



Standing Committee for Youth Justice

POLICING AND CRIME BILL
HOUSE OF LORDS – COMMITTEE STAGE
June 2009

PART 2 – Sexual Offences and Sex Establishments

Amendment to offence of loitering etc. for purposes of prostitution

Amendment

Page 16, line 39 [Clause 15], after 'person', insert 'aged 18 and over'.

Purpose

To exempt children from the offence of loitering or soliciting for the purposes of prostitution

Briefing

The Standing Committee for Youth Justice (SCYJ) regrets that, despite the Government's repeatedly stated intention to make clear that involving children in prostitution is a form of child abuse, this Bill does not abolish the power to prosecute a child over the age of ten for offences under s.1 of the Street Offences Act 1959 which the Bill amends.

This view is shared by the Joint Committee on Human Rights which made the following recommendation in its recent scrutiny report on the Policing and Crime Bill:

We are therefore unconvinced by the Government's explanation of the continuing need for the criminalisation of children involved in prostitution, which is in direct opposition to the conclusions of the UN Committee on the Rights of the Child. In particular, we are not persuaded by the assertion that the criminal justice system may be needed to enable children to access support. The provision of revised guidance is insufficient to address our central point of concern. We recommend that the Government reconsider its opposition to decriminalising children involved in prostitution and suggest an amendment to the Bill below:

Page 16, line 28, clause 15 after "person" insert "aged 18 or over".¹

Children and young people have a right to be protected from all forms of sexual exploitation including involvement in 'on street' prostitution and this right is enshrined in both international conventions and domestic legislation. Articles 34 and 39 of the UN Convention on the Rights of the Child require states to take action to protect children from sexual exploitation and take measures to enable them to recover from the impact of exploitation.

¹ The Joint Committee on Human Rights (April 2009), Tenth Report of Session 2008-09, Legislative Scrutiny: Policing and Crime Bill, p.25

The current situation

Because of the nature of exploitation it is difficult to estimate how many children and young people may be involved. But in 2005/6 Barnardo's sexual exploitation services worked with 2148 young people² aged between 12 and 24 and research undertaken by them in 2005 indicated that as many as 1000 young people in London alone were at risk of or involved in exploitation.³

Research indicates that children likely to be most at risk of sexual exploitation are those who have had a disrupted family life, including being in care; a history of abuse and disadvantage; disengagement from education; poor mental or physical health and a history of going missing from home or care.⁴

The sexual exploitation of children takes many different forms that may include involvement in 'formal' prostitution. It is only relatively recently that there has been a recognition that children and young people who would once have been referred to as 'child prostitutes' should be seen and treated as abused children in need of care and protection and much progress has been made to develop preventative work and services to enable children and young people to 'escape' and recover from exploitative situations and relationships.

It is to be commended that during the passage of the Criminal Justice and Immigration Act 2008 when these measures were previously discussed the Minister acknowledged that children involved in sexual exploitation are victims and said that he wishes to give a '*clear message that child sexual exploitation is a grave crime that will not be tolerated and that the child is always the victim*'.⁵ This position is reiterated in the statutory guidance *Safeguarding children and young people from Sexual Exploitation* that was published earlier this month.⁶ It is therefore difficult to see that there could be any argument for retaining a criminal prosecution measure that is applicable to the victim of the crime.

In its concluding observations on the United Kingdom, published on 3 October 2008, the United Nations committee on the rights of the child recommended that '*The State party should always consider, both in legislation and in practice, child victims of these criminal practices, including child prostitution, exclusively as victims in need of recovery and reintegration and not as offenders*'.⁷

The numbers of children aged under 18 who have been prosecuted under s.1 of the Street Offences 1959 are extremely low – one prosecution and two cautions in 2005.⁸ We believe that this is another reason to remove the offence for under 18s from the statute book.

Answering the Government's arguments against decriminalisation for under 18s

At Report Stage of the Bill in the House of Commons the Minister, Alan Campbell MP set out the Government's reasons for resisting this amendment. These are copied here with our counter-arguments below:

"The approach of treating children abused through prostitution as victims will rightly continue to be that approach that agencies take, but on balance—and it is a fine balance—we believe there are still reasons for retaining the current position on statute. First, decriminalising under-18s would risk sending out a message that we do not think it is acceptable for adults to be involved in street prostitution, but that somehow it is acceptable for a child or young person to loiter or solicit for the

² Barnardo's (2006) *Fact Sheet: 'Sexually Exploited Girls'*, London

³ Harper, Z and Scott, S (2005) *Meeting the needs of sexually exploited young people in London*, Barnardo's, London

⁴ Barnardo's (2006) *Reducing the risk*

⁵ Hansard, House of Commons Tuesday 27th November. Column 537ff

⁶ DCSF (2009) *Safeguarding Children and Young People from Sexual Exploitation*, para 2.9

