostitution have existed in Britain for centuries. In recent decades, the landscape has transformed dramatically and continues to do so at a rapid pace. The advancement of mobile communications and transnational travel, the feminisation of globalisation – women migrants outnumbering their male counterparts, shifting attitudes towards sexuality and paid sex, and the evolution of a contemporary counter-trafficking movement have all contributed to the composition of the early 21st century sex industry. Despite the confluence of these unequivocally modern elements, an ancient debate concerned with the legitimacy and morality of prostitution persists unabated. Interpretations of choice and coercion, how these factors impact upon entry into and departure from the sex industry, and how they should be measured, analysed and incorporated into policy and practice dominate the philosophical and practical terrain. It is not the purpose of this report to examine legal, social or political issues within the parameters of a wider ethics debate, but rather to focus upon one critical aspect of justice in relation to prostitution. Through their analysis and application of the law, judges are uniquely positioned to affect outcomes for women who pass through the criminal justice system as a result of prostitution. The role of the judiciary is therefore central in securing appropriate responses for women who sell sex.

Due to the transient and clandestine nature of the sex industry, estimates of the proportion of women, men, transgender people and children involved should be treated with caution (Cusick *et al*, 2009). Nonetheless, it is widely recognised that women who sell sex comprise the largest number of people involved, many of whom are victims of serial abuse, violence and exploitation<sup>1</sup>. Those who seek to leave prostitution may find it prohibitively difficult to do so, citing diverse impediments such as the need to provide for dependents, lack of access to appropriate housing, training and employment, substance dependency, unhealthy relationships and low self-esteem (Dalla, 2006; Baker *et al*, 2004; Manopaiboon, 2003).

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<sup>1</sup> For example, the Association of Chief Police Officers' (ACPO) recent strategy on policing prostitution states that, 'The most obvious, but generally the most neglected, victim is the sex worker. In most cases in England and Wales today this will be an adult woman' (ACPO, 2011: section 1.2).

Most obstacles may be tackled successfully over time with or without assistance from mainstream and specialist service providers, as well as informal support networks (Oselin, 2007; Saphira and Herbert, 2004). One barrier to exiting the sex industry, however, is typically insurmountable: the criminal record. Women who have sold sex based on the street for a number of years may have amassed hundreds of convictions, to be counted in pages rather than individual offences. Paradoxically, the act of prostitution in itself is not illegal, but many of the auxiliary activities - such as loitering and soliciting by buyers or sellers and controlling or profiting from prostitution - attract criminal sanctions in the name of public order or human rights.<sup>2</sup> In this way, the nature and scope of judicial sentencing is pivotal in influencing, if not determining, the pathways and opportunities that women who want to stop selling sex can pursue, should they come under the scrutiny of the criminal justice system.

There has been incremental progress in the removal of antiquated and prejudicial treatment of women who sell sex, in both the written law and its application. Findings from this research, however, suggest that the current situation is composed of an inefficient and illogical blend of the past and the present. The stated aims and attitudes of the criminal justice system towards women who sell sex appear to be contradicted both in policy and practice. The benefits of structured support as an alternative to punitive sentencing have been demonstrated on a relatively small scale, but are widely advocated by those involved, whether recipients, support workers or criminal justice representatives. A comprehensive and coherent shakedown of legislation and sentencing guidelines is overdue, in order to remove the vestiges of undue or detrimental penalisation. In its place, supportive strategies designed to reduce re-offending should be trialled nationally to establish a workable model of justice for women who sell sex.

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<sup>2</sup> See Appendix A for a list of prostitution-related offences.

## 2. Literature Review

### 2.1 Desistance

How and why women who sell sex cease to do so has been afforded limited attention within the confines of desistance from crime (Hester and Westmarland, 2004). Literature dedicated to desistance from crime focuses predominantly upon male offenders, although there is a growing body of evidence which considers women (Heidensohn, 2009; Lart and Pantazis, 2008; Sheehan, 2007; Mclvor, 2004; Rumgay, 2004a; Chesney-Lind, 1997).

Research internationally has concentrated on motivating factors to stop selling sex, the necessary conditions to embark upon and reach cessation – referred to as routes out or exiting strategies – and obstacles that are encountered along the way (Baker *et al*, 2010; Mayhew and Mossman, 2007; Sanders, 2007; Månsson and Hedin, 1999). Despite this, criminalisation is frequently cited throughout the literature as a serious hindrance, if not an enduring deterrence. Highly specialised long-term support is considered to be crucial for many women who seek to exit prostitution (Ng and Venticich, 2006; Farley, 2003), although a notable proportion do not engage with services in order to do so (Cusick *et al*, 2011; Rickard, 2001).

### 2.2 Identity and Stigma

There is a substantial evidence base addressing how men discard the role of criminal and construct a new identity as ex-offender (Sampson and Laub, 2005; Gadd and Farrall, 2004; Maruna, 1999; Brown, 1991), which is covered to a far lesser extent for women (Rumgay, 2007; Clarke, 2004). In addition to practical factors, internal elements such as personal motivation and sustained commitment must commonly be galvanised in order to desist from prostitution. Social identity and self representation are key determinants in exiting prostitution, as in broader role exit theory – a universal concept which applies to everyone in some form, from the omnitude of leaving childhood to breaking a drug addiction (Anderson and Bondi, 1998) to the rarity of becoming an ex-nun (Ebaugh, 1988). Ebaugh describes role exit as a 'social process that occurs over time' which may be linear or non-linear. A defining feature of exiting prostitution is its unpredictable course which may require several attempts over a lengthy period (Baker *et al*, 2010). Role exit theory has been

criticised for 'systematising the obvious' (Wacquant, 1990), however, the need to create a new identity is an important, complex challenge for many women who seek to stop selling sex (Månsson and Hedin, 1999). This conscious and cognitive shift of self-perception is documented as a prerequisite for successful behavioural change across the theory of desistance (Prochaska *et al*, 1992).

Women involved in prostitution have been depicted historically in law, policy and research as innately deviant or of fallen virtue. In Victorian England, although prostitution was ostensibly frowned upon it was tacitly condoned, if not perpetuated, by much of the ruling class (Weeks, 1981; Walkowitz, 1980). The Contagious Diseases Acts of the 1860s were intended to curb the spread of sexually transmitted infections amongst military personnel. The legislation did not seek to regulate the behaviour of soldiers and sailors, but instead targeted local women around garrison towns who risked being labelled 'unchaste' for walking alone at night. Arrest could lead to forcible internal examinations, followed by imprisonment in lock hospitals until the woman was declared free from infection<sup>3</sup>.

Towards the end of the nineteenth century, atavistic Italian criminologist Lombroso claimed that women involved in prostitution were born offenders. He asserted that certain physical characteristics could be categorised as genetic predispositions towards criminal activity and sexual deviancy (Lombroso, 1893). It was suggested that since women were able to simulate sexual arousal, female offenders embodied a level of cunning which exceeded that of their male counterparts. Despite significant influence across Europe, anthropometrical theories of criminality were discredited by the early twentieth century with the ascent of sociological discourses (Goring, 1913) and later, the exploration of gender and equality in relation to crime (Cox, 2003).

The consolidation of the women's liberation movement towards the end of the twentieth century provided a context for the evolution of literature which addressed the experiences of women in the sex industry and sought to deconstruct prevailing negative stereotypes through a feminist analysis (Barry, 1979). The physical, psychological and social effects of prostitution (Choi, 2009; Raymond, 1999; Vanwesenbeeck, 1994; Herman, 1992; Pheterson,

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<sup>3</sup> The Contagious Diseases Acts were repealed in 1886 following a resolute campaign spanning two decades, spearheaded by nineteenth century activist Josephine Butler (Jordan, 2001).

1990) and human trafficking became increasingly documented and disputed (Zimmerman, 2006; Kempadoo, 2005; Kelly and Regan, 2000). Despite uncompromising contemporary research, the stigma attached to women who sell sex remains (Tomura, 2009; Cohen, 1972; Goffman, 1963), fuelled by mainstream multi-media coverage of prostitution which has the power to both dispel and reinforce prejudices against women who sell sex.

### 2.3 Policy and Practice

In recent years, punitive criminal justice responses have gradually expanded from the traditional emphasis on sellers towards buyers and those who profit indirectly from prostitution, along with the promotion of prevention measures and exiting strategies. The Home Office published 'A Coordinated Strategy on Prostitution' in 2006, which differentiated between street prostitution and 'commercial sexual exploitation' behind closed doors, and distinguished children, victims of trafficking, and non-trafficked adults (Home Office, 2006). The Corston Report recommended 'prostitution referral orders' tailored to facilitate long-term engagement with support services and pioneered the introduction of Resettlement Pathways 8 and 9<sup>4</sup> across the prison estate (Corston, 2007). In October 2011, the Association of Chief Police Officers (ACPO) published its revised strategy on policing prostitution which includes a commitment to minimise the prosecution of people who sell sex in favour of support and diversion.

