

Labour Women Submission on the Review of Legislation on Prostitution

August 2012

INTRODUCTION TO LABOUR WOMEN

Labour Women is the women's section of the Labour Party. For 40 years Labour Women has worked to advance women's political participation and to campaign on issues relevant to women.

Labour Women initiated, drafted and jointly with Brendan Howlin TD, Labour Party Spokesperson for Justice at the time, published the Labour Party's Violence Against Women policy document 'Safety, Accountability and Responsibility' in Dec 2006 in which a recommendation was made to examine the so called 'Swedish model':

'Labour's approach to tackling prostitution will be informed by initiatives already taken in Sweden. Sweden introduced legislation on the gross violation of women's integrity which defined prostitution as a form of male violence against women and children and since 1999 purchasing - or attempting to purchase - sexual services in Sweden has constituted a criminal offence punishable by fines or up to six months imprisonment'

(Labour Party : Safety, Accountability and Responsibility, 2006 www.labour.ie)

In 2008 Labour Women conducted a series of public meetings on Human Trafficking & Prostitution, calling for legislation to ban purchasing of sex as the most effective way to tackle both Human Trafficking for sexual exploitation and Prostitution.

Labour Women joined the Turn Off the Red Light campaign in 2010.

SUBMISSION ON THE REVIEW OF LEGISLATION ON PROSTITUTION

Labour Women supports the criminalisation of buyers of sex and measures de-criminalising of people involved in prostitution. We are in favour of adopting the so-called "Swedish" model in Ireland. The legislation should focus on safety, harm elimination and the prevention of re-victimisation, the development of exit programs for women in prostitution and integrated responses which do not distinguish between a "free" or "forced" entry route into prostitution, do not distinguish between acts in public or private places and that do not carry the threat of forced repatriation for prostitutes. We favour the introduction of legislation which defines prostitution as a form of violence and creates a criminal offence of purchasing, or attempting to purchase, sexual services punishable by fines or up to six months imprisonment. Those who gain from prostitution are those who organise the international trade in women and children and those who buy people through prostitution.

Legislation must focus on identifying, investigating and sanctioning these categories of perpetrator.

GENERAL QUESTIONS

Question 1. Is the present rationale for criminal legislation on prostitution, i.e., the protection of society from a nuisance and public order perspective and the protection of prostitutes from exploitation, a sufficient basis for future legislation in this area?

The traditional rationale for addressing prostitution in terms of social decency and morals and protection of society from nuisance rather than focusing on equality for women and prevention of the threats posed to all women by prostitution and trafficking as forms of violence against women is inadequate in the modern context. The focus on the criminalisation of the prostitute and the lack of attention placed on the pimp and trafficker results in reinforcing the shaming and isolation caused by the sexual abuse, and in reinforcing reliance on the abusive and criminal network of traders, pimps and customers that control the lives of prostitutes.

The illusion that prostitution is a choice is deceptive. It allows the buyers and the pimps to obscure the abuse involved and to transfer a concept of right and entitlement to the abuser where a payment is made. The normalisation of the act of paid sex and the fact that money is exchanged cannot disguise the bodily and psychological violations that occur in prostitution which is in fact sexual violence, abuse and harassment. Prostitution and the sex industry promote the myth that male sexuality must be satisfied by a supply of women and children who can be bought. This demands the creation of a group of women who are legitimate targets for sexual exploitation. Male abusers can act with impunity because they know that women in prostitution will not be believed or taken seriously by the criminal justice system. Abusers deliberately target women's vulnerabilities, in order to act as abusively as they wish.

There are clear imperatives from our obligations under international conventions to refocus future legislation on the protection of prostitutes and potential prostitutes from violence and abuse in the context of the challenges presented by the vast indoor sex trade based on exploitation of migrants where human trafficking and child trafficking takes place. The objectives and rationale of the legislation introduced in the early 1990s may have been sufficient when that legislation was enacted. However, the drastically changed nature and scope of prostitution could not have been foreseen and taken into account at that time. Prostitution has since moved inside out of public sight and multiplied many times due to the development of new media advertising and communication technologies as well as the availability of cheap travel. The number of people involved in prostitution has dramatically increased - those who buy sex being primarily white Irish men and those who sell sex primarily migrant women. There is significant evidence that Ireland has become a destination country for sex trafficking of migrant women and that children have been detected in situations of sexual exploitation. The value of the sex trade has been placed between €180 to 200 million per annum.

Under these new circumstances, considerations around public nuisance alone are not sufficient to address the public knowledge of the abuses and the exploitation taking place in the communities. It is not of benefit for society as a whole and for younger generations in particular to live with the increased normalisation of prostitution as "work" and its disguise as an "occupation" for "other", mostly foreign, women. We cannot protect vulnerable women and children in prostitution while at the same time tolerating a widespread commercial sex business that has a potential to grow further. The public nuisance approach to prostitution is unsatisfactory at a time when we have become fully aware of the dangers, exploitation and child abuse that accompany prostitution, occurring in all communities in Ireland. A modern approach that will stamp out these human rights abuses by categorically discouraging demand for prostitution in an unconditional and clear manner is required. The present legal deterrents that grade the complicity of the buyer in the act of prostitution on the basis of his knowledge are inadequate to prevent the spread of prostitution, its inherent exploitation of women and children and the changing culture towards the normalization of the paid sex in our communities.

