

Prostitution Referral Order – Policing and Crime Bill

Equality Impact Assessment

Background

There is a legal obligation to equality assess for race, disability and gender impact when public bodies are developing new or existing policies. In accordance with best practice, it is suggested that the following areas should be considered:

- **race**
- **disability**
- **gender**
- **gender identity**
- **religion and belief**
- **sexual orientation**
- **age**

This impact assessment considers the prostitution-related provisions in the Policing and Crime Bill. The primary purpose of the provisions is to introduce a new penalty for the offence of loitering or soliciting for the purposes of prostitution¹ (section 1 Street Offences Act 1959). As it stands, the offence of loitering or soliciting and the penalties attached to it are widely criticised for not reducing re-offending. The new order is designed to rectify this situation, by diverting those convicted towards specialist support services so that they can begin to address the reasons behind their involvement in street prostitution, including, for example, through drug treatment and other health services.

The new penalty has been developed following a wide-ranging public consultation in 2004. This public consultation looked at the issues associated with both street-based and off-street prostitution and invited views on the various options for legal reform. Over 860 responses to the consultation were received, which, together with the overview of the evaluation of 11 Home Office funded projects on '*What Works to Tackle Prostitution*' and other recent research studies, formed the basis for the development of a coordinated strategy for prostitution. This strategy was published in January 2006².

Those involved in street prostitution are often significantly socially excluded and disengaged from support services. The complex issues they have faced, and their chaotic lifestyles, mean that routes out of prostitution will necessarily be slow and may involve a number of 'relapses'. The Government Strategy recognises that women (and men) involved in street prostitution are vulnerable and in need of support. It envisages that every opportunity will be taken to signpost them into support services and treatment on a voluntary basis or, where continued involvement in prostitution makes some coercion necessary, to divert them from the criminal justice system into treatment through a conditional caution or a prostitution-specific court diversion scheme.

¹ From here on referred to as 'loitering or soliciting'

² A Coordinated Prostitution Strategy and a summary of responses to Paying the Price, Home Office, 2006 <http://www.homeoffice.gov.uk/documents/cons-paying-the-price/>

However, the strategy also recognises that many will refuse help freely volunteered, and may also exhaust the opportunities available for diversion from the criminal justice system before a route out is taken. Despite the emphasis on diversion, the slow progress out of prostitution means that some of these individuals will face prosecution for loitering or soliciting at some time. The strategy acknowledged that the law on loitering or soliciting requires reform for it to be fit for this purpose.

This provision allows a specific Order to be made upon conviction in place of a fine. The order is intended to be flexible so that it can be tailored to the needs of the individual, and delivered by a supervisor who has been identified on the basis of their expertise in the issues associated with street prostitution. The objective is for the order to require the individual to address the causes of their offending behaviour, and this will be achieved through attendance at a series of 3 sessions with a supervisor.

Scope of the Order

The offence of loitering or soliciting is gender neutral and applies to adults and under-18s alike. The Order will therefore be available to men, women and young people under 18 years of age, convicted of loitering or soliciting for the purposes of prostitution if, following an assessment, they are considered suitable. The decision on the suitability of an Order in any individual case would be taken on the basis of the evidence before the court, and taking into account published guidance.

Objectives of the order

The purpose of the new order is to:

- enable those involved in street-based prostitution to consider and begin to address the underlying reasons for their involvement and take steps to leave;
- achieve an overall reduction in street-based prostitution; and
- improve the safety and quality of life of communities affected by street prostitution, including those individuals directly involved in street based sex markets.

Methodology

Data

It is extremely difficult to be precise about the scale of prostitution in England and Wales. However, we do know that it exists in most major towns and cities, sometimes on the street, but also in commercial premises and private residential properties. Because this assessment focuses on the loitering or soliciting offence, it relates to street prostitution only.

Research published in 2004 profiled in some detail 333 women in five exiting and support projects³. This, along with the consultation responses, provides a considerable amount of information about those involved in street-based prostitution.