*Enforcement of the Policing and Crime Act 2009...should help to create exit opportunities for individual sex workers, and prosecution should usually only be used where there is evidence of a persistent and voluntary return to prostitution after exit opportunities have been provided (section 4.3.1, ACPO, 2011).*

Also in October 2011, the Home Office published a review of responses to prostitution. The report highlights that women who sell sex are frequently victims of sexual offences and other violent crimes, as well as being criminalised themselves. The review's aims include improving safety and reducing violence for those involved in prostitution and supporting those who seek to exit. 'Increasing the confidence of those involved in prostitution to report crimes to the police', features as one of twelve key lessons learned (Home Office, 2011: 5). Appendix B in this report provides an excerpt from the Home Office review which

<sup>4</sup> Pathway 8: support for women who have been abused, raped or who have experienced domestic violence. Pathway 9: support for women who have been involved in prostitution.

covers criminal justice support and profiles two diversion schemes for women who sell sex. An independent evaluation of one of these initiatives found that, 'The scheme's independence from the criminal justice system and remit of working specifically with Women Involved in Prostitution facilitates engagement from women' (Rice, 2010:4). The evaluation emphasises the prevalence of histories of trauma, abuse and addiction, and the fundamental need for a 'revolving door' approach – multiple chances to engage with support providers and the criminal justice system.

## 2.4 Legislation

The study of the social origins of deviance – from symbolic interactionism (Mead, 1934) to the relating of criminal behaviour to social structure (Merton, 1968) and beyond – created fertile ground for ideas which heralded a tempering of hitherto punitive responses towards women who sell sex. The Sexual Offences Act of 1956 introduced provisions that, for the first time, legally recognised gendered elements of exploitation within prostitution (sections 22-32). Much of the potential impact was eclipsed the following year by the controversial Wolfenden Report, which decriminalised homosexuality and introduced enforcement initiatives targeting public nuisance associated with street prostitution. Revisions to the original Sexual Offences Act followed in 1959, 1967, 1985 and 2003, incrementally developing legislative scope on coercion and exploitation within the sex industry. The 2003 Act outlawed child prostitution (sections 47-50), banned pimping for financial gain (sections 52-53) and prohibited trafficking for the purposes of sexual exploitation into, within or beyond the UK (sections 57-59).

Inspired by the Swedish model of prostitution legislation which prohibited the purchase and attempted purchase of sexual services in 1999 (Ekberg, 2004), the Policing and Crime Act 2009 created a new offence of paying for sexual services with a person subjected to force, fraud or coercion by a third party engaged in exploitative conduct with the expectation of gain (Part 2, Section 14). The Act removed the archaic term 'common prostitute', which first appeared on the statute book in the Vagrancy Act of 1824, and reversed the requirement of *persistent* soliciting and loitering from the seller to the buyer (Section 16). The Act also introduced 'Engagement & Support Orders' (section 17) which stipulate attendance at three meetings with an appointed supervisor, as an alternative to fines for soliciting or loitering

for prostitution in a public place (section 4.2.6.1. below, page 23). With the exception of this new order, government efforts to pioneer exiting strategies have been relatively limited although a number of dedicated projects have been funded on an *ad hoc* basis. Specialist service provision has developed across the UK in a piecemeal fashion, subject to the disparity of local commissioning and the perseverance of motivated individuals, rather than as the result of a coherent centrally governed approach (Coy, Kelly and Foord, 2009).



### 3. Methodology

#### 3.1 Research Aims

- To assess the considerations and measures employed by the judiciary when sentencing women who sell sex.
- To make recommendations about legislative and policy change that could advance the application of justice in this area.

#### 3.2 Research Objectives

- To identify and explore the range of factors that judges take into account when sentencing women who sell sex.
- To consider the nature and depth of judicial awareness regarding the backgrounds and circumstances of women who commit offences in relation to selling sex.
- To gather evidence about: the function and suitability of current sentencing measures for women who sell sex; barriers to effective sentencing; and the viability of legislative and non-legislative change.
- To gather evidence from non-judicial stakeholders about: their experiences of the criminal justice system, in particular sentencing, as researchers or practitioners who work with women who sell sex; perceptions of judicial understanding and attitudes towards this group; and opinions about the application of justice.

#### 3.3 Data Collection

A qualitative approach was adopted to obtain detailed attitudinal data. Field research consisted of twelve semi-structured interviews with fourteen respondents<sup>5</sup>. Interviews lasted between one and two hours, and were conducted privately at the respondents' place of work or the LSE. All interviews were voice-recorded and fully transcribed. For the purposes of analysis, respondents were divided into two sub-samples:

(a) Seven members of the judiciary and other court positions, identified in this report as 'judicial respondents'; and (b) seven specialist practitioners and researchers in non-legal professions, referred to as 'stakeholder respondents'.

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<sup>5</sup> Two interviews involved pairs of respondents who worked closely together but in different roles.

Criteria for participation required that interviewees should:

(a) work directly with women who sell sex who have had criminal justice experiences; and/or (b) have an advanced understanding, informed by practical experience, of the issues that affect this group in relation to criminal justice.

### 3.4 Qualitative Analysis

Accumulated qualitative data was analysed thematically using NVivo Qualitative Social Research software. To safeguard anonymity, all quotations in this report have been attributed to either sub-sample – seven judicial respondents (comprising three magistrates, one district judge, and three non-judicial court representatives) and seven other stakeholders (comprising four support workers, two academics and one law enforcement representative) – rather than to named individuals. Desk research included a literature review, consideration of relevant case law, legislation, policy materials, media coverage and the submission of several Freedom of Information requests.

### 3.5 Research Limitations

During the course of this study, the author was concurrently involved with a separate research project<sup>6</sup> for which over 160 interviews were conducted with women currently or formerly involved in prostitution. Given its comprehensive and complementary nature, the extensive ethical issues in working with vulnerable adults, and available resources for this research, the author was asked by the Griffins Society to focus exclusively on judicial attitudes and associated practitioner insight, as distinct from women's direct experiences of the judiciary. Interviews were conducted between April and October 2010, during a climate of heightened uncertainty about the direction of legal and social policy, punctuated by the UK general election in May 2010 and consequent creation of a coalition government. The Policing & Crime Act 2009 came into force in April 2010, introducing the new Engagement & Support Order (ESOs - s4.2.2.a below). Due to the political timing and negligible promotion of the order by both outgoing and incoming administrations, it was not possible to gather meaningful evidence about the initial impact of ESOs.

<sup>6</sup> *Prostitution Exiting: Engaging through Research* – a study on exiting prostitution strategies for women, conducted by Eaves in partnership with London South Bank University, and funded by the Big Lottery Fund.

## 4. Analysis

### 4.1 Law and Policy on Prostitution

All respondents shared the view that, despite recent legislative change, the existing legal framework<sup>7</sup> relating to prostitution was inadequate to deal with the complexities faced by women who appear before the courts as a result of prostitution.

*We're just tinkering at the edges, we're not doing anything. We're not achieving anything... you've got to ask what purpose it is in bringing these women to court. It has very little purpose in terms of the sanctions. It probably has virtually no impact in terms of effect on their behaviour. It doesn't stop re-offending. It doesn't help society by bringing them [to court]. Most people would say it's a waste of time, a waste of money, a waste of resources. (Judicial respondent A.)*

Several judicial respondents felt that improving justice in relation to prostitution was neglected by legislators and law enforcement except periodically when, for example, a serial killer was at large or a major human trafficking network was exposed.

*Prostitution has been put on a backburner as not being particularly important. The police are much more concerned about organised drug dealing (judicial respondent B).*

This view is reflected in the latest ACPO Strategy for Policing Prostitution and Sexual Exploitation which states that, 'Prostitution has traditionally for a variety of reasons, been a low priority for the police' (ACPO, 2011: s1.6) and, 'Prostitution is difficult to measure or quantify and seems somehow less impactful than burglary, vehicle crime and robbery' (ACPO, 2011: s1.7). Despite these assertions, every stakeholder respondent who was a practitioner felt that prostitution policy had progressed in recent years in certain ways, albeit to a limited degree. Factors highlighted on a local level included increased liaison with and support from magistrates' courts, growing awareness and approval of specialist criminal justice diversion schemes, and greater collaboration with the local community.

*I think more and more policy is recognising the need to support women exiting prostitution and to develop routes to change lifestyle rather than to just...minimize harm. (Stakeholder respondent A.)*

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<sup>7</sup> For a full list of offences relevant to prostitution, see Appendix A, page 44.

Practitioner stakeholder respondents were invariably working in or with dedicated projects, as opposed to sifting through the diverse matters dealt with by judges, and as such were more likely to be familiar with local initiatives which may explain this divergence in opinion.

#### 4.1.1 The Role of Judges

Most respondents recognised a substantial space for interpretation between the statute book and sentencing decisions, which afforded judges degrees of flexibility.

*The judiciary's role is to reflect the changing values of society and to take into account how society is viewing certain offences. (Judicial respondent B.)*

Several judicial respondents were unambiguous about the requirements of their position.

*We dispense the law and if the law is unjust, we still dispense it. You want to change the law, become an MP. If you want to apply the law, stay here. (Judicial respondent C.)*

Whilst judicial respondents invariably framed their decision-making process in terms of applying the law in the most appropriate manner, stakeholder respondents were more likely to cite elements which could affect impartiality of sentencing.