The second rationale contained in the question, i.e. that concerned with the protection of prostituted people from exploitation remains valid. However, the present measures do not deliver on intentions in this regard, simply because they are geared towards a different no longer existing environment. The present response does not take into account the prevalent young age of the prostituted people, the massive presence of vulnerable migrants in prostitution and the continuous evidence of child prostitution and it ignores the important role buyers play in the exploitation chain by relieving them of any responsibility when prostitution is conducted out of public eye.

Question 2. If not what policy objectives should underpin future legislation?

The simple but profound values already held in our society should underpin future legislation: the right to be unharmed, the right of women to feel equal, the right of men to protect women and children, the pursuit of gender equality, the right of communities to know that violence and human rights abuses are not taking place in their midst and the right to pursue and enjoy sexual relationships that are based on affection. Any future objective has to be informed by the reality of prostitution, which is a place where vulnerable, primarily young migrant women, including children, are exploited and sexually abused by men who can afford to pay for this. The State must endeavour ensure that this position of vulnerability is not taken advantage of, regardless of the prostituted person's age, nationality and reasons for being in prostitution.

While diversity is present as within every social group or category, there are undeniable facts about the profile of people who sell sex: they are primarily young and female, including teenage girls below and around the age of 18. In excess of 90% are migrants. These young people are of poor background and have limited opportunities and choices in their countries of origin as well as in Ireland. Many have entered prostitution as children. Some have come from difficult disintegrated families and a high proportion of them have experienced child sex abuse. Many are controlled by other agents, such as pimps, madams, advertising and organising agencies, traffickers and smugglers. As a result of this, it is only

reasonable to acknowledge that their selling of sex is often carried out under control, sometimes under duress, and at the minimum has been prompted by unfortunate circumstances and at a tender age. To assert that they have chosen to sell their bodies for the sexual gratification of others is to deny knowledge of their uneven start and their unequal chances in life.

If we leave aside the criminal role organizers, promoters, pimps and traffickers play, we are left with the second main actor in the prostitution transaction - the purchasers. While those who sell sex are potentially liable for a variety of offences, purchasers of sex enjoy immunity from prosecution. Section 5 of the Criminal Law Human Trafficking Act 2008 which provides penalties for men who knowingly purchase for sex trafficked persons in Ireland, is the only provision which places a responsibility with sex buyers and even this contains a lack of knowledge defence.

There is not a prostitution market for adult women, another one for teenagers and yet another one for trafficked or controlled individuals. The market is the same for all of them and the men who purchase sex in the market are the same. Men who purchase sex purchase all people who are available for sale whether they are native women, migrant women, teenagers, boys and girls.

All international treaties relevant to human trafficking contain clauses for the reduction of demand in recognition of the links existing between the general prostitution trade and the supply of trafficked people and while the minimum standard on how States do this are not prescriptive, every country has the obligation and the right to decide how to deter demand. Presently, there are no measures being taken by the Irish State to comply with our international obligations to reduce the demand for prostitution in indoor settings because purchasers who buy sex can act with impunity.

Apart from the men who buy sex, direct beneficiaries of the present situation are also the prostitution advertisers and the pimps for as long as they remain undetected and unprosecuted despite the efforts of the State. Prostitutes selling sex are not significant beneficiaries from their participation in the prostitution business. None of the women interviewed in the 2009 Globalisation, Sex Trafficking and Prostitution study who were currently engaged in prostitution viewed prostitution as an occupation for life but rather as a temporary activity that required coping and survival strategies. Women were waiting for the opportunity to exit as soon as possible.

Migrant women reported having significant debts and a feeling of being "trapped" in the industry. All of the interviewed women had daily anxieties in relation to their physical health and safety. Others already suffered lifelong consequences such as infertility, hepatitis and sexually transmitted diseases. International research confirms that given the opportunity prostituted people would quit on the spot. This position and the apparent vulnerabilities of the people selling sex, has to convince us beyond any doubt that prostitution is not a desirable place for those selling sex and that the protection of the sellers of their bodies from exploitation and abuse should be the primary objective underpinning the legislative regime.

Question 3. How should future legislation address the variety of circumstances in which prostitution occurs?

Solicitation on the street is already criminalised. Different provisions are required for out of sight prostitution which is now the prevalent form of prostitution. Those purchasing or attempting to purchase people for sex should be made guilty of an offence irrespective of where the act takes place.

The approach adopted by An Garda Síochána during the latest all-Ireland police operation, where people selling sex were viewed primarily as victims and possibly witnesses due to their vulnerable and often controlled situation should become the norm and be the model underpinning the new legislation. Those who purchase the sex and those who profit from the sale (other than the prostitutes) should be viewed as the criminals.

