THE LEGAL OBLIGATIONS ON UK STATE BODIES FOR DECISION-MAKING AND POLICY DEVELOPMENT ON PROSTITUTION

Introduction: a campaigner speaks

From the Roman law of the *paterfamilias* to William Blackstone's 1765 *Commentaries on the Laws of England,* men have traditionally enjoyed access to and control over women's bodies simply by virtue of having been born male. Over the last two centuries, women have resisted this, seeing a clear link between male entitlement to access to women and oppression. Slowly, societal attitudes towards sex have changed. It is no longer to be regarded as a work of labour, performed under contract by a woman for a man in exchange for financial support. We rightly view such an attitude as regressive, and a man's "right" to sex with his wife, now known as marital rape, was finally abolished in the 1992 case of *R v A*.

Outside the sphere of prostitution, we increasingly understand that sexual consent must be enthusiastically and freely given to be meaningful. Yet the 1765 attitudes linger on within the sex industry, which entitles men to buy women's sexual consent to satisfy their own sexual desires and not hers. Women's empowerment, advancement and equality is undermined by this system.

This legal briefing has been commissioned by the Women's Liberation Movement to provide a greater understanding of the obligations of public bodies in relation to decision-making and the sex industry.

Overview

State bodies in the UK have legal obligations under domestic (UK) legislation, European law and international instruments[1] that are highly relevant to gender discrimination and ending violence against women, in the context of prostitution. This briefing aims to set out those obligations and how they should be met when state bodies in the UK make decisions or develop policies in relation to prostitution, which is in itself a form of violence against women.

This briefing document covers the following in terms of their application in the UK:

A UK domestic legislation:
- (i) Equality Act 2010
- (ii) Human Rights Act 1998
- (iii) How to use these rights

B European law and treaties:
- (i) Istanbul Convention
- (ii) EU Victims' Directive

C International instruments and treaties:
- (i) Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW")

[1] European and international law has relevance beyond the UK and this is referred to briefly below but a detailed analysis is beyond the scope of this briefing. It has also not been possible to cover the law in relation to trafficking which will often be relevant to the protection of women in this context.

A: UK DOMESTIC LEGISLATION

(i) Equality Act 2010

The Equality Act 2010 ("EA 2010") is the main body of anti-discrimination law that applies in England, Scotland and Wales[2]. It prohibits various forms of discrimination (including harassment and victimisation) in a range of activities including the provision of services and the exercise of public functions. The Act also includes a positive, proactive duty known as the public sector equality duty ("PSED") which seeks to avoid any adverse impact on gender equality as a result of public body decision-making or policy development.

Thus public bodies in the UK - such as the police, the Crown Prosecution Service or the Home Office – when making decisions, providing services or developing policy on how to deal with prostitution, should do so in such a way as to avoid discrimination against women and to ensure that such actions do not adversely affect women. The relevant legal issues are set out in more detail below.

The Public Sector Equality Duty[3]

Under section 149 of the Equality Act 2010, a public authority in the exercise of all of its functions must have due regard to:

- the need to eliminate discrimination and harassment of women (and any other conduct prohibited by the Act);
- the need to advance equality of opportunity for women; and
- the need to foster good relations between women and men.

Schedule 19 of the Act lists public authorities to whom the duty applies including Ministers of the Crown, Government Departments, local authorities and the police. Healthcare bodies and the Crown Prosecution Service ("CPS") must also meet the duty.

In addition, section 149(2) of EA 2010 confirms that: "A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1)." So an organisation exercising a public function on behalf of a public body (for example a private company running a prison) may also have to comply with the duty in respect of those functions.

The duty applies to both high level policy decisions at a strategic level within public bodies and specific decisions affecting only one individual. The duty is not a duty to achieve a particular result, but a duty to have "due regard to the need" to achieve the goals set out above.

Under section 149(3), meeting the duty to have due regard to the need to advance equality of opportunity includes having due regard to the need to remove or minimise

[2] The Equality Act 2010 does not apply in Northern Ireland, which has a range of legislation corresponding to the pre-Equality Act 2010 statutes.