*They're always in that contradiction in that they are interpreting and applying the law from their perspective...and they don't necessarily understand the contradictions they create... it's interesting seeing people become magistrates and then it changing their perspective because they... end up adopting the ways and approaches from within the criminal justice system and the rationale from within. (Stakeholder respondent B.)*

Persistent tension between respecting the rule of law, assessing accurately the agency and victimhood of defendants and seeking an effective reduction of recidivism presents not only a legal, but also a social and political challenge for judges, which risks cultivating a variable system of justice for women who sell sex.

#### 4.1.2 The Role of Court Clerks

Responses relating to the purpose and influence of clerks were contradictory. On the one hand they were depicted as rigid enforcers of tariffs who were responsible for ensuring that judges did not fall prey to bouts of unconstitutional sympathy.

*We are kept in line to some extent, or by a large extent, by the clerks... If the law says there is a tariff, if you don't apply that tariff, there has to be a very good reason for it, and the fact that they burst into tears isn't a good reason. (Judicial respondent C.)*

Other judicial respondents described clerks as a vital component in conveying to judges the vulnerability of women who sell sex as a mitigating factor for criminal behaviour.

*[Clerks] challenge magistrates when you hear about what can happen in terms of prostitution and what can happen to girls working on the streets and what they can do to stop that cycle, or if they can't stop the cycle to assist the individual in understanding the cycle more. (Judicial respondent D.)*

#### 4.2 Sentencing Women Who Sell Sex

All judicial respondents expressed frustration about the constraints of the options at their disposal for sentencing women who sell sex. It was emphasised by both groups of respondents that punitive measures typically served to entrench women in prostitution and failed to address the fundamental issues that had brought them to court.

*The sentencing options are very limited for us...there isn't a sentence that you would deem a success. The outcome is, I hope, that somewhere along the line, something will take grasp and you won't see...the ten girls I can name off the top of my head continually, because that would mean that somewhere along the line something happened to make a change and difference in their lives. (Judicial respondent A.)*

Several stakeholder respondents reinforced this view and acknowledged the difficulties involved in making the right sentencing decision for women defendants who sell sex.

*Magistrates, I suspect, feel quite powerless, but there isn't actually anything constructive that they can do sometimes. (Stakeholder respondent C.)*

Other stakeholders, however, construed this purported impotence as a lack of empathy which served to detract from apposite sentencing. The following analysis of respondents’ opinions about the adequacy of available sentencing options indicates that there is a combination of problematic factors, dominated by the limited application of recent statutory and local community initiatives specifically designed to minimise futile or recidivistic reactions from the criminal justice system towards women who sell sex. The sentencing options are divided into two categories determined by respondents’ views of the impact upon defendants, the criminal justice system and wider society. ‘Chronic sentencing options’ are those which respondents identified as likely to perpetuate prolonged criminal justice involvement by failing to address the causes behind offending behaviour, whereas ‘constructive sentencing options’ are those highlighted as successfully preventing or reducing further criminalisation through strategic community-based support.

#### 4.2.1 Chronic Sentencing Options

##### (a) Custody

A custodial sentence for prostitution may be invoked following persistent breaches of orders or conditions. All respondents were opposed in principle to imprisonment for prostitution-related offences. Those who were practising judges, however, reported that occasionally they may feel obliged to impose custodial sentences on women who sell sex.

*For prostitution, a custodial sentence is never appropriate... [but] there comes a time when you are left with no alternative. It’s not going to do them any good, you know that, but there is no alternative. You’ve tried every single other thing and you hope that perhaps the first time the clang of the prison doors might, just might, stop them doing something. The reality is most times it doesn’t. Most times is to give them a warm bed for the night, three square meals a day, and a chance to mix in a society. (Judicial respondent B.)*

The above respondent concedes the injustice and probable futility of imprisoning women who sell sex, whilst simultaneously entertaining optimism about the experience of incarceration. Repeated breach to the extent that prison becomes a legal option suggests a lack of access to alternative sources of income for the defendant.

*I wouldn't want to send a prostitute to prison, but I might actually have no choice. Then that would be an extremely difficult situation....I would like to try every possible alternative before sending a prostitute to prison. It would be a real last resort in my view, and I'm sure there are different ways of dealing with it... What we need to tackle is criminal activity through the law, for instance, the issue of exploitation. (Judicial respondent E.)*

There is a substantial body of evidence documenting the unsuitability of prison for many women offenders in general, encapsulated in the Corston Report (Corston, 2007) and recurring recognition amongst this sample and in previous research that it is specifically counterproductive and unjust for women who sell sex (Clark, 2006; Browne *et al*, 1999). The disconnect between the application of legislation, the safeguarding of justice and the reduction of offending behaviour raises the question why custodial sentences remain issuable for women defendants who sell sex, if no serious offending behaviour is detected, irrespective of breaches. A partial explanation for this conundrum was offered by several stakeholder respondents who mentioned the potential benefits that could be accrued.

*If rehabilitation is possible in custody, fine...and actually, for a number of women, custody is the only support they have. It's the only time they can feel safe, it's the only time they can detox, but it's very hard actually to use that and then go back out in the community and maintain that level of control over their own lives. I think if women present a danger to others, but in terms of a punishment for involvement in the sex trade, the sex business, no. (Stakeholder respondent D.)*

That the structure and security of prison will provide a conducive atmosphere to begin addressing problematic issues and consequently avoid recidivism amounts to purely speculative sentencing. There is no guarantee that this will occur, rather the repercussions of imprisonment may far outweigh the possible benefits (Prison Reform Trust, 2011).

*People shouldn't be going to prison for respite... Prison should never be a break. We've got no romantic illusions about prison. You know, the amount of self-harm that goes up with our client group [women who sell sex], attempted suicide, there's all that. It's horrific, prison is no picnic. (Stakeholder respondent E.)*

Even a short custodial sentence can lead to the removal of children by social services, loss of housing and employment, along with a catalogue of additional repercussions. The united

voice of respondents against prison as a sentencing option for women who sell sex is compelling. Evidence gathered from respondents emphasises the complex needs of many in this group, favouring community-based responses which avoid the potential perils of a custodial sentence and clearly suggesting that prison should not be used as a last resort to compel non-violent women offenders who sell sex to tackle criminal behaviour.

### **(b) Anti-Social Behaviour Orders**

Anti-social behaviour orders (ASBOs) were introduced by the Crime & Disorder Act 1998. Originally intended for persistent, but minor offenders who would otherwise escape prosecution, ASBOs became commonly used as a measure to deter people from selling sex by banning them from certain areas. The order attracted criticism for preventing people from accessing essential services, for failing to address the underlying causes of offending behaviour and in some cases leading to the anomaly of a custodial sentence.

*We were finding that prostitutes who were then charged with breaching ASBOs were being sent to prison for an offence which you could not send them to prison for in the first place, and that seemed to be absolutely ridiculous. (Judicial respondent B.)*

Judicial respondents tended to focus on the viability of ASBOs, whereas stakeholder respondents provided evidence of the potentially destructive impact of the order. ASBOs reportedly constituted a major impediment to the ability of services to provide sustainable support tackling the causes of the very anti-social behaviour in question.

*[ASBOs] undo a lot of work that might have been successful in terms of you might have got someone housed, their involvement in prostitution or offending behaviour might have reduced so ASBOs, especially if someone goes into prison in breach of an ASBO and loses their housing, you're using the same resources again and again to try and pick that work up when they come out. (Stakeholder respondent E.)*

The displacement of women who sell sex on-street was continually underlined by both groups.

*ASBOs have been very detrimental in that if a woman is trying to get support and help, that will be from the area that she's working in.... Often an ASBO means that she's got to go out of that area but her only means of earning money is through sex work, so she'll start off in another area without that support. (Stakeholder respondent D.)*

Respondents universally contested the appropriateness of ASBOs, with members of both groups reiterating the view that the orders were inherently pernicious.

*If you're not in any position to keep any conditions on them, then they're just setting people up to fail really badly. They're a tool that was never meant to be used in terms of women involved in prostitution. (Stakeholder respondent E.)*

The need to use alternatives to ASBOs was emphasised by all respondents, although a minority in both groups felt that the orders could perform a valid function, if used sparingly.

*On very, very rare occasions for particular individuals, it may be the right answer.... We're talking of somebody that is absolutely not engaging with any services at all, that is not only a danger to themselves but a danger to the other women working or to the community. (Stakeholder respondent F.)*

Data showing the number of women who breach ASBOs related to prostitution was not available through Freedom of Information requests (Appendix B). The likelihood of breach for any group amounted to approximately half of all orders issued in the five years after ASBOs were introduced (Appendix C). The Association of Chief Police Officers' revised strategy on policing prostitution pledges to use, 'Current soliciting legislation and official antisocial behaviour powers only once all other avenues have been exhausted as, in terms of on-street sex work, persistence is almost guaranteed as the vast majority of on-street workers are addicted to Class A drugs' (ACPO, 2011, s4.3.2). Government plans to abolish ASBOs were announced in 2010, on the basis that the purpose of justice in this area should be "rehabilitating and restorative" as opposed to punitive (Home Office, 2010). In February 2011, the Home Office launched a consultation on anti-social behaviour<sup>8</sup>. As there was no reference to prostitution in the consultation, it is unclear if or when the proposed orders may be applied to people who sell sex. The consultation closed in May 2011 and at the time of writing, ASBOs remain on the statute book.

