

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**

Helen Atkins

Executive Summary

www.thegriffinsociety.org

Executive Summary

1. BACKGROUND

- Criminal justice responses to prostitution have existed in Britain for centuries. Despite the confluence of unequivocally modern elements, such as mobile communications, globalisation and changing attitudes towards paid sex, an ancient debate persists.
- 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.
- Women who seek to leave prostitution may find it prohibitively difficult to do so, for diverse reasons including providing for dependents, lack of access to appropriate housing, training and employment, substance misuse, and unhealthy relationships.
- Many activities related to prostitution incur sanctions in the name of public order or human rights. A criminal record can prove to be an insurmountable impediment to exiting the sex industry. The nature and scope of judicial sentencing, therefore, is pivotal in affecting outcomes for women who are criminalised for selling sex.
- The purpose of this research is to focus upon one critical aspect of justice in relation to prostitution – the role of the judiciary – rather than to explore the wider ethical debate.
- Findings suggest that current law and policy on prostitution is composed of an illogical blend of the past and the present. A comprehensive and coherent shakedown of legislation and sentencing guidelines is needed to establish a workable model of justice.

2. RESEARCH AIMS AND OBJECTIVES

Aims

- To assess 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.

Objectives

- To identify and explore the range of factors that judges take into account.
- 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 qualitative evidence about: the suitability of current sentencing measures; barriers to effective sentencing; the viability of legislative and non-legislative change.
- To gather qualitative 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. METHODOLOGY

- A highly qualitative approach was adopted to obtain detailed attitudinal data. Field research consisted of semi-structured interviews with representatives of the judiciary, related legal positions, specialist practitioners and researchers.
- Desk research included an international literature review, consideration of case law, legislation, policy materials and media coverage, and Freedom of Information requests.
- Evidence was analysed thematically using qualitative data analysis software.

4. KEY FINDINGS

4.1. Law and Policy on Prostitution

- Prostitution policy has progressed in recent years in certain ways, such as court liaison, specialist criminal justice diversion schemes, and community collaboration.
- The existing legal framework relating to prostitution is inadequate to deal with the complexities faced by women who appear before the Courts for selling sex.

4.1.1. The Role of Judges

- Tension between the rule of law, the agency and victimhood of defendants, and an effective reduction of recidivism facilitate a variable system of justice.

4.1.2. The Role of Court Clerks

- Clerks are perceived as either rigid enforcers of tariffs, or as vital components in conveying to judges the vulnerability of women who sell sex as a mitigating factor.

4.2. Sentencing Women Who Sell Sex

- Punitive measures typically serve to entrench women in prostitution and fail to address the fundamental issues that have brought them to court.
- Statutory and local community initiatives, specifically designed to minimise futile reactions from the criminal justice system, should feature more prominently.

4.2.1. Chronic Sentencing Options are likely to perpetuate prolonged criminal justice involvement by failing to address the causes behind offending behaviour.

- (a) **Custody** is widely recognised as counterproductive and unjust for women who sell sex. Evidence from respondents favours community-based responses which avoid the potential perils of a custodial sentence.
- (b) **Anti-Social Behaviour Orders** constitute a major impediment to the ability of services to provide sustainable support to address the offending behaviour of women who sell sex.
- (c) **Conditional Discharges** are used periodically as a means to avoid escalating fines for prostitution but risk instigating a spiral of criminality through breach of conditions.
- (d) **Community Punishment Orders** are not seen as a viable sentencing option because of the enduring stigma attached to selling sex.

4.2.2. Constructive Sentencing Options are highlighted as successfully preventing or reducing further criminalisation through strategic community-based support.

- (a) **Engagement and Support Orders (ESOs)** are considered viable and a useful addition to relevant sentencing options, but poor publicity has restricted their application.
- (b) **Drug Rehabilitation Requirements** run the risk of breach and further criminalisation, but offer a practical option for women seeking to address addiction alongside prostitution involvement, particularly residential programmes.
- (c) **Pre-sentence Reports** are not typically issued for women defendants who sell sex, however, they can provide judges with crucial information for sentencing.
- (d) **Criminal Records** severely limit alternative opportunities for income generation. There is judicial reluctance to contemplate expunging offences for women who have suffered serial abuse and violence through selling sex.

4.3. Diversion

- There is consensus that women who sell sex should not ordinarily come before the Courts, despite this, dedicated UK diversion schemes are scarce.
- The criminal justice response should be designed to reduce reoffending through holistic community-based engagement which promotes autonomy and choice.

4.4. Information and Training

- Collaborative training efforts and information sharing between the Courts, probation and specialist support services are vital in order to attain appropriate criminal justice responses.

5. CONCLUSIONS AND RECOMMENDATIONS

5.1. Consistency

The current application of court sentences for women who sell sex varies significantly.

RECOMMENDATION: Develop guidelines for sustainable partnerships between the Courts and support services to raise judicial awareness about community-based options. Designate a liaison official in each Magistrates' Court to cultivate pre-sentence reports.

5.2. Change

There is judicial appetite for significant restructuring in the prevailing criminal justice response to women defendants who sell sex.

RECOMMENDATION: Custodial sentences should never be issued to women who sell sex, including persistent offenders, unless serious violent offences have also been 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.

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

5.4. Fines

Replacing fines with ESO issuance could prove effective in limiting convictions, avoiding entrenchment in prostitution to pay fines, and facilitating access to positive support.

RECOMMENDATION: Abolish fines for loitering and soliciting by people who sell sex. Promote ESOs as through the publication and effective circulation of judicial guidance.

5.5. Awareness

Cross-sector sensitisation is essential to generate a shared understanding of salient issues and to supersede counterproductive assumptions and prejudices.

RECOMMENDATION: Provide collaborative dedicated training in each statutory area which illustrates positive and negative impacts of criminal justice intervention.

5.6. Responsibility

There is reluctance to assume operational or financial accountability for instigating substantive change and ensuring justice. Crime reduction budgets should be reallocated to develop diversion schemes as the preferred alternative to further criminalisation.

RECOMMENDATION: create multi-agency task groups in each area to develop a shared understanding and to galvanise legislative and non-legislative change.

ENDS

The full report is available on the Griffins Society website: www.thegriffinsociety.org