[3] In this context, where women's equality is in issue, the "PSED" will sometimes be referred to as the "gender equality duty" or simply the "equality duty".

the disadvantages women suffer; and the need to take steps to meet women's needs that are different from men's needs.

Case law has established a number of principles as to how this duty should be complied with[4]. These can be summarised as follows:

a. The duty is an integral and important part of the mechanisms for ensuring fulfilment of the aims of anti-discrimination legislation;
b. The duty must be exercised in substance, with rigour and an open mind; (it has been said by the courts that there must be a "proper and conscientious focus on the statutory criteria");
c. The duty must be complied with before and at the time a proposed policy is decided upon and must not be a "rearguard action";
d. The decision-maker must assess the risk and extent of any adverse impact on women and the ways in which such risk may be eliminated;
e. The duty is upon the decision-maker personally and is non-delegable;
f. The duty is ongoing.

There is also extensive guidance from the Equality and Human Rights Commission as to how public authorities should meet the equality duty, specifically its "Technical Guidance on the Public Sector Equality Duty: England" (revised in August 2014)[5]. At page 19, paragraph 2.20, the guidance states that:

> "*How much regard is 'due' will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question.* ***The greater the relevance and potential impact, the higher the regard required by the duty***." [emphasis added]

A decision-maker is required to show how the duty has been discharged, and so will need to be able to evidence the steps taken to have "due regard". This is commonly done by undertaking an "equality impact assessment" (although there is no specific legal requirement to carry out a formal written "equality impact assessment" or to create a document with that title), it is good practice to do so, and to have such written records available to the public. Where there is no written record, the courts may decide that a public body has not complied due to the lack of evidence.

The duty therefore bites in the following situations:

- central government departments and ministers making policy decisions on whether to decriminalise elements of the sex industry;
- the CPS developing its guidance on prosecuting offences arising from prostitution;
- a police force implementing operational guidance to treat crimes against those who are paid for sex, as a hate crime;

[4] The leading cases on the PSED are the Court of Appeal decision in *R (Bracking & Others) v SSWP* [2013] EWCA Civ 1345 (per McCombe LJ at para 26) and the decision of the Supreme Court in *Hotak v Southwark London Borough Council* [2015] UKSC (per Lord Neuberger at paras 73-75).
[5] The EHRC's guidance can be found here: https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance#h2

- individual decisions taken by the police in respect of how to police certain areas, when making arrests or charging decisions;
- local authorities setting up legal "red light" districts, or establishing exit programmes for women wanting to leave prostitution.

The public bodies in question must recognise that such decisions are highly relevant to gender equality as articulated in the PSED, that policies and legislation in this area will have a very significant impact on gender equality (given that it disproportionately affects women and is recognised as violence against women[6]) and the regard they must pay to gender equality in this context is therefore particularly high.

Furthermore, the PSED includes a duty of sufficient enquiry: public bodies must ask themselves the right questions and ensure they have obtained the right information to enable them to meet the duty. This may require consultation with relevant expert bodies, such as women's organisations, women who are paid for sex and those who have exited the sex industry, to establish the impact on gender equality of particular policy proposals or decisions.

Thus to take the example of a local authority setting up a legal red light zone, the council must have due regard to the need to eliminate discrimination and harassment of women, and the need to advance their equality of opportunity (which includes taking steps to remove and minimise disadvantages they face, and meeting their needs as women). So they should ask themselves:

- Will this help to stop women being discriminated against and harassed?
- What else could we do to help end discrimination and harassment of women who are paid for sex?
- How can we advance equality of opportunity for these women?
- How can we help them exit such exploitative and dangerous contexts?
- What disadvantages do they face because they are women and how can we remove or minimise these?
- How do we find out the answers to these questions?
- Who do we need to speak to get this information?