Question 4. In what way should the criminal law on prostitution address the rights of communities and society in general?

Society will be protected by no longer tolerating prostitution and no longer accepting it as a harmless transaction between consenting adults. Increased public awareness of the violation and abuse experienced by women in prostitution, an increased public intolerance for any promotion of men's right to buy and sexually exploit women and an increased public awareness of the links between adult and child sexual exploitation will lead to a reduction in prostitution generally and a reversal of the normalisation of paid sex. The purchase of sex will come to be seen as an outdated harmful culture that no one needs and no one will miss, in the same way we view slavery, the disenfranchisement of women and slapping children.

Question 5. What type of measures, if any, can be taken to address the use of modern technologies to facilitate prostitution?

A court procedure should be introduced which would allow for the speedy closing of internet websites, withdrawing of domain names by domain name registries, terminating services to IP addresses by service providers and withdrawing of SIM cards belonging to persons who are in breach of the law on the application of An Garda Síochána. The precedent set by the music industry in combating illegal downloading of copyright material could be followed in relation to internet activity.

However, efforts to undermine prostitution solely through measures combating its advertising and promotion without any legal steps to make the prostitution acts practically impossible would probably be ineffective. Reducing the demand for purchased sex through criminalisation, would be more effective in the long term in addressing prostitution than measures which merely address advertising. These measures are therefore important but auxiliary.

SWEDISH MODEL QUESTIONS

Question 1. Should the criminal law have a role, at all, in regulating the purchase (or sale) of sexual services where the transaction is conducted, in private, between consenting adults?

The premise in this question that adults, free from any degree of control or duress or lack of alternatives, discreetly agree to exchange sex for money, rarely occurs. Experience shows that the tender age or the obvious vulnerability of a person alone cannot act as deterrents for the buyers of sex and a more comprehensive approach is needed in tackling the demand for paid sex.

Notwithstanding that carnal knowledge of persons under the age of 17 years is already criminalised in Ireland and that the Criminal Law (Sexual Offences)(Amendment) Act 2007 protects children under the age of 17 years from being solicited or importuned in relation to acts which would constitute offences against them, the estimated average age of entry into prostitution is 14 years . There is ample evidence about young teenagers in prostitution in Ireland and in 2009, the National Advisory Committee on Drugs published a report where "a significant minority" of the sample of 35 drug users involved in prostitution started as minors. The 2009 report published by the Immigrant Council of Ireland exploring the sex trafficking of migrant women revealed that 11 of the 102 studied cases involved girls younger than 18 years. The Government annual reports on human trafficking stated that in 2010, 15 out of the 56 victims of sex trafficking were minors and 8 out of 37 in 2011 respectively. The inevitable conclusion is that a significant number of purchasers of sex, pay to have sex with minors.

International research from 2003 and 2009 exposes the fact that purchasers of sex are frequently aware of the coerced and trafficked status of women and this does not discourage them from buying these same individuals for sex. A criminal record, including the risk of disclosure, has been identified by the buyers themselves as a reliable deterrent of their actions.

Penalties are the most efficient proven approach to deter men who contemplate buying sex. Sex buyers act out of their free will, unforced by economic circumstances or other people unlike the women that are for sale. In their freedom to decide and choose, buyers of sex differ from the sellers, who are often penalized for their involvement and this penalisation constitutes a secondary victimization for them.

Question 2. What social policy objective(s) would support such intervention by the criminal law?

Vulnerable people, including young people, should be protected from entrapment, exploitation and abuse and organised criminality should be discouraged from flourishing at the expense of the exploitation.

The reduction in demand for paid sex will lead to a decreased supply of prostituted people, among them those who have been forced, controlled, trafficked, those who are minors or have other vulnerabilities. The reduction of demand further impacts on organised crime by reducing the size and profits from the sex industry and reducing opportunities for profit for criminal elements who, without exception, accompany the prostitution business everywhere. The clear contrast between the number of people involved in prostitution in Sweden (estimated 500-600) and the Netherlands (25,000 people in the legal sector alone) illustrate the different social objectives achieved by both countries.

This policy has the potential to establish a new norm in our society, which deems prostitution to be an unnecessary and unacceptable social phenomenon. Such an approach creates a social context within which young people could be raised with intolerance towards the purchase of another person's body for gratification.

The State must ensure that prostituted people are not criminalised and re-victimised. They should be supported to exit prostitution if this is what they want, which will happen in parallel with the overall efforts to reduce prostitution.

Question 3. Would such policy be clearly justifiable on objective grounds? If yes, what are those grounds?

The policy takes account of the reality of prostitution and therefore is objective. The common cliché to refer to prostitution as "the oldest profession in the world" does not address the physical, mental and emotional suffering that is endured by women in prostitution and is a relic of a time when women were disenfranchised and treated unequally with men generally.

Like many other social phenomenon that have been condemned, prostitution should no longer be socially acceptable or compatible with human rights and human dignity. Purchased sex is not a physiological necessity and should not be equated with sex. The purchase of sexual services adds a power/servitude dimension to the sexual relationship.

