

Sex Workers and the Policing and Crime Act 2009

The Policing and Crime Act 2009, Section 14, amended the Sexual Offences Act 2003 by adding a new Section 53A. The new section makes it an offence in England and Wales to pay for the services of a prostitute who has been coerced into providing sexual services; the section was implemented from 1 April 2010. After nearly four years' experience of s14 research has revealed that the section is hardly ever used by the police.

Although the word 'trafficking' is not used in the Act, s. 14 is aimed at trafficking and the victims of trafficking for purposes of sexual exploitation; it is also about trying to reduce the overall demand for prostitution which is seen to be 'fuelling' sex trafficking.

The Home Office said ten years ago:

prostitution can only exist because there is a demand for it ... a coordinated strategy designed to reduce its prevalence must address demand as well as tackle the factors that lead individuals to become involved in its supply **(1)**

In Sweden the law prohibits all purchases of sexual services; section 14 could be seen as a hesitant first step in the same direction.

To find out how the law is being implemented researchers at Leeds Metropolitan University made requests under the Freedom of Information Act 2000 to all 43 police forces across England and Wales; results demonstrated that the majority of forces have not used s. 14 of the Policing and Crime Act 2009 at all **(2)**.

This raises questions about either the need for this law and/or the inherent difficulties the police have in identifying women who have been trafficked for sexual exploitation.

Even before implementation of the new law the difficulties of determining whether a person has been 'coerced' or 'controlled for gain' had been recognised by the Home Office when it acknowledged 'the practical difficulties in proving whether a defendant knew if a woman was controlled or not' **(3)**. One Chief Constable had also expressed his concerns about the police's ability in 'gaining sufficiency of evidence to merit a suitable number of prosecutions' **(4)**.

The current results seem to bear this out. There was, however, one notable exception to the overwhelming 'nil' results revealed by the research. One force had used s14 no less than 81 times. This, on the surface, seems to suggest that the law has been used successfully.

But, in response to our request for further details, the force in question said that the arrests were all made for the following reason: 'Solicit another for the purpose of obtaining their sexual services as a prostitute in a street/public place'. But under the terms of the law, this is an incorrect application of s14, as the offence described is already covered under s. 51 of the Sexual Offences Act 2009.

The force told us that they had achieved outcomes leading to fines, costs, and conditional discharges. All would involve prosecution. Yet the involvement of the CPS would be inconsistent with the CPS's own legal guidance:

It is anticipated that this [s. 14] offence will be considered most often in relation to off-street prostitution. If the police apprehend someone who has paid for sexual services with a person involved in street prostitution, it is likely that soliciting (section 51(A) Sexual Offences

Act 2003) would be a more appropriate offence to pursue as this does not require proof of exploitative conduct (5)

Attempts to get the relevant CPS office to elaborate on this seeming inconsistency have met with no response.

Given that this police force has utilised the law in what appears to be an inappropriate manner, further research and questions need to be raised about this incorrect application of the law to offences already covered under existing legislation.

The lack of police use of the law also challenges some of the fundamental principles upon which the legislative changes were made. In particular, the rationale for reducing the demand for prostitution because it is often considered to be fuelling sex trafficking. Supporters will no doubt suggest that the lack of application of the law demonstrates very clearly that the law is working, that demand has been reduced as clients are deterred by the legal changes and potential punishments they may face.

Critics might argue that the law was unnecessary to protect vulnerable individuals and that given trafficking for sexual exploitation is not as endemic as originally thought. Others may say the police are unable to detect such instances because of incompetence.

What we do know is that the law is not being used.

References:

- (1) Home Office (2004) *Paying the Price: A Consultation Paper on Prostitution* (Home Office Communication Directorate), London: HMSO para.1.7
- (2) Kingston S and Thomas T (2014) The Police, Sex Work, and section 14 of the Policing and Crime Act 2009 *Howard Journal of Criminal Justice* DOI: 10.1111/hojo.12058 (Early View published 10.12.13)
- (3) Home Office (2008) *Tackling Demand for Prostitution: A Review*, London: Home Office p14.
- (4) Whitehead, T. (2009) 'Police fear laws to criminalise men who pay for sex will be "unworkable"', *Daily Telegraph*, 5 April p1.
- (5) Crown Prosecution Service (2010) *Prostitution and Exploitation of Prostitution: Legal Guidance*, London: Crown Prosecution Service p1

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