⁷ UN Committee on the Rights of the Child (2008) Consideration of reports submitted by states parties under article 44 of the Convention. Concluding observations: United Kingdom of Great Britain and Northern Ireland . para. 74

<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁸ *ibid.*

purposes of prostitution. If one child is deterred from getting involved in prostitution because they would be at risk of breaking the law, that would justify our position.”⁹

SCYJ believes that this argument rests on a fundamentally flawed understanding of the situation that children who are sexually exploited are in. They do not choose (as most of us would understand the concept) to be involved. In all cases of exploitation, including ‘on street’ prostitution, those exploiting the children and young people will have power over them by virtue of their age, gender, physical strength or economic or other resources. While some element of intimidation is common, the involvement in exploitation is characterised for the child or young person by ‘choices’ borne out of their social, emotional and economic vulnerability. Therefore to suggest that the threat of prosecution acts as an effective deterrent is in our view erroneous.

Furthermore we do not concur that decriminalisation will send a message that prostitution is acceptable for under 18s. To the contrary it will send an unequivocal message to young people in this situation that they are victims in the eyes of the law and will be treated as such.

“Secondly, abolishing the offence could encourage pimps to target children, as they would know that the police could not arrest child prostitutes if they were found loitering or soliciting.”¹⁰

This should not be the case so as long as the response towards perpetrators is sufficiently robust. Whenever the police identify a child who is being sexually exploited they should take appropriate steps to identify and prosecute those who are responsible for the exploitation, including under section 49 of the Sexual Offences Act, 2003. The nature of the response towards a child should not affect the actions taken against the perpetrator.

“Thirdly, we are concerned at the risk that such a move would encourage the trafficking of women into street prostitution, having been briefed to lie about their age. This may be a particular risk as it may be difficult to establish the age of women trafficked from abroad.”¹¹

The trafficking of both women and children is a very serious issue and the focus in tackling it must be on providing support to victims to allow them to exit exploitative situations whilst also identifying and prosecuting those who are responsible. The latter can be done under sections 57-59 of the 2003 Act which provide specifically for offences relating to trafficking for sexual exploitation of both women and children. As argued above, providing that this approach is applied consistently and robustly, the decision to decriminalise prostitution for under 18s will not create this kind of perverse incentive.

“There may be exceptional cases where support from agencies has been made available but the child refuses to accept that support. At that point, criminal justice agencies may be important to push the child towards that support.”¹²

Children and young people will often not initially recognise or acknowledge that they are in exploitative situations and assisting them to ‘escape’ is not something that can be done quickly. Many children and young people will return to these situations several times and while this may be seen as ‘choice’ to refuse support we would argue that this is not the case given their histories, background and circumstances. Services, which seek to engage young people on a voluntary basis even if that takes a significant period of time, are far more likely to be effective than coercing young people to accept support with the threat of prosecution

On the contrary the fact that the offence remains may deter young people from seeking any form of support. Even though the levels of prosecution are very low the young people on the street are not aware of that. What they will know, or be told, is that it continues to be illegal and therefore they are at risk of prosecution. That alone is likely to make a young person sceptical of seeking help from the authorities.

⁹ House of Commons, Hansard, 19 May 2009, Col 1414

¹⁰ *ibid.*

¹¹ *ibid.*

¹² *ibid.*

Even more worrying, however, is research that suggests that continuing to criminalise young people in this way actively assists the controlling influence of those who exploit them. It has been demonstrated that 'pimps' are able to exercise control by threatening to report the young people to the police. Literature on the use of threats within domestic child abuse demonstrates that such threats can seem real and exercise a controlling influence over a child or young person and yet again this literature appears to be ignored.¹³

Fear of the police can also result in young people taking health risks; children involved in commercial sexual exploitation may be reluctant to be found with condoms for fear that this may be used as evidence against them on charges of loitering and soliciting.¹⁴ This is obviously very concerning as it puts both young people and their clients at increased risk of HIV infection and other sexually transmitted diseases, as well as the risk of becoming pregnant.

Conclusion

The current legal situation undermines the excellent work which has been done by Government and others to place the focus on the crimes committed by the exploiters and is contrary to the approach which acknowledges the vulnerability of these children and young people and the need to offer persistent and long term support to enable them to disengage from exploitative and abusive situations and relationships. **The Bill must abolish the power to prosecute children for prostitution.**

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The Standing Committee for Youth Justice (SCYJ) is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Members are: Action for Children, Association of YOT Managers, Barnardo's, Catch22, Children Law UK/TACT, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, NSPCC, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

The contents of this briefing do not necessarily reflect the views of all member organisations

¹³ Gillespie, A. A., Web Journal of Current Legal Issues (2007) Diverting children involved in prostitution.

¹⁴ Carsick, L., (2002), "Youth prostitution: A literature review." In Child Abuse Review v 11, issue 4 pp 230-52, especially p. 240, p. 48