The local authority should set out in writing how they assessed the impact on gender equality of their policy to set up a legal red light zone. If they have identified an adverse impact on gender equality, they should then consider what steps they can take to reduce or mitigate that impact, as well as considering whether the impact is justified in any way. If there is no justification and no scope for reducing or mitigating the adverse impact on women, they should then re-think their policy. If they fail to do so, it would be difficult for them to assert that they had had due regard to the statutory needs set out in s.149 given that informally legalising prostitution in this way is very relevant to gender equality and likely to have a very significant impact on it.

[6] The Crown Prosecution Service recognises prostitution as a form of violence against women and girls; see the CPS website pages on Violence Against Women and Girls at: http://www.cps.gov.uk/publications/equality/vaw/.

Equality Act: anti-discrimination provisions

The anti-discrimination provisions contained in the Equality Act 2010 prohibit various forms of discrimination including direct discrimination, indirect discrimination, harassment and victimisation, in the context of various listed activities including the exercise of public functions and the provision of goods and services[7]. Legal protection from discrimination is afforded on the basis of listed characteristics (known as "protected characteristics") which include sex. The two forms of discrimination most likely to be relevant are indirect discrimination and harassment[8].

Indirect discrimination (see section 19 of the EA 2010) arises where a service provider (such as the police, the CPS or a local authority) applies (or would apply) an apparently neutral practice, provision or criterion which puts women at a disadvantaged compared with men, and applying the practice, provision or criterion cannot be objectively justified by the service provider. It follows that any policy or practice adopted that had a disproportionate impact on women, that was not objectively justified, may amount to indirect discrimination. For example, having a zero tolerance approach to soliciting but not kerb-crawling may constitute indirect discrimination on the grounds of sex by the police[9].

Harassment is defined in section 26 of the Equality Act 2010 as unwanted conduct related to a protected characteristic (so for example, sex, race or gender reassignment) that has the purpose or effect of violating a person's dignity or creates a degrading, humiliating, hostile, intimidating or offensive environment. As with all forms of discrimination, this is only prohibited in terms of particular activities, such as providing services or exercising public functions (for example policing). The Act also prohibits sexual harassment: this is defined as any conduct of a sexual nature that is unwanted by the recipient, including verbal, non-verbal and physical behaviour, and which violates the victim's dignity or creates an intimidating, hostile, degrading or offensive environment for them. These provisions might, for example, be relevant in the context of enforcement action taken by the police.

Evidence of indirect discrimination and/or a failure to deal with incidences of harassment may also be relevant to the public sector equality duty dealt with earlier in this briefing, i.e. if a service provider or policy maker has failed to address indirect discrimination or harassment allegations properly (or to consider them at all), this is likely to support the argument that they have failed to have due regard for the need to eliminate discrimination and harassment of women in this particular context.

[7] Other activities such as employment, education and premises are also covered but public functions and goods and services are the most relevant categories here.
[8] See Chapter 2 of the Equality Act 2010 for the definitions of the various forms of prohibited conduct.
[9] The recent inquiry by the Home Affairs Committee heard evidence, for example, that there were far more prosecutions for loitering and selling sex than for kerb-crawling, which may be evidence of a discriminatory approach to the policing and prosecution of offences related to prostitution.

(ii) The Human Rights Act 1998

The Human Rights Act 1998 ("the HRA") is composed of a series of sections that have the effect of codifying the protections of the European Convention on Human Rights into UK law. All public bodies (and other bodies carrying out public functions), must comply with the Convention rights. The State's role in protecting women through policy development and legislation that addresses prostitution, must be compliant with its obligations under the HRA.

Article 2, the right to life, includes the right to be protected if your life is at risk. Article 3 prohibits inhuman and degrading treatment, and public authorities must also protect individuals from such treatment where it comes from someone else; for example, if they know someone is suffering inhuman or degrading treatment, they must intervene to stop it.