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<sup>8</sup> <http://www.homeoffice.gov.uk/media-centre/news/asb-consultation>.

### (c) Fines and Discharges

The imposition of fines was generally condemned as counter-productive, although a minority of judicial respondents also considered fines to be a necessary evil in the current framework.

*If you abolish fines, you have to abolish the ability to bring people to court ...if you involve the criminal justice system, you've got to have the criminal justice sanction to some extent. If you don't...then we have to find an alternative of a diversion out of the court, which I personally would support. (Judicial respondent A.)*

Rare imposition of absolute discharges was reported, whereas conditional discharges were used periodically as a means to avoid escalating fines. As with ASBOs, however, intended benefits were deemed to be in constant jeopardy due to the high probability of re-offending.

*If you impose a conditional discharge you would hope that with that hanging over their head, they are not going to commit another offence. The reality is that if they are doing it in order to feed a drug habit, they are going to commit another offence, and so...if they are detected and brought back in front of the courts, you are then going to have to punish them for two offences, not for one. And because they have committed an offence during the currency of a conditional discharge, the punishment for the second offence ought to be greater than the punishment for the first offence. (Judicial respondent B.)*

The above respondent illustrates the spiral of criminality that can be generated as a result of well-intentioned sentencing decisions pursuing protocol whilst failing to consider sufficiently the circumstances of the defendant. Judicial responsibility to constructively navigate concepts of punishment and protection is thus highlighted as a vital but complex task in assisting women who sell sex to break the cycle of recidivism.

*I know what I would like to think about doing and that is say, "Look, alright, I'm going to give you a conditional discharge...that condition is you attend this particular programme which I know about". ...If I can turn this young lady or young man away from crime the first or second offence, yes it may cost me, but if it's a voluntary or third sector organisation, it may not cost me as much as it would through the probationary service. But in the long run I actually might save money. (Judicial respondent E.)*

Important as the principles of justice are, financial considerations inevitably play a role. There are no reliable estimates of the cost of prostitution to society (DeRiviere, 2006), but both groups of respondents conveyed the strong conviction that investment of resources would be placed prudently in rehabilitative rather than punitive responses.

#### (d) Community Punishment Orders

Also known as community payback, the community punishment order was not seen as a viable sentencing option by either sub-sample. The enduring stigma attached to selling sex was cited as the main reason to avoid this form of explicit penalty. It is included here for consideration due to its sporadic mooted by some commentators as an alternative to seemingly harsher sanctions for women who sell sex.

*I think there's enough shame already... [it] can be quite damaging, you know, wearing an orange jumpsuit and I don't think it would stop people committing crimes. I think it would just increase anger and resentment. (Stakeholder respondent G.)*

Several stakeholders felt that, rather than owing a debt to society, women who sold sex were themselves owed a duty of care which was neglected, if acknowledged at all.

*Most of the women that we work with have been let down by society and community... when people talk about prostitution they talk about 'the community' but they take the women that we're working with out of the community. (Stakeholder respondent E.)*

The tumultuous lives of some women who sell sex was identified as a barrier to community payback working effectively and, as with ASBOs, non-compliance was seen as a major risk.

*Most of the women do tend to lead chaotic lifestyles. They are more likely to miss appointments, they are more likely not to turn up. What is likely to happen in those cases is the probation service will breach them and then we are back to square one. (Judicial respondent F.)*

Unlike ASBOs, community punishment orders did not attract any concessionary comments.

#### 4.2.2 Constructive Sentencing Options

##### (a) Engagement and Support Orders<sup>9</sup>

Engagement and Support Orders (ESOs) were created as an alternative to fines for loitering or soliciting for prostitution in a public place (Street Offences Act 1959, s1 amended in

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<sup>9</sup> See Appendix C for the statutory provisions of Engagement and Support Orders.

Policing and Crime Act 2009, s16). Section 17 (2) of the order requires recipients to attend three meetings with a designated supervisor to, ‘(a) address the causes of the conduct constituting the offence, and (b) find ways to cease engaging in such conduct in the future’. A year after introduction, just one organisation in England and Wales had requested funding for delivery of the orders.<sup>10</sup> Only one respondent who was a sitting judge at the time of interview was aware of the existence of ESOs. Another judicial respondent, a practicing magistrate, stated that, “Certainly I have never and I can’t think of any of my colleagues who have ever come across this’. Despite poor publicity about ESOs, judicial respondents were universally interested in the concept and potential impact on improving justice in this area.

*I think they’re a good thing if the only alternative is fine, unpaid fines, imprisonment, or alternatively conviction, conviction, conviction, ASBO. Then engagement orders, set against that backdrop, are a better option... Why are we still arresting people on the street, keeping [them] in custody overnight, putting them before court, and all of [those] costs day in, day out, up and down the cities of this country? If they invested all of that money into rehab rather than into the infrastructure to put them before the courts... (Judicial respondent D.)*

This respondent illustrates the enduring dilemma of investing in crime reduction – whether to pursue a retributive or rehabilitative model of justice and, on a practical level, whether to concentrate resources in preventative or curative measures.

*Early intervention seems to be the key, and fining is not enough. But I would have no problem of going down tariff from saying, “It’s a conditional discharge”, to saying, “Actually, right, look you’re going to meet with this particular programme for a period of three months. (Judicial respondent E.)*

Most respondents welcomed the introduction of ESOs though a minority questioned the mandatory element.

*I think it’s a step in the right direction. My only concern is that looking at how the scheme works, if you force somebody to do something, does it have the same effect as a person who voluntarily goes along? I suppose if you look at it in terms of alcoholism, you have to admit that you have a problem before you can deal with the problem. (Judicial respondent F.)*

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<sup>10</sup> Although several organisations are delivering ESOs, funding can only be requested once ten orders are in place at £125 per order.

Detoxification should not necessarily be compared directly to ESOs as the respective aims are substantively different, however evidence from drug treatment research suggests that coercion is not a barrier to effectiveness, showing outcomes which are comparable with voluntary treatment (McSweeney, 2007; Seddon, 2007). ESOs are intended to facilitate time and space for reflection, advice and action in a supportive environment. The purpose is not to impose punishment or force behavioural change, but rather to assist the recipient to identify and address issues which led to the conviction, with the aim of continued liaison after the order has been fulfilled and the cessation of criminal behaviour. The only requirement upon recipients is to attend appointments – participating organisations have reported using the time to advocate for housing provision, legal aid and benefits or provide pampering sessions. Unlike other sentencing options, breaching an ESO does not attract a more serious penalty. Instead the court is 'able to deal with the individual as though the individual had just been convicted for the original offence' through the imposition of either a new order or an alternative sentence (Home Office, 2010, s4.14,). Guidance on ESOs allows considerable court discretion and encourages 'careful consideration' by judges before issuing a summons for failure to comply (Home Office, 2010). Despite low levels of awareness about ESOs to date, it seems that the orders offer a constructive alternative to detrimental sanctions, which respondents welcomed unanimously, albeit with caveats.

### **(b) Drug Rehabilitation Requirements**

The relationship between substance dependency and street prostitution is well documented and widely acknowledged (Hunter and May, 2004; May *et al*, 1999). Both sub-samples identified addiction as a major barrier to reducing recidivism for women who sell sex. Residential drug treatment was seen as a practical option for women seeking to address addiction alongside prostitution involvement, by virtue of the immersive service provision.

*It's very difficult for a woman to actually try to get out of the mess she's in when she's in the same area meeting the same people and who she is maybe getting the drugs from. (Stakeholder respondent D.)*

Despite strong conviction from respondents about the value of residential programmes, the combination of high costs, restricted availability and the need for complete commitment from individuals means that as a sentencing option its application is restricted. Drug

Intervention Programmes (DIP) were deemed to be a more accessible sentencing option. As with ASBOs and other compulsory orders, the risk of recurrent breach and subsequent serious criminalisation was emphasised by both groups of respondents.

*The trouble with DIP is that as soon as you drug test the woman at the police station, she is in a punitive system and that's the way DIP works. You fail a drug test, you go into the DIP programme. If you don't attend your appointments then you've breached and you go before the courts, and that's not generally the way I think a supporting agency is designed to be and it's not actually the way most agencies work. (Stakeholder respondent C.)*

Drug treatment is undoubtedly an important aspect of supporting women who sell sex in order to fund substance dependency, but programmes are typically short in length (twelve weeks) with targeted content and staff may not have the requisite resources to address ancillary issues arising from prostitution involvement.

### **(c) Pre-Sentence Reports**

A pre-sentence report informs the court of any mitigating or aggravating factors in relation to the circumstances and background of a defendant, which may influence the nature and scale of sentencing. If an individual who sells sex comes before court accused of offences such as acquisitive crime, drug offences or offences against the person, then a pre-sentence report should be prepared and taken into account, under section 158 of the Criminal Justice Act 2003. Judges are required to request a report before issuing a custodial or community sentence which means they do not typically feature for people accused of loitering or soliciting for prostitution.