Only a small minority purchase sex, which is an indication that paid sex is not linked with men's sexuality. Many of the men who do purchase sex are married men and men in relationships, showing that prostitution is not a prerogative for lonely men who "need" to purchase sex. In the vast majority of cases, the people who are involved in selling sex do not do this out of sexual drive but out of dire economic necessity or other duress. There are no objective grounds justifying a policy of tolerating prostitution.

Question 4. What benefit might ensue from a ban on purchasing sexual services?

Prostitution is not a "service". Sex with another human being cannot be reduced to a service. The act of "purchase" in prostitution is an act of buying of access to, and control over, another person's body for certain duration of time and for a certain amount of money.

The Swedish State, where the ban on the purchase is in operation for the longest time, clearly demonstrates the benefits associated with this ban. Making the purchasing of another person for sexual gratification illegal, will reduce demand for prostitution and the supply of prostituted people respectively. It will reduce a dangerous market, where children and adults are harmed and exploited and sometimes destroyed. A reduced sex market is less attractive to criminal gangs and various organisers that inevitably accompany prostitution. The fact that a tolerated and vast sex market attracts criminality is evident in the fact that 50% of the permit-required businesses on the notorious Wallen district in Amsterdam have one or more managers with a criminal record.

The ultimate beneficiaries of the ban will be the communities and the society as a whole, where harmful degrading practice of prostitution will decrease. The ban on paid sex is the

right message to give to younger generations and brings to the fore well established values of the Irish society, such as the importance of relationship and marriage, the appreciation of sex associated with affection rather than with anonymity and power, gender equality, the unconditional rejection of sexual exploitation of children and other vulnerable people.

Question 5. Would it deter demand for sexual services?

The demand for "sexual services" is the demand to paid access to a stranger's body, which the buyer uses for sexual gratification, within a set duration of time, usually 30 minutes or 1 hour.

A ban on the purchase of sex will act as a deterrent to the small minority of men in Irish society who purchase sex. Penalties and the risk of public exposure have been identified as a major deterrent by the buyers of sex themselves. Sweden, which introduced this ban 13 years ago, estimates that the number of men purchasing sex had dropped from 13.6% before the ban to 7.8%.

The Consultation document refers on several occasions to a relatively old report on Sweden from 2004. The research was carried out in 2003, only 3 years after law. The context has since changed and many of the issues raised in relation to law enforcement have been dealt with, in particular those focusing on the indoor sex industry and the claims that it had gone underground. The police are engaged in extensive operations in relation to the indoor market, including surveillance, phone tapping, monitoring of sites, mobiles, advertisements etc.

Many years of experience have shown that the vulnerable appearance of an individual or the tender age or even the crying and the distress of the prostituted person have not prevented buyers of sex from carrying out sexual acts with such people. Reports from around the world repeatedly show that buyers are aware of the controlled/coerced status of the women they buy. In the UK 55of buyers said the majority of women are coerced/trafficked, in the US the number of buyers sharing this view rises to 60% and to 63% in Scotland. Other studies also show that men buying sex are well aware of the vulnerable status of women but this does not affect their decision to buy sex. These findings show that in our efforts to deter demand we cannot rely on the buyer's consciousness but on penalties and the risk of exposure.

Question 6. Would a ban deter human trafficking?

In the last decade, all international treaties relevant to human trafficking contain clauses for the reduction of demand in recognition of the links existing between the general prostitution trade and supply of trafficked people. While the standard on how States do this are not prescriptive, every country has the obligation and the right to decide how to deter demand.

Countries that believe that prostitution can be controlled and regulated have opted for the minimum standard of measures to discourage demand, expressed in penalties for buyers who knowingly purchase victims of human trafficking (as in section 5 of the Criminal Law (Human Trafficking) Act 2008) . This is based on the presumption that the State can regulate

the sex market so that it only supplies non-trafficked adult prostitutes, and that the buyers are competent to determine who is a victim of trafficking, which even trained professionals find extremely hard.

This approach appears to be a failure in such countries, and presently the Netherlands, which has one of the largest numbers of sex trafficked victims is considering additional immigration regulations and raising the minimum age of people in prostitution to 21 as a recognition of the failure to ensure children and trafficked people are not purchased by men.

Other countries have taken a different and more profound approach on prevention of sex trafficking and child trafficking by outlawing the purchase of sex in an unconditional manner. Instead of relying on the buyer to find out if the person is trafficked or a minor, or relying on the pimp to supply only prostitutes with legally permissible profile, the State has deemed the act of the purchase of another human being for sexual gratification illegal, thus ensuring that demand is tackled square. This is the case in Norway, who in recent years adopted a ban on the purchase of sex out of considerations linked with human trafficking, among other concerns.

Presently, the demand for prostitution in Ireland in inside settings is without deterrent and men who buy sex act with impunity. We have penalties for those who knowingly purchase trafficked people, which were adopted in 2008 however, we have not obtained any convictions against buyers of sex trafficking victims since the adoption of the law and section 5 of the Criminal Law (Human Trafficking) Act 2008 does not appear to be fulfilling its preventative objective in relation to human trafficking and the exploitation of trafficked people.