Thus Articles 2 and 3 (both absolute rights) impose positive duties to protect and procedural (investigative) obligations. It is well-established that where the State (or other relevant public authority) is aware of a real risk of harm to a person of a type that would fall within Article 2 or 3, it is under an obligation to take reasonable and effective steps to prevent that harm, including where that risk comes from a private individual. The level of risk faced by women engaged in prostitution places a very significant burden on the State to afford them the necessary protection from breaches of these fundamental rights. Any legislative change or policy development must address these duties.

Also relevant to policy-making and legislation on prostitution is Article 4 of the Convention which prohibits slavery, servitude, forced or compulsory labour; and is again an absolute right. The State must have a legislative and administrative framework capable of enforcing this right. It must also investigate allegations of slavery, trafficking or forced labour, and again this is an area of human rights compliance that is self-evidently in play for many women engaged in prostitution.

Article 8 protects the right to respect for private and family life including a person's physical and psychological integrity. This is a qualified right in that in certain limited circumstances it may be lawful for the State to interfere with that right. However, it is directly relevant to this area of decision-making given the obvious impact on women's physical and psychological integrity of their engaging in prostitution and the risks they face as a result. Thus any failure by State bodies to protect women in this context may also amount to a breach of Article 8.

As to Article 14, this contains the Convention's non-discrimination guarantee. Article 14, read with Article 3, for example, imposes positive obligations to investigate and protect against gendered forms of violence[10], including sexual assault, and which the CPS now recognises includes prostitution. This reflects the obligations contained in the Convention on the Elimination of All Forms of Discrimination Against Women[11]: *"gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men"* (§1). It

[10] *Opuz v Turkey* (Application no 33401/02) (2010) 50 EHRR 6950.
[11] General Recommendation no. 19

accordingly constitutes a form of discrimination within the meaning of Article 1 of CEDAW (§7)[12].

It is essential that any policy development and/or legislative changes are HRA-compliant. In some circumstances this can extend to ensuring that a policy or procedure does not create too great a risk of breaches of the HRA: a policy which is in principle capable of being implemented lawfully but gives rise to an unacceptable risk of unlawful acts or decision will itself be unlawful[13]. Thus in the context of how the police or the CPS police and prosecute offences, or how local authorities assist women to exit prostitution, they must ensure that even if on the face of it their policies could be implemented lawfully, they do not create an unacceptably high risk of breaching women's human rights.

Particularly relevant here is the evidence of very high levels of violence against women in prostitution: the recent Home Affairs Committee Inquiry heard evidence that prostitution is "one of the most dangerous occupations in the world"[14] and the All Party Parliamentary Group on prostitution referred to "near pandemic levels of violence experienced by women in prostitution" in its 2014 report[15]. Thus if state bodies have duties to protect women from inhuman and degrading treatment (Article 3) and to protect their private and family life (Article 8, including their physical and psychological integrity), state bodies must ensure the measures they adopt to prevent and investigate violent crime, provide genuine protection to women in these particular circumstances.

This principle also applies to the Equality Act 2010: public bodies must avoid creating policies that create an unacceptable risk that women's rights under the Equality Act will be breached, or they will be acting unlawfully.

[12] See also Article 6 of CEDAW concerning prostitution, dealt with further below in this briefing.
[13] See the cases of *R (Suppiah) v Secretary of State for the Home Department* [2011] EWHC 2 (Admin); and *R (Refugee Legal Centre) v Secretary of State for the Home Department* [2004] EWCA Civ 1481.
[14] See the interim report, July 2016, page 11.
[15] See the report entitled: 'All-Party Parliamentary Group on Prostitution and the Global Sex Trade: Shifting the Burden, Inquiry to assess the operation of the current legal settlement on prostitution in England and Wales'

(iii) How women can use these rights in the UK

All the legal rules outlined above can be used to protect women in the sex industry in two main ways: through court cases or through lobbying and campaigning.