The numbers of prosecutions and convictions for loitering or soliciting have fallen considerably in the last ten years (Annex B). However, this fall is likely to be indicative of policing activity as opposed to the numbers of people involved. In line with the Government's strategy and ACPO guidance, the focus of enforcement has

³ Hester & Westmarland (2004) *Tackling Street Prostitution: Towards an Holistic Approach*

shifted on to those creating the demand for street-based sex markets, in recognition that those selling sex exercise less choice.⁴

Consultation and involvement

In July 2004, the Home Office published *'Paying the Price: a consultation paper on prostitution'*⁵. The consultation paper considered the wide-ranging issues associated with prostitution and posed a number of specific questions for respondents to consider. This included a specific request seeking information about the different needs of the various groups involved in prostitution in terms of accessing support services, as well as views about how we could deliver a more rehabilitative response for those involved in prostitution. The responses to the consultation provided a considerable amount of information about those involved and the services in place to support them⁶.

Since the publication of the strategy, we have also consulted specifically on the details of this Prostitution Order with our key stakeholders and community groups. This has provided further information in terms of the potential impact of the new provision on any particular equality target group.

Assessment

Race

- Responses to *Paying the Price* and published research suggest that those involved in street-based prostitution mirror the ethnicity of the local population. No issues were identified as having a specific impact on BME communities.
- The new order is not likely to impact specifically on any particular racial group, although, as it is by no means clear how effectively voluntary sector projects reach out to different groups, the order should facilitate links into dedicated support services and ultimately access to mainstream services.

Disability

- The available data suggests that those involved in street-based prostitution often have varied and complex mental health needs. This will need to be considered in guidance.
- The new order is unlikely to impact disproportionately on a particular group as a result of disability, and should facilitate links into dedicated support services and ultimately access to mainstream services

⁴ The conclusion that prostitution is more of a survival activity is based on research (cited in *Paying the Price*) that shows that the common characteristics of those involved include (a) difficult lives – many reported poor school attendance, as many as 70% spent time in care and many reported running away from home or suffering periods of homelessness; and (b) problematic drug misuse – as many as 95% use prostitution to support their own (and often their partner's) problematic drug use.

⁵ Home Office (2004) *Paying the Price: a consultation paper on prostitution*

⁶ A list of the organisations that responded to *Paying the Price* is available at Annex A of the Government Strategy

Gender

- The offence of loitering or soliciting is gender neutral, although criminal statistics demonstrate that virtually all those convicted are female. This reflects the fact that very few men are engaged in street-based prostitution. This new measure will therefore have a greater impact on women involved in prostitution, albeit not disproportionately.
- It will be important to ensure those acting as supervisors, and the services they provide, recognise the particular needs of this vulnerable group of women.
- Guidance will also have to be provided to ensure the order is available, if considered appropriate, for the small number of men convicted of loitering or soliciting.

Gender Identity

- We will ensure that guidance considers the specific needs of all those with different gender identities involved in prostitution

Religion and belief

- We will ensure that guidance considers the specific needs of those involved in prostitution with different religious beliefs

Sexual Orientation

- We will ensure that guidance considers the sexual orientation of those subject to an order and the impact this might have in terms of service delivery.

Age

- There is no evidence to suggest that this new measure will disproportionately impact on a particular age group.
- Data suggests that the largest proportion of women involved in street-based prostitution are aged between 20-40 and that a significant number of these women first became involved before they reached 18.
- The provision of dedicated and separate services for adults and under-18s ensures appropriate service provision for each group. Guidance will need to ensure that anyone under the age of 18 made subject of an order is allocated a supervisor from a service for children/young people.

Overall Assessment

- The policy is unlikely to have a disproportionate impact on a particular equality target group.
- Access to a supervisor from a dedicated support project may be limited in some areas (particularly where the street sex market is small and no dedicated services exist). However, a key element of the prostitution strategy is for local partnerships to ensure that dedicated support projects are commissioned to develop routes out for those involved in prostitution in all areas where they are required.
- Those involved in street-based prostitution often have complex needs and anecdotal evidence suggests they tend to have difficulty accessing mainstream services. The new Order will ensure they are in contact with local projects, who can act as key workers, improving their access to other mainstream services.