Respondents expressed conflicting views about the applicability and value of pre-sentence reports for women who sell sex. Most practicing judicial respondents believed that they did not need detailed background information as they felt that this could be surmised through years of hearing similar cases.

*I don't want the full life picture because you're going to tell me probably from a broken home, probably going to tell me there was physical abuse, probably going to tell me there was certain mental abuse... Most magistrates will know that... The lifestyle, I don't want pages on it... What are the recent factors that have led to this young lady finding herself in this difficult position? (Judicial respondent E.)*

The creation of pre-sentence reports for women who sell sex depends upon the relationships between a particular judge, attending probation officers and local support services, all or some of whom may deem it to be superfluous to requirements. One stakeholder respondent, however, described valuable joint work with the probation service in relation to both pre-sentence and non-statutory reports.

*We're working a lot more with probation ...We find that really helpful to be able to provide input, and certainly probation have really welcomed that from us.... We've initiated a lot of reports for women who aren't necessarily going to be given short sentences...we might provide a mini-report of progress... It often means that we can provide a fuller picture...and obviously we would do that with the full support and write that together with the client to make sure she's happy with what's going in. (Stakeholder respondent E.)*

There was a discrepancy between judicial and stakeholder respondents in terms of who should take responsibility for initiating reports. Judicial respondents – tasked with ruling upon every corner of life – felt unreservedly that it was the role of probation officers, or workers in the voluntary and community sector, to come forward and offer any pertinent information, particularly about local support services providing holistic alternatives to criminal sanctions. Conversely, several stakeholders felt that in cases where a pre-sentence report was not legally required, courts should seek out information from statutory or voluntary agencies. Most stakeholder respondents felt that it was not the sole responsibility of any particular organisation or position, but rather a shared duty which necessitated collaboration between the courts, probation service and voluntary agencies.

*Dialogue that happens now between probation, who can be writing the pre-sentence report, and the providers in the community, that dialogue has started to happen, and I think it needs to be much deeper so that they can come to the agreement that there will be engagement with probation but there will be specified activities which can include engagement with other services as well. (Stakeholder respondent G.)*

Probation officers were portrayed by respondents as overworked and under-funded, grappling with a broad mandate. Specialist voluntary and community sector workers were collectively deemed to be best placed, but least resourced, to identify and distil factors which the court should take into account when sentencing women who sell sex.

### 4.3 Criminal Records

Consensus amongst respondents was most pronounced on the issue of criminalisation. Judicial respondents were more likely to hold the view that women who sell sex should not be afforded 'special treatment' and should not have criminal records expunged in order to improve employment prospects. There is, however, considerable evidence that women who sell sex are 'over-criminalised' compared to other people in the sex industry who offend. ACPO's revised strategy on policing prostitution, for example, states that, 'The number of exploiters punished by the law is low compared to the number of prostitutes convicted/cautioned' (ACPO, 2011, s4.5.1). Despite this admission, concerns about diluting legislation along with procedural problems in amending existing legislation were voiced by some judicial respondents, but roundly dismissed by others.

*You just amend the Rehabilitation of Offenders Act [1974] and say that certain types of offences do not have to be regarded as a criminal record for purposes of employment. ... It's a piece of legislation that damages people without the need for them to be damaged. (Judicial respondent D.)*

Possession of a criminal record is a significant obstacle to gaining employment for any ex-offender (Maruna, 2001). Securing interviews, let alone obtaining job offers, may prove impossible, with the exception of careers where personal experience of the criminal justice system could be seen as an advantage, such as support work with offenders. The stigma of prostitution and its association with substance misuse can constitute an insurmountable obstruction to future employment for women who sell sex.

*How on earth is a woman supposed to move on? Let's say she had worked really hard, and she's addressed her drug issue, and she's addressed her health issues, and she's got herself a tenancy, and she's gone on a training course, and she's done everything that she's supposed to do. And then what? She's left with this long list [of convictions] that she's got from back in the day that she's now got to show every potential employer. (Stakeholder respondent F.)*

Such a predicament drastically limits career choice, meaning that women who want to stop selling sex either continue doing so, rely on benefits, seek undocumented employment, or pursue a narrow range of roles which constantly draw upon their experiences.

Recent lobbying in the United States has led to the introduction of legislation in states such as New York<sup>11</sup> and Nevada<sup>12</sup> which enables victims of trafficking to expunge convictions from their criminal record, providing the offences in question were committed under the influence of a third party during an exploitative situation. In Nevada, a state which is deeply divided – ideologically and geographically – about prostitution, it is notable that the bill was supported by a coalition of diverse entities, more often to be found in disagreement over the direction of prostitution policy (Farley, 2007). Women’s rights groups, faith-based organisations, the brothel industry, law enforcement and a range of pressure groups were united in demanding state action which led to the bill passing through both legislative chambers unanimously. There is no comparable legislation<sup>13</sup>, nor campaign, to expunge prostitution convictions in the UK. Political and police engagement in tackling the injurious permanence of criminal records for women who sell sex is, however, gaining traction as summarised in recent UK governance and operational reviews.

*Criminal records resulting from someone being involved in prostitution can sometimes prove a barrier to employability... In recognition of this a number of areas have developed diversion schemes which allow people arrested for loitering and soliciting to be directed into support services as an alternative to the criminal justice system. Other areas have developed capacity to use Engagement and Support Orders: a criminal sanction imposed after conviction for loitering or soliciting, as a practical alternative to a fine (section 6.34, Home Office, 2011).*

ACPO’s revised strategy on policing prostitution lists a number of aims relating to diversion from serious criminalisation and the promotion of community-based support.

*Arresting on-street sex workers under the existing laws only as part of a staged approach that includes warnings, police engagement with local support projects, voluntary engagements with projects, existing diversionary mechanisms and Engagement & Support Orders (ESOs) (ACPO, 2011, s4.3.2).*

This shared direction from central government and law enforcement is encouraging, but requires far greater commitment in principle and practical resourcing to develop nationally.

<sup>11</sup> Criminal Procedure Law §440.10(1)(i). <http://criminaljustice.state.ny.us/legalservices/c332.htm>

<sup>12</sup> Assembly Bill 6 [http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB6\\_EN.pdf](http://www.leg.state.nv.us/Session/76th2011/Bills/AB/AB6_EN.pdf)

<sup>13</sup> Although case law states that a victim of trafficking should not be treated as a criminal in R v. O [2008] EWCA Crim 2835 which provides landmark guidance on the suitability of criminal prosecutions for immigration offences committed in the UK by victims of trafficking.

#### 4.4 Diversion

In recent decades the concept of diversion – originally developed for mental health intervention and liaison – has been adapted for application to other groups of vulnerable offenders, including young people, drug users and women who sell sex (May *et al*, 2001). There is no standard definition of criminal justice diversion, although schemes share a universal aim of reducing re-offending. Measures seeking to attain this vary, but typically include tackling the motivations behind offending and the propensity to re-offend. Strategies include support and liaison with specialist services, identifying and addressing needs, promoting health and well-being, and facilitating access to treatment, training and education. This may involve diversion away from the criminal justice system entirely or diversion away from custody into community-based orders. Dedicated UK diversion schemes for women who sell sex are scarce. Where they do exist, local statutory, voluntary and community services engage with and encourage the initiatives and positive results have been recorded, albeit necessarily measured by soft outcomes (Rice, 2010).

*Success isn't just about coming out the other end and if you think that someone's going to come out the other end within twelve months – or even two years – as a result of being plugged into this diversion, I think you're probably deluding yourselves. But, for a lot of women, it's about changing their habits, perhaps using less drugs, perhaps working less, being less disruptive... for a number of women it's just a very gradual process. (Stakeholder respondent C.)*

The success and very existence of criminal justice diversion for women offenders who sell sex depends upon motivated individuals at willing organisations to create and deliver schemes. The lack of a national framework – for diverting women offenders who sell sex away from punitive sentences and towards beneficial support – has inadvertently generated a variable system whereby a tiny proportion of the potential beneficiaries are offered access to criminal justice diversion which is unavailable in most areas.

*It's not joined up. It doesn't sit right with me that you have a different opportunity if you get arrested in [one area] than if you get arrested in [another area]. You'd have to fund diversion schemes across the country, most operating on goodwill or very little funding, to do any-thing really effective that would give you that joined up approach. Diversion is the only thing to my mind that will really work, dishing out ASBOs is seen to be effective but it's the old thing about confusing activity with productivity that's important. (Stakeholder respondent C.)*

The overwhelming opinion of judicial respondents was that women who sell sex should not ordinarily come before the courts – reasons given were that it was a poor use of court time, cycles of criminality could ensue becoming increasingly difficult to break and the relative ease of punishing sellers could obscure the drive to prosecute serious offenders. Perhaps surprisingly, stakeholder respondents were more supportive of court involvement.

*The court process means something. Where you've got magistrates tuned in to what a diversion scheme is trying to do, I think they do need to play their part. ...Simply to say to a woman, "Don't do it", or have some kind of informal diversion where you sit down and talk to them every few weeks, almost doesn't give them the impression that anything's going to happen. So I think there's value in the court process there, but you've got to back it up with something behind that.*  
(Stakeholder respondent C.)