Litigation
If someone has sufficient interest in an issue, they can bring a legal challenge (usually by way of a judicial review) and ask the court to rule on whether a policy or decision is in breach of the Equality Act or the HRA, or unlawful in some other way. Judicial review does not look at the merits of the particular decision or policy, but looks at the decision-making process, or how the policy was arrived at. If for example, a public body failed to meet the public sector equality duty when deciding how to support women to leave prostitution, this could render its policy in this area unlawful and the court may quash the policy. This would leave it up to the public body to reconsider, and it should then do so on a lawful basis complying with the equality duty before it decides on its new policy.

If someone is the victim of discrimination or their human rights have been breached, they may be able to bring a private law claim against the public body that has discriminated against them or breached the HRA. The court can make a ruling that there has been discrimination or a breach of someone's human rights, and can order the public body to pay modest damages. Sometimes one case can deal with policy challenges, discrimination and breaches of the HRA all at the same time.

In terms of bringing a court case, importantly, legal aid remains available – if the individual who wants to bring the case is financially eligible[16] – for cases against state bodies, including discrimination claims, breaches of the HRA and judicial reviews.

There are strict time limits for bringing different types of cases. A judicial review claim – to challenge a decision by a public body or a policy – needs to be started within three months of the date of the decision you want to challenge. A discrimination claim must be started within six months of the discriminatory act, and a claim for a breach of the HRA must begin within a year of the breach. These are strict time limits and can only be extended by the court in exceptional circumstances.

Campaigning and lobbying
All public bodies dealing with prostitution decision-making and policy development should be familiar with their duties under the HRA and the Equality Act 2010; unfortunately they do not always recognise their relevance in this area of consider these obligations adequately. It is therefore crucial that campaigners are aware of the relevant legislation and how it operates, and that they include representations on both discrimination law and the HRA when lobbying on issues relating to prostitution.

At a local level, it may be appropriate to contact a local authority or police force to ask them how they have complied for example with the public sector equality duty in relation to a particular policy or decision. They should have a record of how they have done so and be able to provide evidence. If they fail to do so, or simply fail to

[16] I.e. on mean-tested benefits or a very low income.

respond, it may be appropriate to pursue the matter through their formal complaints procedure, or to get legal advice if it appears they are in breach of the equality duty. Any request for information from a public body should ask for a response within a certain period and be followed up promptly[17]. As the public sector equality duty is an ongoing, non-delegable duty, public bodies can be asked how they are meeting it in terms of monitoring or reviewing current policies, earlier decisions or the status quo generally. This can help to facilitate a dialogue between the public body and campaigners focussing on women's human rights and their rights under the Equality Act.

Case study

In October Leeds City Council set up a "legal" red light district, allowing women who are paid for sex to work freely in a particular area between 7 pm and 7 am. The documents in the public domain about this decision make no reference to either the Equality Act 2010 or the Human Rights Act 1998. This suggests that there has been no consideration by the Council of the need to eliminate discrimination and harassment of women, or to ensure that women are safe on the streets of Leeds in terms of protecting their human rights. There is no evidence that this strategy makes prostitution safer for women and one woman working in the area was killed in late 2015.

Local campaigners could ask the City Council how they met the equality duty and how they considered they were protecting women's human rights on the basis of this policy decision. If the Council had failed to do so, or could not produce any evidence that they had, it may be possible to challenge the policy or any decision arising from it that has an adverse impact on women. The Council should also be monitoring the impact of its policy, particularly in the light of the murder of Dario Pionko in 2015; this should include reviewing the policy in terms of how the Council is meeting the equality duty and whether this is too great a risk of breaches of the HRA as a result of its implementation.

In contrast public bodies in Suffolk – including the local councils, police, probation and healthcare agencies – implemented a strategy to eliminate on-street sex work after the multiple murders of sex workers in Ipswich in 2006. An independent evaluation after five years of the project identified that it had had clear and sustained success in removing women who are sex working from the streets, successfully engaging them and extending the intervention to off-street sex working and helped women to move on, as well as making effective inroads into prevention, including with children and young people at risk of sexual exploitation. Such strategies are based on a recognition of the adverse impact on women of prostitution and the need to support them to exit as well as to prevent more women entering prostitution in the first place. This approach is likely to comply with the equality duty and the HRA. The examples of improved safety and increased numbers exiting prostitution in Suffolk could even be used as evidence of the flawed approach in Leeds.