Question 7. Might the ban on the purchase of sexual services drive prostitution further underground and make life more dangerous for sex workers?

Prostitution is clandestine and always underground. Countries that are attempting to regulate and normalise prostitution and thus bring it in the open, observe the development of big illegal sectors alongside the legal sectors. A large portion of the industry remains unlicensed and unregulated in Australia and the Netherlands where no such ban is in operation.

In Ireland prostitution is mostly only visible to those who are interested - buyers, pimps, organised gangs, researchers and authorities, and sometimes communities. Occasional and sporadic media articles and investigations bring it out in the open for the wider public, and the rest of the time it fits the common understanding of underground, yet we do not have a ban on the purchase of sex in operation.

In 2011, Norwegian and Swedish police detectives who participated in a roundtable organised by the Immigrant Council of Ireland and Ruhama, expressed their views that prostitution is a business reliant on clients. If the sex trade is so well hidden that no clients can access it, there will be no such business. Assertions that prostitution will go underground, where clients can still find it but where the police cannot, make no sense. In relation to the second part of the question that refers to the safety of prostituted people

in the underground sex trade, people in prostitution are at risk of harm, regardless of the legal framework. In Ireland, the prostituted women interviewed for the 2009 Globalisation, Sex Trafficking and Prostitution study reported high level of anxiety in relation to their safety, which remains their paramount concern at all times, and this is in the absence of a ban on prostitution. The same considerations for safety prevail in the safety guidelines for street prostitution issued by Chrysalis . The guidelines for the "sex workers" in New South Wales, Australia and the panic buttons installed in the legal brothels, are a confirmation that no matter what the legal regime is, prostitution remains inherently dangerous and abnormal.

Legitimate concern for the health and safety of women and the desire to make prostitution a voluntary regulated occupation led many policy makers to argue against the criminalisation of the sex industry. However, evidence from other jurisdictions where regulation and legalisation have been in place for over a decade demonstrates that those aspirations were ill founded. In Germany an extensive evaluation in 2007 indicates there is no evidence that women are safer, only a tiny number of women have accessed health insurance, the illegal sector continues to grow and profit and the people who have benefited most are the organisers and owners of the businesses.

Similarly in the Netherlands, extensive evaluation of the industry has found that legalisation has not brought any more safety for women but rather a massive legal and illegal trade in migrant girls and women; The same evaluation concludes that combating the exploitation of involuntary prostitution is 'virtually impossible' to ascertain and also that pimping is widespread, while the emotional well-being of women is now lower than in 2001 on all measured aspects, and the use of sedatives has increased . A review of prostitution regimes in nine countries finds that it is not feasible to treat "sex work" like any other occupation, integrate it into employment law or create the conditions in which women's health and safety can be protected.

Research consistently indicates that there is no safe location for prostitution. Rape, physical violence, forced sex without condoms, abusive and dangerous sexual practices are constant risks whether it is on the streets or in indoor locations.

We further point out that the Swedish model is not limited to the ban of the purchase of sex but has another equally important component. It establishes full decriminalisation for those who sell sex, which provides the ultimate level of assurance on the part of the State in the recognition of their vulnerable situation. In contrast, it is worth noting that in the Netherlands, the most common fine issued during inspection of legal brothels is for presence of migrants, who lack appropriate authorisation.

The only way to eliminate harm in prostitution is by working to eliminate prostitution itself.

Question 8. In view of the constitutional requirement to hold all citizens equal before the law, could the purchase of sexual services be criminalized without also criminalising the sale of such services? Would the law deny the purchasers of sex basic rights to a fair trial?

The requirement to hold citizens equal before the law is not an absolute requirement. In Article 40.1 of the Constitution, the State is required to balance the equality of citizens with

due regard to differences of capacity and of social function. In addition, the State is required in Article 40.3 to defend and vindicate the personal rights of the citizen. If one considers the imbalance of power between those buying and selling sex and considers the level of vulnerability of those who sell sex in Ireland almost entirely all of whom are under some level of compulsion whether economic, physical or psychological as compared with the freedom of choice being exercised by the purchasers of sex, it is clear that there is a significant difference in social function and capacity between the purchasers and sellers such as to justify treating them unequally.

As long as there is a rational basis for discriminating between the perpetrator and the victim of a crime, it will not be seen by the Irish courts as breaching the equality provisions. Section 5 of the Criminal Law (Human Trafficking) Act 2008 already protects trafficked persons from being solicited or importuned for prostitution and the Criminal Law (Sexual Offences) (Amendment) Act 2007 protects children under the age of 17 years from being solicited or importuned in relation to acts which would constitute offences against them. These pieces of legislation already distinguish between the person who is soliciting or importuning and the vulnerable person without any suggestion that they breach the equality provisions and by analogy neither would provisions which criminalise the purchase of sex without also criminalising the sale of sex.

Question 9. Would immunity from prosecution for sellers expose the purchasers of sex to a risk of blackmail?