For women who sell sex, offending behaviour may perpetuate through a combination of individual agency and vulnerability rather than criminal intent. Judges should always explore the possibility that a woman defendant who sells sex may also be a victim of multiple serious crimes (Hale, 2005; Rumgay, 2004b; Church *et al*, 2001)<sup>14</sup>. For those who entered prostitution at a young age with no formal educational qualifications or employment history, or with no support network outside the sex industry, the notion of exiting may seem remote, particularly when compounded by criminalisation (PE:ER Project, publication pending).

*You don't want non-violent women that are involved in prostitution to be criminalised. And yet at the same time we see it as a very positive thing to provide diversion within the criminal justice system... until we manage to bring about, if we can, complete diversion within the community, then we need to work within the criminal justice system to change it. It seems to me that the direction has been going to providing intervention within the community and we need to improve that and really resource that.* (Stakeholder respondent E.)

Exiting prostitution can be an arduous and circuitous journey for those women who want to stop selling sex, but have been failed repeatedly by mainstream services. In such cases, the

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<sup>14</sup> A 2008 landmark case overturned the conviction of a child victim of trafficking. The child was tried as an adult, convicted of immigration offences, and imprisoned in a detention centre. The Court of Appeal condemned grave errors by lawyers, police, immigration and the courts for failing to protect the victim and wrongful conviction. *R v O* [2008] EWCA Crim 2835.

criminal justice response should be designed to reduce reoffending through holistic community-based engagement which promotes autonomy and choice. Some women interviewed for forthcoming research (PE:ER Project, publication pending), who have been through diversion schemes stated that they would have been unlikely to engage initially on a voluntary basis, but nonetheless had embraced the support and accrued significant benefits. Consequently, they were supportive of diversion to help break the cycle of selling sex, arrests, court appearances, lengthening criminal record, diminishing prospects of alternative income generation, entrenchment in prostitution and further criminalisation.

#### 4.5 Information and Training

Respondents who were practicing judges felt that dedicated training on the circumstances of women who sell sex was not necessary to inform their sentencing decisions. Other judicial respondents and stakeholders were less confident about existing sensitisation.

*Lots of people in the court system won't ever have come in touch with people like that [women who sell sex] because they just lock themselves into their rooms and just do their jobs, or lock themselves into their courthouses and do their jobs.*

(Judicial respondent D.)

A number of individuals within the court system were lauded by stakeholder respondents for their enthusiasm to engage with and learn from specialist support services.

*We were really surprised that we were actually asked to come and deliver training for the magistrates ...The Chief Clerk Justice...talked to his magistrates. They were really interested in the background stories of the women, and they were saying, "What else can we do as magistrates? What do you want from us? How can we help?"* (Stakeholder respondent A.)

The surprise expressed by this stakeholder respondent – an experienced practitioner– implies that proactive engagement from the courts in this way is rare. Taking into account the pressures faced in making correct sentencing decisions on multifarious issues, it may be unrealistic to expect judges to seek out additional information as a matter of course.

*Many of the problems that benches face are because we're not provided with the full information that is necessary. Not the life history, but the more recent underlying factors that have put somebody into this position... [and] third sector programmes, which we don't know about because all we ever see is what's provided by probation.* (Judicial respondent E.)

Probation officers are, however, in a similar position faced with diverse clients and demanding caseloads which necessitate a generalist approach.

*Supervision now that the probation needs to do are with much, much, much more serious offenders. The sex offenders, the people who are much more likely to go out and commit much more serious offences than prostitution, so probation is not the route. They don't have the resources to deal with prostitution. (Judicial respondent E.)*

Respondents in both groups broadly agreed that the impetus for providing pertinent information to the courts should come from specialist agencies. Correspondingly, it is important that judges are receptive to training overtures by prostitution support services, then absorb and apply the knowledge.

*There have been open days for certain projects, and magistrates have gone along, been really keen to find out but unless they get pressure put on them to do so, it's going to be down to personal choice. (Stakeholder respondent G.)*

In order to accurately gauge the criminality of women defendants who sell sex and to strike a just balance between punitive and rehabilitative sentencing, collaborative training efforts and information sharing are vital. The potential benefits for all involved are significant.

## 5. Conclusions and Recommendations

### 5.1 Consistency

There is a lack of consistency in how women who sell sex are sentenced. The above analysis indicates that measures employed by the judiciary for this group vary significantly. Judicial respondents disclosed that, although their decision-making process was governed fundamentally by legislation and guidelines, there are numerous other considerations which influence the nature and scale of sentencing. Accumulated knowledge about the circumstances of women who sell sex, court reports providing extenuating details about individual women, and information offered by local projects about available support featured most prominently as mitigating factors.

#### **RECOMMENDATION 1:**

**Develop new guidelines to encourage sustainable collaboration between the courts and support services to raise judicial awareness about community- based options. Designate an official in each Magistrates’ Court to liaise with voluntary and community agencies to foster the standardisation of pre-sentence reports.**

### 5.2 Change

There is judicial appetite for significant restructuring in the prevailing criminal justice response to women offenders who sell sex. Despite the fact that sentencing has become increasingly lenient over recent decades, existing legislation is “*predominantly pushing the judiciary towards punitive elements*” according to one practicing magistrate respondent. Both sub-samples felt that women who sell sex are essentially set up to re-offend by the system, resulting in a spiral of recidivism which can be prohibitively difficult to overcome.

Unanimous consensus amongst respondents that custody is inappropriate for women who sell sex suggests that judges should resist ever taking the risk of ‘short, sharp shock’ prison sentences for persistent offenders in this group. The desire to avoid perpetuating a ‘revolving door’ response fails to acknowledge the typical nature and circumstances of women who repeatedly offend in relation to selling sex.

**RECOMMENDATION 2:**

**Custodial sentences should never be issued to women who sell sex, including persistent offenders, unless serious violent offences are also committed.**

**5.3 Diversion**

There is considerable cross-sector support for the expansion of specialist diversion schemes for women who are criminalised through selling sex. Both groups of respondents voiced significant support for increased involvement from the voluntary and community sector, in particular the extensive resourcing, development and expansion of diversion schemes. Respondents who were proponents of diversion acknowledged the dichotomy that, although they believed women who sell sex should not be criminalised, diversion as a mandatory but non-punitive sanction requires a point of access to potential beneficiaries, which currently occurs through the criminal justice system. This ‘carrot and stick’ approach requires the criminal justice system to facilitate engagement. No respondents saw diversion as a solution in isolation, but rather as a conducive element in progressing towards a more pragmatic and holistic overall response. Currently, prostitution outreach services may or may not raise awareness about diversion support, depending upon time, resources and ethos.

**RECOMMENDATION 3:**

**Fund, develop and promote a national multi-agency framework of specialist court diversion schemes for women who sell sex.**

**5.4 Fines**

Fines were roundly criticised by all respondents for perpetuating the need to sell sex in order to make payment and escalating criminality. Replacing fines with the issuance of an ESO could prove effective, firstly in limiting convictions, secondly by avoiding entrenchment in prostitution to pay fines, and thirdly by facilitating access to positive support.

**RECOMMENDATION 4:**

**Abolish fines for loitering and soliciting by seller. Promote ESOs as an alternative to fines; publish and effectively publicise judicial guidance.**

**5.5 Awareness**

Professional attitudes towards prostitution are varied and often conflicting. In the absence of a common approach, efforts to improve justice for women who sell sex can pursue opposing pathways, such as the well-documented polarised views about whether to legalise or criminalise buying and selling sex (Sanders *et al*, 2009; Matthews, 2008), consequently effective action can be neutralised. Cross-sector sensitisation is essential in order to generate a shared understanding of salient issues and to supersede counterproductive assumptions and prejudices about prostitution.

**RECOMMENDATION 5:**

**Provide dedicated training which illustrates the positive and negative impacts of criminal justice intervention, delivered in partnership with women who sell sex, support workers, healthcare practitioners, social services and police.**

**5.6 Responsibility**

There is reluctance to assume operational or financial responsibility for the instigation of substantive change, and a lack of consensus over who should be responsible for ensuring justice for women who sell sex. In addition to discordance over accountability and what precisely constitutes justice for this group, respondents overwhelmingly agreed that extensive changes were essential and long overdue. The majority of judicial respondents felt that prostitution *per se* should not be dealt with in court and that it was not their role to initiate, resource or oversee changes to current policy.

Stakeholder respondents were, however, unanimous in calling for leadership and mobilisation from official sources to supplement and develop existing grassroots action. Amidst a growing climate to rapidly reduce pressures on the criminal justice system, preceded by an emphasis on concrete targets for a population most accurately measured using soft outcomes, a shift in political and practical thinking is required in how the effectiveness of any new direction is assessed. Since dedicated diversion schemes function as an effective crime reduction tool (Rice, 2010), resources in existing crime reduction budgets should be reallocated to promote and develop diversion schemes as the preferred alternative to further criminalisation.

**RECOMMENDATION 6:**

**Create multi-agency task groups in each area which include women who sell sex, court representatives, specialist support workers, healthcare practitioners, social services, law enforcement, and local governance, to develop a shared understanding in order to galvanise legislative and non-legislative change.**

*“More money, more resources, more understanding, more commitment”*

(Stakeholder respondent F.)