[17] Although requests for information need not be made formally under the Freedom of Information Act 2000, more information on using it is available here: https://www.whatdotheyknow.com/?gclid=Cj0KEQjwr7S-BRD96_uw9JK8uNABEiQAujbffAhFN3_rxG6NuGdaCt1B8S0jq22KGe-mTNbTbUDHtskaAq568P8HAQ

B: EUROPEAN LAW AND TREATIES

Notwithstanding the result of the referendum and the likelihood that the UK will leave the European Union, there are two significant pieces of European-based law that are relevant to decision-making by UK state bodies in relation to prostitution. The first is an international convention that is not in fact EU law, but comes from the Council of Europe, a separate and distinct body from the EU. The second is an EU directive but it has already been implemented in the UK in any event.

These will also be relevant to many other European states when addressing the issues raised.

(i) Istanbul Convention on preventing and combatting violence against women and domestic violence

The Istanbul Convention is a Council of Europe[18] Convention from 2011 aimed at combatting violence against women and domestic violence. It addresses violence against women through measures aimed at preventing violence, protecting victims and prosecuting perpetrators. The Convention recognises violence against women as a human rights violation. It aims to bring societal change by challenging acceptance or denial of such violence and gender stereotyping. It calls on men and boys as key actors in such a process.

There is no specific reference to prostitution in the Istanbul Convention but the definition of "violence against women" set out at Article 3(a) clearly encompasses it:

> "a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in, or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life".

A copy of the full Convention can be accessed here: http://www.coe.int/en/web/istanbul-convention/home at the Council of Europe's dedicated website which has a range of other materials on the Convention.

Of specific relevance to state bodies making decisions and developing policies on prostitution, are the prevention obligations at Chapter III which includes Article 12(1), a general obligation:

> "Parties shall take the necessary measures to promote changes in the social and cultural patterns of behaviour of women and men with a

[18] The Council of Europe is an international organisation focused on promoting democracy, the rule of law, human rights, and economic development. Founded in 1949 it has 47 member states including the UK. It is distinct from the 28-nation European Union and unlike the EU, the Council of Europe cannot make binding laws. However it does have the power to enforce select international agreements reached by European states on various topics, the best-known enforcement body of the Council of Europe being the European Court of Human Rights which enforces the European Convention on Human Rights.

view to eradicating prejudices, customs, traditions and **all other practices which are based on the idea of the inferiority of women or on stereotyped roles for women and men**." [emphasis added]

Specific obligations also include awareness-raising, education, training of professionals, preventive intervention and treatment programmes and participation of the private sector and media.

Chapter IV covers protection and support including the general obligation to take necessary legislative or other measures to protect all victims of gender-based violence from any further acts of violence (Article 18(1)). Any such measures must be based on a gendered understanding of violence against women and be based on an integrated approach which takes into account the relationship between victims, perpetrators and their wider social environment. Such measures must be aimed at the empowerment and economic independence of women victims of violence, and must allow for a range of protection and support services. Information on support services must also be made available to victims (Article 19).

Support services are required to be provided under Article 20:

> "1. Parties shall take the necessary legislative or other measures to ensure that victims have access to services facilitating their recovery from violence. These measures should include, when necessary, services such as legal and psychological counselling, financial assistance, housing, education, training and assistance in finding employment.
>
> 2. Parties shall take the necessary legislative or other measures to ensure that victims have access to health care and social services and that services are adequately resourced and professionals are trained to assist victims and refer them to the appropriate services."