Response

The flexible nature of the order should mean that the provision will have a positive impact in terms of equality. The offender will receive interventions or programmes that are specific to his or her circumstances, via a supervisor who will be selected on the basis of their ability to meet the needs of this specific offender group. However, flexibility also brings the risk that the order may impact differently on each group and we will take this into account when drawing up monitoring procedures.

Sentencers will receive guidance on the new penalty and (race) equality training is delivered as part of all sentencers' general training. Monitoring of the sentencing of those involved in prostitution, and the use of the order will be introduced.

Recommendation: We do not recommend any changes to the provisions in light of the above assessment.

Detailed Assessment

Race

- Home Office Research Study 279 profiled 333 women involved in prostitution who were accessing support services from five projects in Hackney, Hull, Kirklees, Manchester and Stoke-on-Trent. Information was available on the ethnic origin of 304 of the women. Most of the women were white-European (83%), 11% were Afro-Caribbean, 1% Pakistani, 1% Asian and 5% from other ethnic groups. This largely echoed the local population. (*HORS 279 Tackling Street Prostitution: Towards an Holistic Approach. Home Office 2004*)
- Demographic profiles of women arrested for loitering or soliciting and drug tested in DIP (Drug Interventions Programme) Intensive areas under Inspector's Authority between April 2006 and September 2006 shows that 70% were white British, 14% of unstated race, 4% mixed race, 3% Black and 1% Asian. (*DIP Drug Testing reports Home Office, 2006*)

Disability

- Evidence from the *Paying the Price* consultation suggests a significant number of those involved in prostitution report varied and complex mental health needs.
- The Government's Women's Mental Health Strategy notes that domestic and sexual violence and abuse contribute greatly to women's mental health and that this is particularly true for women with complex needs, such as those with a dual diagnosis of substance misuse and mental health problems.

Gender

- Evidence from the *Paying the Price* consultation suggests that the vast majority of street-based prostitution involves women, whilst male prostitution predominantly takes place off-street. Men involved in prostitution are therefore much less likely to be arrested for loitering or soliciting (although some street markets do exist).
- Criminal statistics provide a gender breakdown of those arrested for loitering or soliciting for the purposes of prostitution. A total of 1376 people were prosecuted for loitering or soliciting in 2005. Of these 99.3% (1366) were female. 1116 of these cases resulted in conviction, of which 99.2% (1107) were female.

Gender Identity

- *No relevant existing data*

Religion / Belief

- *No relevant existing data*

Sexual Orientation

- *No relevant existing data*

Age

- Home Office Research Study 279 profiled 333 women involved in prostitution who were accessing support services from five projects in Hackney, Hull, Kirklees, Manchester and Stoke-on-Trent. Information was available on the age of 288 of these women. The women were aged between 16 and 55 years of age, with an average (median) age of 25. The breakdown by age group was as follows:

16-20 – 45 (16%)
21-30 – 178 (62%)
31-40 – 50 (17%)
41-50 – 14 (5%)
51-60 – 1 (<1%)

Just over three quarters of the women (76%, 93/122) had first become involved in prostitution at the age of 21 or under.

- The order will be available to under 18s, although current Government guidance states that those under the age of 18 should be treated primarily as the victims of abuse and only arrested if they persistently and voluntarily return to the streets. The number of convictions for those under the age of 18 is very small (1 in 2005).
- Dedicated services for under-18s tend to operate where there is evidence that children are involved in prostitution (although they tend to be involved in off-street prostitution as opposed to on-street). Although separate, these services tend to have good links with any local service for adult women involved in prostitution.

Annex B

Numbers of police cautions and convictions for loitering or soliciting 1995-2005

Year	Cautioned	Convictions
1995	3302	5737
1996	3409	5504
1997	3485	5749
1998	3505	5269
1999	2001	3398
2000	1206	3395
2001	754	2849
2002	1424	2678
2003	949	2653
2004	1265	1744
2005	927	1116