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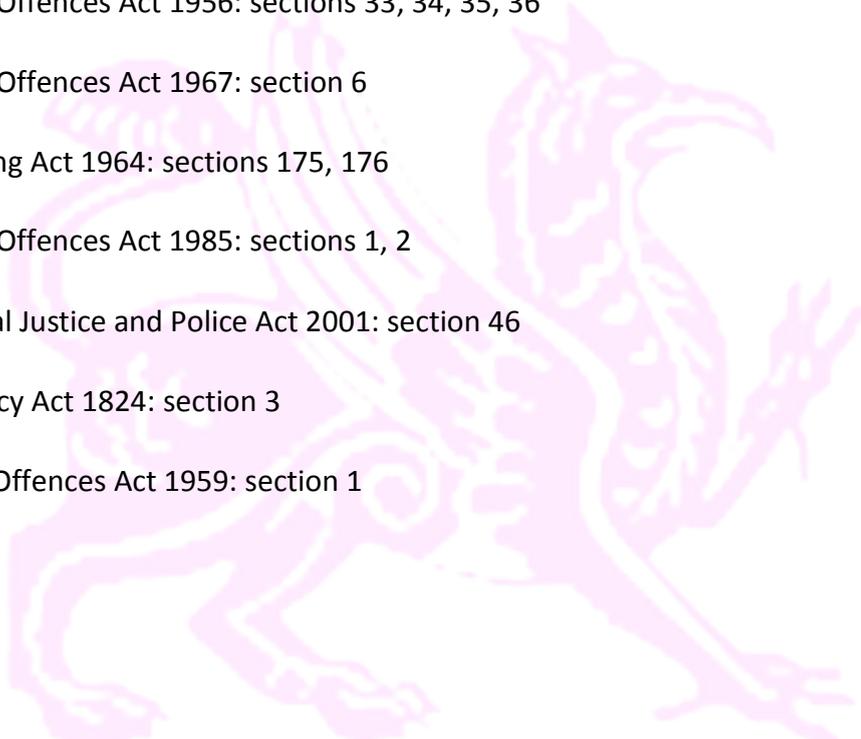
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## 8. Appendices

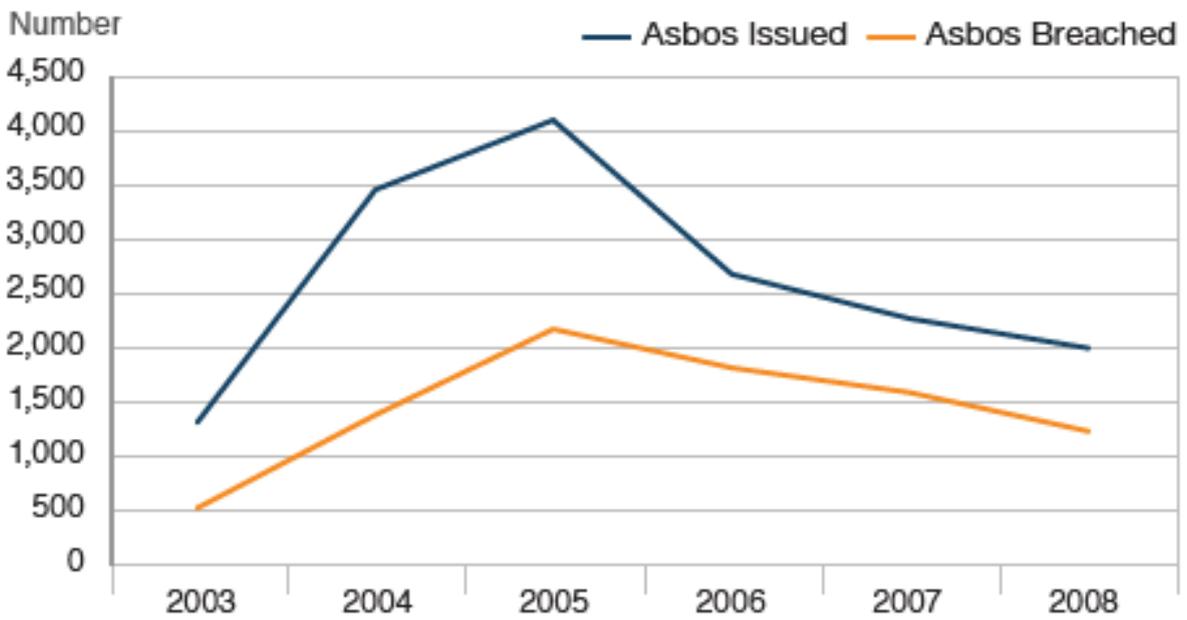
### 8.1. APPENDIX A: UK LEGISLATION ON PROSTITUTION

Principal UK legislation relating to prostitution includes:

- Policing and Crime Act 2009: sections 14, 15, 16, 17, 18, 19, 20, 21
  - Sexual Offences Act 2003: sections 48, 49, 50, 52, 53, 55, 33A
  - Sexual Offences Act 1956: sections 33, 34, 35, 36
  - Sexual Offences Act 1967: section 6
  - Licensing Act 1964: sections 175, 176
  - Sexual Offences Act 1985: sections 1, 2
  - Criminal Justice and Police Act 2001: section 46
  - Vagrancy Act 1824: section 3
  - Street Offences Act 1959: section 1
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8.2. APPENDIX B: SAMPLE INCIDENCE OF ASBO BREACH

### Asbos issued and breached in England and Wales 2003-2008



Source: Home Office



### 8.3. APPENDIX C: FREEDOM OF INFORMATION REQUESTS

The Home Office provided the following information in response to several 'Freedom of Information Requests' submitted by the author for national and metropolitan statistical data on women convicted of prostitution-related offences.

***Number of women arrested for prostitution-related offences***

*Although Home Office does collect arrest data, this is broken down by main offence group (for example violence against the person, robbery etc.) rather than into specific offences; therefore data on arrests for prostitution-related offences cannot be provided.*

***Number of Engagement & Support Orders issued since they came into force on 1 April 2010 under Section 17 of the Policing & Crime Act 2009***

*The Home Office does not hold this information.*

***Number, name and details of organisations/individuals funded to deliver Engagement & Support Orders***

*As at 25<sup>th</sup> March 2011, we have received a request from one organisation for funding in relation to the delivery of ten Engagement and Support Orders [details supplied].*

***Total funding allocated and specific funding designated to organisations/individuals delivering Engagement & Support Orders***

*The total funding due to be allocated to [details supplied] is £1,250 for the delivery of ten Engagement and Support Orders.*

#### 8.4. APPENDIX D: HOME OFFICE PROSTITUTION REVIEW 2011

##### Extract from the Home Office’s ‘A Review of Effective Practice in Responding to Prostitution’, October 2011.

###### **Criminal justice support (page 23)**

6.36. Although people involved in street prostitution may become involved in the criminal justice system as a result of offences directly related to prostitution, they may also become involved due to their generally chaotic lifestyle, for example through shoplifting or possession of drugs.

6.37. If individuals involved in street prostitution are arrested and prosecuted, support from specialist services may be necessary. This may take the form of liaison with criminal justice agencies on behalf of an individual, supporting them to attend court hearings on time, or dealing with the fact that an individual may have children and may be at risk of losing them. Advice can also be given on their rights, options around housing, and benefits. A number of projects also conduct outreach visits to prisons to ensure that support can still be offered while an individual is in custody.

6.38. Some projects provide diversion schemes which aim to help people who have been arrested to seek support for the factors that contributed to their engagement in street prostitution.

###### **TRUST, Lambeth – Court Diversion Scheme**

Trust’s Court Diversion Scheme in Lambeth is run in partnership with Camberwell Magistrates Court, Lambeth Metropolitan Police Service and the Crown Prosecution Service. It provides an opportunity for women to be diverted from the Criminal Justice System and into treatment and support. Women opting on to the scheme can have their cases discontinued by attending two structured appointments where a full needs assessment is carried out and a Care Action Plan drawn up. The aim of the appointments is to engage women with the services they need to support changes in their lifestyle, increasing their stability, reducing drug use and in the longer term, exit from prostitution. It has consistently delivered a completion rate of 89%.

###### **Safe Exit, Tower Hamlets – Pre-court Diversion Scheme**

The Safe Exit Diversion Scheme provides an alternative to appearing in court for women arrested for loitering or soliciting by the police in Tower Hamlets. Women are bailed at the police station to appear at court, usually five weeks after arrest. If they attend and complete an initial assessment with the Diversion Scheme worker and a second appointment at an appropriate service, they are not required to attend court, and the prosecutor discontinues the case at court on the appointed day. 84 women had been through the scheme between Jun 2006 and Dec 2009. On average, women were referred to the scheme five times (although this is a result of women being re-arrested, this continued contact and support is important, as it is unlikely for someone to exit prostitution after only two appointments).

## 8.5. APPENDIX E: ENGAGEMENT AND SUPPORT ORDERS

### Engagement and Support Orders - Extract from the Policing and Crime Act 2009

#### **Section 17: Orders requiring attendance at meetings**

(2A) The court may deal with a person convicted of an offence under this section by making an order requiring the offender to attend three meetings with the person for the time being specified in the order (“the supervisor”) or with such other person as the supervisor may direct.