The Istanbul Convention came into force in August 2014. To date it has been signed by 42 countries and ratified by 22. The UK has signed but not yet ratified the Convention. Once the Government has signed a treaty, it must then set about making sure that the UK complies with the treaty before ratifying it, making any necessary changes to law or practice. Parliament then has to agree to ratification and once the treaty is ratified by the Government, treaty obligations become binding on the UK. Ratification of the Convention would give it a strong indirect effect on the UK legal system: a ratified treaty could be cited by the UK courts as persuasive authority with regard to legal decision-making and the establishment of legal principles; and where there is some ambiguity as to what the law requires, the courts will assume that the law should be interpreted in a way that complies with the UK's international obligations[19].

[19] There would also be a strong indirect effect via the European Court of Human Rights which regularly refers to international and European conventions as part of the process of legal reasoning and the establishment of principles in its case law. As the UK courts are required by the HRA 1998 to take account of ECtHR case law and the Government is bound by its judgments in cases against the UK, the terms of the Istanbul Convention would have a strong indirect effect on the UK legal system.

By ratifying the Convention, there would be a strong inference that UK law is compliant with the treaty. Upon ratification, the Government would be undertaking to fulfil the positive obligations in the Convention. The positive obligations of the Convention on states are to exercise due diligence to prevent violence against women, to prosecute perpetrators and to protect victims (as set out above). As the Istanbul Convention is already in force, these obligations would commence immediately on ratification. Whilst the Convention does not create enforceable rights for an individual woman (i.e. she cannot take the Government to court over a breach of the Convention), ratification would mean that UK laws would need to be interpreted to comply with the Convention. A failure to take the obligations into account in decision-making may also render any such decision unlawful and susceptible to legal challenge.

In 2014, the Joint Committee on Human Rights[20] undertook an inquiry to examine the UK's progress towards ratification of the Istanbul Convention. In their report[21], published in February 2015, they concluded that the UK was in a good position to be able to ratify the Convention: one legislative change was required and several changes in practice. The Committee identified a number of key concerns and made recommendations including that the Government should prioritise ratification of the Convention. The Committee specifically declined to undertake a review of the law on prostitution stating that they believed "it is a topic that would require more than our inquiry could give" but in mid-2016, the Home Affairs Committee took up this issue and its interim report was published on 1 July 2016[22].

By signing the Convention the Government has expressed its intention of abiding by it and it has already taken a number of steps to enable ratification (such as introducing new laws to criminalise coercive control and forced marriage). However, it will only become legally binding once ratified. Up until then, it can still be used in lobbying and campaigning.

(ii) EU Victims' Directive

Women involved in the sex industry are highly likely to be victims of crime, particularly violent crime, and the UK Government must ensure that their rights as victims of crime are protected. The UK Government has already set up a Code of Practice for Victims of Crime (sometimes referred to as the "Victims' Code") and this was amended to comply with the EU directive on Victims of Crime which came into force in November 2015. The EU recognised that victims must be guaranteed a minimum level of rights without discrimination across the EU, irrespective of their nationality or country of residence, and that this should include access to support services. The EU therefore introduced a Directive which each member state has to implement nationally. The UK's Victims' Code already covered much that was in the EU Victims' Directive but was amended in 2015 in order to comply fully.

[20] The Joint Committee on Human Rights is appointed by the House of Lords and House of Commons to consider matters relating to human rights in the UK.
[21] The Committee's report entitled "Violence against women and girls" is available here: http://www.publications.parliament.uk/pa/jt201415/jtselect/jtrights/106/106.pdf
[22] The Committee's interim report is here: https://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/inquiries/parliament-2015/prostitution/

The aims and objectives of the Directive are to ensure that victims:

- are recognised and treated with respect and dignity;
- are protected from further victimisation and intimidation from the offender and further distress when they take part in the criminal justice process;
- receive appropriate support throughout proceedings and have access to justice;
- have appropriate access to compensation.

Thus when investigating crimes of violence against women working in the sex industry, all State agencies must ensure that they comply with the EU Directive, as implemented by the Victims' Code. This includes for example the right to be offered the opportunity to have a person of the same sex conduct the police interview where someone is a victim of sexual violence, gender-based violence, or domestic violence (see paragraph 1.8 of the Victims' Code).

