

‘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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Abstract

- The aim of this research project was to assess the considerations and measures employed by the judiciary when sentencing women who sell sex — and to make recommendations about legislative and policy change that could advance the application of justice in this area.
- The specific objectives were: 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 sentences, legislation and sentencing; and to gather evidence from researchers or practitioners who work with women who sell sex.
- To obtain detailed attitudinal data a qualitative approach was adopted — and the field research consisted of twelve semi-structured interviews with fourteen respondents — seven judicial respondents and seven other stakeholders.

Findings

- There is a lack of consistency in how women who sell sex are sentenced. 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.
- There is judicial appetite for significant restructuring in the prevailing criminal justice response to women offenders who sell sex — and a unanimous consensus amongst respondents that custody is inappropriate for women who sell sex.
- 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.
- 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 Engagement & Support Order (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.
- Professional attitudes towards prostitution are varied and often conflicting. Cross-sector awareness-raising is essential in order to generate a shared understanding of salient issues.
- 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.

Recommendations

- New guidelines should be developed to encourage sustainable collaboration between the courts and support services to raise judicial awareness about community based options. There should be a designated official in each magistrates’ court to liaise with voluntary and community agencies to foster the standardisation of pre-sentence reports.
- Custodial sentences should never be issued to women who sell sex, including persistent offenders, unless serious violent offences are also committed.
- A national multi-agency framework of specialist court diversion schemes for women who sell sex should be funded and developed.
- Fines for loitering and soliciting by seller should be abolished. ESOs should be promoted as an alternative to fines; judicial guidance should be published and promoted.
- Dedicated training should be provided which illustrates the positive and negative impacts of criminal justice intervention. This training should be delivered in partnership with women who sell sex, support workers, healthcare practitioners, social services and police.
- Multi-agency task groups should be created 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.