The Swedish model incorporates a low level of penalties, involving a fine and a notification of fine, therefore the question about blackmailing is primarily linked to the risk of disclosure to families or the loss of reputation or social capital as opposed to risk of severe penalty. Men who purchase sex are exposed to blackmail and similar threats linked to disclosure not because of any existing or future criminal offences. The susceptibility to blackmail is generated by these men's own preference to lead a double life expressed in the secretive purchase of prostituted people on the one hand and the reputable life at family/work/community on the other.

The question implies that people who sell sex are prone to the crime of blackmail, which is farfetched and unjust. If blackmailing occurs at all, it is equally likely that it is happening in Ireland now and that it happens at the whim of pimps, brothel owners, bouncers and other categories of people who are involved in the current prostitution business. If such a danger of blackmailing at all exists, it could act as an additional deterrent for people who buy sex, which is in line with the objective of the recommended approach. If the question implies that the sellers could threaten to report buyers to the police authorities, this again is another risk those who purchase sex have to contemplate.

Question 10. Would a Swedish style ban impact on the rights and interests of persons who are voluntary involved in selling sexual services and, if yes, how can those rights be protected?

The reality is that we live in a society where we do not have complete choice to decide what is acceptable. Society regulates what constitutes an acceptable choice and what does not. There are plenty of examples where voluntary activities are restricted: we do not give

people the choice to sell their organs, or to work below the minimum wage, and to sell drugs to other people as means of living or to be in possession of unprescribed drugs. It must also be recognised that research shows that the vast bulk of prostitutes in Ireland are not voluntarily involved in selling sex. The research shows that the background of the people selling sex includes poverty, sexual exploitation of children, young people and human trafficking, abuse and violence and that the vast majority of people in prostitution wish to exit. Asked about it, nine out of ten women respond that they want to exit prostitution.

There are isolated cases where the decision to sell sex is taken consciously and without pressure from other people. However, recent reports unequivocally show that at the minimum a traumatic or unusual personal circumstance has compelled the person to do so. Even in these cases where "own will" to an extent is exercised, the availability of alternatives has been limited.

Question 11. Given the stigma associated with convictions for solicitation, could a Swedish style ban have undesirable social consequences for persons convicted of an offence (which would be minor) of purchasing sexual services?

In Ireland, there is already a law against solicitation in the street, which indicates that any considerations in relation to stigma or reputation damage for the perpetrator are secondary when the law aims to regulate behaviour.

The stigma does not stem from the existence of the offence itself but from the nature of the act of solicitation for prostitution. If a buyer is determined to solicit and to purchase for sexual pleasures another person, he then must be very little concerned with embarrassment and stigma. Whether or not a person experiences stigma in relation to breaking a law per se is a different matter and clearly the stigma attaching to committing a minor offence is less than that attaching to a serious offence.

Question 12. Would it have unacceptable knock-on effects on innocent parties, for example, the spouses and children of defendants?

The concerns expressed in the question have been put aside when the laws banning the solicitation on the street have been introduced. Whether the buyer of sex purchases in a public or a private place, his behaviour has a detrimental effect on his family and children.

It is irrelevant, if the buyer was caught committing the solicitation or if he had managed to remain undetected, because with his actions he had already put his family's feelings and reputation at risk.

Question 13. Would criminalizing the purchase of sexual services discourage buyers from reporting suspicions that a sex worker has been trafficked or otherwise coerced into prostitution?

The rare cases where clients provide important evidence are not prevalent enough to cause a deviation from the understanding of the role buyers play in the dehumanization and destruction of vulnerable prostituted individuals. The businesses traffickers, pimps and other criminal organizers conduct rely mainly on the demand from buyers of sex.

It has been the experience of the Swedish and the Norwegian organised crime unit that since the ban, men who buy sex (in other word potential offenders) are more cooperative with the authorities, and they explain this willingness to cooperate with the legal framework in their countries.

In isolated cases it might be preferable to offer prosecutorial immunity to a buyer in exceptional circumstances where the value of evidence could bring down a criminal gang exploiting a number of victims as with any other witness involved in a crime at the discretion of the prosecution authorities. It should also be borne in mind that the offences being committed by the purchasers would be relatively minor and therefore should not be a serious disincentive to reporting a suspected case of trafficking. Fear of retribution from organised crime is more likely to provide a greater disincentive to reporting than the risk of prosecution for a minor offence.

Question 14. Would there be difficulties proving an offence of purchasing sexual service?

In 2011, at a roundtable with police forces from Norway, Sweden, PSNI and An Garda Síochána, the officers shared some practical advice around the implementation of the law in the Scandinavian countries, and more useful exchanges could be organized, should an offence be introduced in the State. At no point however during that particular session, as well as in the substantial evaluation of the Swedish legislation conducted by a Swedish High Court Judge , was the proving of the offence of the purchase of sex presented or referred to as an insurmountable difficulty.

Even if there are difficulties in proving offences, the declarative and normative component of the offence of the purchase of sex from a person would be as important as the punitive aspect.