Paragraph 1.10 also states that if you are a victim of the most serious crime, persistently targeted or vulnerable or intimidated, you are entitled to additional support including special measures to give you extra protection if you have to give evidence in court. You are also entitled to be referred to a specialist organisation (where available and appropriate) and to receive information on pre-trial therapy and counselling where appropriate. These rights are likely to be highly relevant to women in prostitution who then become victims of crime and the Code requires all relevant State agencies (for example the police and the courts) to comply by providing the services in question. A failure to do so will be a breach of the Directive[23].

The EU Directive must be implemented in a non-discriminatory way, in compliance with the HRA and the public sector equality duty. A failure to do so would result in an unlawful decision which individuals or an organisation could challenge through a judicial review court case in the UK.

[23] As the EU Directive has been implemented via the Code which is a type of statutory guidance, the State agencies listed must also follow the Code (unless they have a very good reason not to) to avoid making an unlawful decision which could be challenged in the UK courts without reference to the EU Directive itself.

C: INTERNATIONAL LAWS

In February 2016, CAP[24] International produced a briefing document entitled: "Prostitution under International Human Rights Law: An Analysis of States' obligations and the Best Ways to Implement Them." The document can be accessed via this link: http://www.cap-international.org/uploads/4/0/6/7/40678459/cap_rj_va.pdf

This document sets out the current human rights legislative framework and the obligations arising under international law with regards to prostitution and its exploitation. It reaches two main conclusions in doing so. Firstly, that international human rights law recognises prostitution as a violation of human rights and prohibits its exploitation. Secondly, that the only way for states to respect their obligation to eliminate the exploitation of prostitution in respect of human rights is to implement abolitionist policies.

The analysis as to why international human rights law specifically prohibits the exploitation of the prostitution of others relies heavily on two UN Conventions: the UN Convention on the Elimination of All Forms of Discrimination against Women which the UK Government ***has*** signed and ratified, and the UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others, which the UK Government ***has not*** signed or ratified. Thus the former has considerably more weight in the UK than the latter and from a UK perspective it is only those parts of the analysis that are directly relevant. A convention that has been signed and ratified by the UK Government (as explained above in relation to the Istanbul Convention) can have a strong indirect effect in the UK. CEDAW can therefore be cited by the UK courts as persuasive authority with regard to legal decision-making and the establishment of legal principles; and where there is any ambiguity as to what the law requires, the courts will assume that the law should be interpreted in a way that complies with the UK's international obligations.

As set out in the CAP International briefing, Article 6 of CEDAW states that "States Parties shall take all appropriate measures, including legislation, to suppress all forms of trafficking women and exploitation of prostitution of women."[25] The analysis continues (at page 14), "States that have decriminalised or tolerate pimping, procuring and the running of brothels, violate both the spirit and the letter of international human rights law, and in particular their obligations under CEDAW". Thus in terms of decision-making by UK state bodies in respect of prostitution, Article 6 of CEDAW must be complied with, to ensure any new policy or specific decision is lawful.

In terms of lobbying and campaigning, the representations made in the CAP International briefing are also worth considering given the fundamental points they make as to the Charter of the United Nations and the UN Secretary General's special bulletin issued in 2003 to UN personnel that reaffirmed that "sexual

[24] Coalition for the Abolition of Prostitution.

[25] See also EVAW's Submission to Amnesty International's Global Policy Consultation on Sex Work: "While 'exploitation of prostitution' is not 'prostitution', those who exploit the circumstances which put women in prostitution (e.g. poverty, discrimination and abuse) are those who buy sexual acts, whose demand fuels the global sex industry."

exploitation and sexual abuse violate universally recognised international legal norms and standards", and that prohibited the purchase of sex acts. As explained in the CAP International briefing "the high degree of ethical obligation expected by the UN of its personnel is a direct and logical implementation of all human rights frameworks".

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