(2B) The purpose of an order under subsection (2A) is to assist the offender, through attendance at those meetings, to (a) address the causes of the conduct constituting the offence, and (b) find ways to cease engaging in such conduct in the future.

(2C) Where the court is dealing with an offender who is already subject to an order under subsection (2A), the court may not make a further order under that subsection unless it first revokes the existing order.

(2D) If the court makes an order under subsection (2A) it may not impose any other penalty in respect of the offence.

#### **1A Orders under section 1(2A): supplementary**

(1) This section applies to an order under section 1(2A).

(2) The order may not be made unless a suitable person has agreed to act as supervisor in relation to the offender.

(3) In subsection (2) “suitable person” means a person appearing to the court to have appropriate qualifications or experience for helping the offender to make the best use of the meetings for the purpose mentioned in section 1(2B).

(4) The order must specify (a) a date (not more than six months after the date of the order) by which the meetings required by the order must take place; (b) the local justice area in which the offender resides or will reside while the order is in force.

(5) The supervisor must determine (a) the times of the meetings required by the order and their duration, and (b) the places at which they are held.

#### **Policing and Crime Act 2009 (c. 26) Part 2 — Sexual offences and sex establishments, 20**

(6) The supervisor must (a) make any arrangements that are necessary to enable the meetings required by the order to take place; and (b) once the order has been complied with, notify the court which made the order of that fact.

(7) The court making the order must provide copies of it to the offender and the supervisor.

(8) Subsection (9) applies where (a) the order is made by the Crown Court, or (b) the order is made by a magistrates’ court but specifies a local justice area for which the court making the order does not act.

(9) The court must provide to a magistrates’ court acting for the local justice area specified in the order (a) a copy of the order, and (b) any documents and information relating to the case that it considers likely to be of assistance to that court in the exercise of any functions in relation to the order.

*(10) The order ceases to be in force (unless revoked earlier under section 1(2C) or under the Schedule to this Act) (a) at the end of the day on which the supervisor notifies the court that the order has been complied with, or (b) at the end of the day specified in the order under subsection (4)(a) whichever first occurs.*

*(11) The Schedule to this Act (which relates to failure to comply with orders under section 1(2A) and to the revocation or amendment of such orders) has effect.*

**Extract from the Home Office's 'A Review of Effective Practice in Responding to Prostitution',  
October 2011.**

***Engagement and Support Orders (page 24)***

*Birmingham's use of Engagement and Support Orders*

*Agencies signed up to the prostitution strategy in Birmingham have developed an effective process for delivering these orders and ensuring they can be used constructively. The Drug Intervention Programme (DIP) mapped out this process with West Midlands Police SMART (Substance Misuse Arrest Referral Team), the DIP Probation Court and two designated agencies; SAFE (specialised female agency) and Turning Point – Birmingham Drug Line (men). The agencies have an appointed supervisor to conduct a needs assessment and oversee further appointments that must be completed as part of the order.*

## 8.6. APPENDIX F: HOME OFFICE ASBO CONSULTATION

### Extract from the Home Office's 'More effective responses to antisocial behaviour - a consultation', February 2011

#### 1. *Executive Summary (page 5)*

- ② *repeal the ASBO and other court orders for anti-social individuals, and replace them with two new orders that bring together restrictions on future behaviour and support to address underlying problems – a Criminal Behaviour Order that can be attached to a criminal conviction, and a Crime Prevention Injunction that can quickly stop anti-social behaviour before it escalates;*
- ② *ensure there are powerful reasons to stop someone from behaving anti-socially – for example, by making breach of the new orders grounds for eviction from social housing;*
- ② *bring together many of the existing tools for dealing with anti-social behaviour that happens in a specific location, for example a park or a house, into a Community Protection Order. This would deal with persistent litter or noisy neighbours, and also with street drinking and closing crack houses;*
- ② *bring together existing police dispersal powers into a single police power to direct people away from an area for anti-social behaviour;*
- ② *make the informal and out-of-court tools for dealing with anti-social behaviour more rehabilitative and restorative; and*
- ② *introduce a Community Trigger that gives victims and communities the right to require agencies to deal with persistent anti-social behaviour.*

<http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/>

## 8.7. APPENDIX G: INTERVIEW TOPIC GUIDES

### INTERVIEW TOPIC GUIDE: Judiciary

#### A. Introduction

1. Tell me about your professional background...
2. How long have you been sitting as a judge? Which court(s)?
3. Approximately, how many cases do you hear relating to prostitution annually? What proportion of these cases involve women defendants who sell sex?
4. What considerations do you take into account when sentencing this group?
5. How often are you asked to consider pre-sentence reports for women involved in prostitution?

#### B. Existing Legislation

6. In your view, what is the purpose of the law in this area?
7. How effectively do you think that the law operates in this area? (for example, in relation to desistance, rehabilitation, punishment, incapacitation...)
8. What do you think the impact will be of incoming legislation to criminalise those who purchase sexual services from exploited people? (Clause 13, Part 2, Policing & Crime Act 2009)

#### C. Sentencing Options

9. What is your view on the available range of sentencing measures?
10. What is your opinion about the function and suitability of the following measures for women involved in prostitution? (a) conditional cautioning (b) Anti-Social Behaviour Orders (c) community payback schemes (d) treatment / rehabilitation orders (e) suspended sentences (f) custodial sentences (g) other options?
11. Are custodial sentences appropriate for women involved in prostitution? If so, under which circumstances?

#### D. Advancing the Application of Justice

12. What does successful sentencing look like in this area?
13. What legislative or non-legislative changes, if any, might improve the application of criminal justice in this area?
14. Do you get sufficient information about (statutory / voluntary) support services which inform how you sentence women involved in prostitution?
15. Do you support community-based responses which circumvent black-letter law (such as tolerance zones) with the aim of improving conditions for, and/or reducing the criminalisation of, vulnerable women who are involved in prostitution?

#### E. Role of the Judiciary

16. Do you face any conflicts or contradictions in pursuing effective sentencing for this group?
17. In your view, does the judiciary play a role in dispelling or reinforcing stereotypes about women involved in prostitution?
18. Should the courts be primarily focused on dispensing punishment to women who offend in relation to their involvement in prostitution, or on facilitating access to alternatives?

**INTERVIEW TOPIC GUIDE: Stakeholders****A. Introduction**

19. Tell me about your professional background... (qualifications, training, work experience)
20. What is the title and remit of your current position?
21. What is your experience in working on the issue of prostitution?

**B. Service Users**

22. What are the demographics and needs of your service users / clients?
23. Which model of practice do you use? What is the philosophy behind it?
24. What types of interventions / support / services do you offer?
25. What are the key strengths of the work that you do?
26. What gaps / barriers / problems do you face in meeting service users’ needs?
27. What resources do you need in order to overcome these issues?
28. How much does it cost to support one service user / client? (per week/month/year)
29. Can you give examples or case studies which resulted in (a) positive and (b) negatives outcomes?

**C. Legislation & Sentencing**

30. What do you think the purpose of the law is, as applied to women involved in prostitution?
31. What is your view on the function and suitability of judicial measures which are available for sentencing this group?
32. Are custodial sentences appropriate for women involved in prostitution? If so, under which circumstances?

**D. Advancing the Application of Justice**

33. How effectively does the law operate in this area? (for example, in relation to desistance, rehabilitation, punishment, incapacitation...)
34. In your view, what legislative or non-legislative steps might improve the application of criminal justice in this area?
35. Do you support community-based responses which circumvent black-letter law (such as tolerance zones) with the aim of improving conditions for, and/or reducing the criminalisation of, vulnerable people who are involved in prostitution?

**E. Role of the Judiciary**

36. Do you perceive any conflicts or contradictions for the judiciary in sentencing this group?
37. Does the judiciary play a role in dispelling or reinforcing stereotypes about women involved in prostitution?
38. Should the courts be primarily focused on dispensing punishment to women who offend in relation to their involvement in prostitution, or on facilitating access to alternatives?

ENDS

## About the Griffins Society

The Griffins Society is an independent charity working for the care and resettlement of women offenders in prison and in the community.

For thirty years the Society concentrated on providing hostel accommodation for female offenders. When those residential projects were transferred to another organisation, the Society re-focused its activities on promoting effective practice for women in the criminal justice system through:

1. Funding practitioner-led research via its Research Fellowship Programme;
2. Coordinating and disseminating information about research and services for women in the criminal justice system;
3. Initiating service development projects to stimulate implementation, in the criminal justice system, of the recommendations arising from Griffins Society Research Fellowship reports.

The Society was established in 1965 and during the next three decades it developed considerable experience in the management of hostel accommodation for women offenders and women facing remand in custody. In 1999 the Society's accommodation projects were transferred to another organisation and the Society changed its emphasis to facilitate research into women offenders in the criminal justice system. As part of this, the Society finances up to four [Research Fellowship Awards](#) each year in conjunction with the Mannheim Centre for Criminology at the [London School of Economics](#). The Fellowships provide research opportunities for criminal justice practitioners who are seeking to develop and enhance provision for women offenders.

[www.thegriffinsociety.org](http://www.thegriffinsociety.org)