Question 15. Could a ban on the purchase of sexual service be comprehensively and consistently enforced by the Garda Síochána?

An Garda Síochána has a long tradition in effective implementation of legislation. A ban on the purchase of sex would complement the offence of solicitation on the street with respect to buyers and make the approach towards those who search to purchase sex in Ireland consistent. It would be no more difficult to enforce than the existing law and would be assisted by the availability of victims as witnesses.

"Operation Kerb" in Dublin and "Freewheel" in Limerick, as well as the joint action between An Garda Síochána and the PSNI in July 2012 have been informed by the understanding that the prostituted people have not taken the decision to sell sex freely and have been forced by other people or compelled by circumstances . These operations sent a strong message that the actions of the men soliciting people for the purpose to buy them for sex are unacceptable and punishable. The operations confirm the need for differential approaches towards those who purchase sex and those who sell, in recognition of the fact that penalties for both would only compound the vulnerability of the prostituted people and lead to their re-victimisation.

Question 16. Were it possible, would such enforcement be an efficient and cost-effective use of scarce Garda resources?

The present legislation is a reflection of a set of elaborate priorities and values, which had led to the establishment of a complex legal framework for the law enforcement to operate in. For example: soliciting on the street is prohibited but soliciting indoors is acceptable, controlling a person in prostitution is prohibited but buying a controlled person is not, buying of trafficked person is prohibited but the perpetrator is only liable if the State can prove that he had prior knowledge of the trafficking crime, otherwise not.

A ban on the purchase of sex will not require a significant additional skill set, resources and approaches to those presently used in relation to tackling prostitution by An Garda Síochána. On the contrary, the proposed approach has the potential to make the response to prostitution less ambiguous and complex, and more straightforward and efficient as a result. In the longer term, the proposed approach has the potential to free police resources that are presently directed into investigation of prostitution and trafficking for the purposes of prostitution as the level of prostitution is reduced due to the fall in demand. A legal approach based on the reality of prostitution that has been extensively tested in one particular country and increasingly opted for by other countries in Europe would provide a simple and coherent policy. Such a law would underline the role of the police force as justifiable and respectable one, and one that will enjoy the full-hearted support of the overwhelming majority of the Irish society.

Question 17. Would enforcement of a ban on the purchase of sexual services, divert the Gardai from operations targeting serious and organised crime, including human trafficking and organised prostitution?

The proposed approach would not divert but rather complement and bring consistency to the efforts in tackling of serious and organized crime, human trafficking and organized prostitution. One of the most significant outcomes of the Swedish legislation banning the purchase of sex has been the contraction of the prostitution market that ceases to be profitable and attractive for criminal gangs, according to intercepted messages.

The UN Protocol from Palermo, which complements the Convention on the Transnational Organised Crime, is very clear on the link between organized crime on the one hand, including human trafficking and the demand for prostitution on the other. Article 9 of the said Protocol provides that States "shall adopt or strengthen legislative or other measures, such as educational, social or cultural... to discourage demand that fosters all forms of exploitation or persons, especially women and children, that leads to human trafficking".

Organised prostitution and sex trafficking cannot be addressed in isolation from the prostitution market. Respectively, every effort to reduce and disable this market will benefit the fight against exploitation of people through prostitution. This is why we believe, the measures geared towards the reduction of prostitution through demand are an integral part of the fight against organized and other crime associated with prostitution, including human trafficking.

Question 18. How will this legislative approach:

a) Reduce the numbers engaged in prostitution?

The approach reduces the numbers of people engaged in prostitution in absolute terms as is evident in Sweden where the ban is in operation for the longest period of time. Compared to other countries, in particular in the neighbouring countries such as the Netherlands and Denmark, the number of people involved in prostitution is many times lower. There are 25,000 people involved in the Dutch legal prostitution sector, which contrasts to the estimated 500-600 of women involved in Sweden.

b) Reduce the demand for prostitution?

The demand for prostitution is expressed in the number of men who purchase sex. The number of men purchasing sex in Sweden has dropped significantly - from 13.6% before the ban to 7.8%.

c) Reduce abuse and exploitation of prostitutes?

Prostituted people have been decriminalised in Sweden and therefore are free to seek help and turn to the police at any time. It is evident from the 10-Year evaluation report that women in prostitution are assured that the State is siding with them in any situation and feel at liberty to seek help.

d) Help prostitutes to enforce their rights, including their rights to equality and access to health?

The Swedish approach is the best practice of policy aimed at preventing and ending the harm for people in prostitution. Vulnerable people selling sex are decriminalized and supported to exit the sex industry and all parties involved in their harming and exploitation are held responsible - pimps, traffickers and buyers. The approach in question endorses the prostituted people's right to see an end to their sexual exploitation, which is in contrast to all other existing regulations that are setting the modest goal to reduce the harm and danger amid all the evidence of how dangerous prostitution is.

e) Avoid the stigmatization of and discrimination against prostitutes?

Acting out of concerns about the harm in prostitution, some countries have opted to institutionalize the sexual abuse in prostitution and attribute to it the status of an "occupation". It is indicative of the failure of the approach, that this idea has not been taken on by the prostituted people themselves, whose stigma and social standing has not improved by branding them with work related terms or by dressing up the sexual acts and perversions in prostitution in occupational rhetoric.

f) Address issues regarding prostitution and crime?

Prostitution always attracts crime. Tolerated prostitution attracts more crime. In countries that have made prostitution legal, the pimps become 'agents', the brothel runners become 'businessmen', theatres turn into 'sex theatres' and cinemas into 'sex cinemas'. When a

pimp breaks the law the offence becomes a tax compliance offence. There is ample evidence that legal prostitution attracts special types of 'business' people. Half of the permit-required businesses in the Wallen district of Amsterdam have one or more managers with criminal record. In 2011, the Romanian criminal boss Florin Nicolae head of the Ghenosu gang, who was controlling women in prostitution in Ireland parading them as independent high class escorts, was convicted. He reportedly liked the prostitution organization in Ireland so much that he planning to replicate the 'Irish model' in Italy, which an imprisonment in Romania prevented him from doing. The recent joint operation between An Garda Síochána and PSNI was launched precisely because crime always accompanies prostitution and it focused on securing convictions against individuals involved in "organising prostitution, brothel keeping and associated offences including money laundering". One of the biggest gains of the Swedish approach has been the deterrence of criminal gangs, who find fewer clients because of the purchase ban and the sex market less profitable. The 10-Year evaluation refers to intercepted conversations between criminals who make comments to that effect, which clearly is a great relief to the law enforcement.

g) Address concerns regarding public health and HIV transmission?

By recognising prostitutes as victims and supporting them rather than re-victimising them, their ability to control their working conditions will be improved and they will be empowered to protect themselves from infection.

h) Help to create an environment in which prostitutes feel comfortable about leaving prostitution?

The Swedish model creates an environment where people are encouraged to exit prostitution simultaneously with measures to decrease the prostitution related business and rejection of prostitution in general. Although the process of addressing the vulnerability of people and the factors driving them into prostitution is a slow and complex task, it is reasonable to expect that this process could only be successful if the society maintains zero tolerance to the environment that fosters their exploitation. There are fewer incentives for people to leave prostitution if it is easily available as a 'business' opportunity to them, while their economic necessities remain still prevalent. Only if the society has stamped out the behaviour of their abusers together with the environment of abuse, can people in prostitution be seriously encouraged to embrace their right to receive help and to leave prostitution. This could happen in a society that can assure prostituted people that their hardships and needs are understood, and acted upon.

i) Avoid driving prostitution further underground and making life more dangerous for sex workers?

Driving prostitution underground has been a preferred 'argument' of the prostitution defenders, ever since the Swedish law was implemented in 1999. The notion is that if we tolerate (or preferably legalise) prostitution it will be well visible and less dangerous, and vice versa, if we criminalise the buyers prostitution it will go underground and become unreachable. This argument is unfounded and lacking logic.

Prostitution is a market and as such it depends on reaching clients. If prostitution goes underground to an extent that it stops reaching its clients, that will mark the end of the sex industry. While prostitution is always clandestine, it is also visible because it is geared towards a "clientele". If prostitution is visible to buyers, it will also be visible to police authorities if they look for it. If it is so hidden that neither the police authorities nor the clients can find it, we will be satisfied that there is no such phenomenon. Prostitution is a dangerous place and those who work to eliminate prostitution and those who work to endorse it as licensed work are in agreement on this. Reminders of the potential danger are the panic buttons in the "legal brothels", and safety handbook for prostitutes in legalized business in Australia , which expose the inherent harm and abnormality of the prostitution setting. Prostitutes are in danger of meeting dangerous buyers, and the so called "ugly mug" campaign is around protection from such "customers".

The Irish National Advisory Committee's report published 2009 reveals that many of the 35 interviewed people in prostitution "had been physically and/or sexually assaulted by a customer". People in prostitution are brutalized by pimps, traffickers and customers, and their main priority in prostitution is about remaining healthy and safe . The Ipswich murders happened in the UK, a country that does not operate a ban on purchase of sex. In actual fact, these tragedies were a wakeup call for the UK Government to explore possible changes to their prostitution regulations and after studying the situation in Sweden and the Netherlands, the decision was to increase the penalties for buyers as opposed to legalise the sex trade.

All of the above examples are from countries that tolerate prostitution or have legalised prostitution, rather than having a ban on paying for sex. Safety can be guaranteed for prostituted people only by facilitating them out of prostitution. If a man is determined to get paid sex nothing can stop him in countries where prostitution is tolerated or legalised and where the availability of women is unlimited. The chances that he will brutalise more prostitutes is much greater because the perception is that he is not committing a crime. Who is to stop him? If however, there is a ban in operation, this man will be seen as the offender that he actually is. The chances that he will be stopped are greater and the prostituted people have equal or more rights to report him to the authorities because the roles of the buyer and the seller are not blurred in countries operating the ban, and everybody is in the clear about who the offender is in this scenario.