

# SEX WORKERS AND THE LAW

HELPLINE 0845 4500 215



Release is the national centre of expertise on drugs and drugs law - providing free and confidential specialist advice to the public and professionals. Release also campaigns for changes to UK drug policy to bring about a fairer and more compassionate legal framework to manage drug use in our society.

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# EDITOR'S NOTE

The previous edition of this booklet was written by Katy Swaine with the assistance of her colleagues at Release.

This comprehensive, fully updated new edition has been written by Kirstie Douse (Legal Services Manager, Release), Niamh Eastwood (Deputy Director, Release), Genevieve Harris (Barrister) and James McSweeney (Barrister) with help from Release's legal and drugs teams. We would like to thank the following people for their assistance:

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**Richard Yorke – Barrister, Coram Chambers**

'Sex Workers and The Law' has been peer reviewed by Rosie Campbell of the UK Network of Sex Work Projects and Sebastian Gardiner of 25 Bedford Row Chambers. Thanks also go to Jane Ayres, Manager, Praed Street Project, and Shelley Stoops, Independent Sexual Violence Advisor, Merseyside for their feedback and views. The information contained in this booklet is meant only as guidance and NOT to be solely relied on. ALWAYS seek appropriate legal advice. The areas of law discussed in this publication are subject to change. Check with Release for developments and changes in the law at [www.release.org.uk](http://www.release.org.uk) or 0845 450 0215.

With thanks to the Home Office Violent Crimes Unit for funding this edition and to the Release Trustees for their continued support.

**"This excellent, much needed and well researched publication provides sensible and invaluable advice for those working in the sex industry"**

**Sebastian Gardiner, Barrister, 25 Bedford Row**

# INTRODUCTION

## PROSTITUTION IS LEGAL

Prostitution is legal, but many of the activities surrounding the exchange of sex for money or other goods are criminal offences. In this booklet, we explain the relevant offences and other risks that you should be aware of, as well as explaining your rights.

The police have limited resources and need to prioritise their work. In general, indoor work is targeted less than street work, but patterns of law enforcement vary at different times and in different places. Find out what laws the police are currently enforcing in your area and try to work within those boundaries. Keep your activities low-key to avoid attracting attention. Crucially, try to maintain good relations with local residents. Whatever your set-up, police involvement is more likely where there are under-age or illegal immigrant workers, or where there is drug dealing, money laundering, or violence on the premises. Anti-social behaviour (such as openly soliciting in the street in residential areas, or leaving used syringes in public places) may also attract police attention.

There are a number of organisations that can offer you support and assistance, these are listed in the useful contacts section on page 124. If you need free legal advice, do not hesitate to contact the Release legal helpline, we can advise and refer you to a solicitor if necessary. Your local Citizens Advice Bureau and Law Centres can also assist in a similar way.

## MALE AND FEMALE WORKERS

The information in this booklet applies to men, women and transsexual persons. If you are a transsexual person you can apply to the Gender Recognition Panel for a certificate that for legal purposes you should be treated as having your acquired gender.<sup>1</sup>

<sup>1</sup> GENDER RECOGNITION  
ACT 2004, S1



## SCOTTISH LAW

This booklet is primarily concerned with the law and practice in England and Wales. While the position in Scotland is often similar, it does differ in certain respects. You can obtain printed information about your legal rights from SCOT-PEP in Edinburgh (see page 127).

## LEGAL REFERENCES

As well as explaining what the law says, in this booklet we give you the relevant legal references as footnotes (e.g. section 33, SOA 1956) so that you can easily do further research yourself if you like. For a briefer guide to the law around sex work, you may be interested in one of our “Sex Workers’ Rights” cards. These are pocket-sized summaries of useful information. Contact our publications department on 020 7324 2979 if you would like to know more about these or would like to order copies of these or any other publications.

## SENTENCING

This book details the maximum sentences for an offence in practice, however, most offences will not receive the maximum tariff available. This is a complicated area and if you wish to discuss this please contact the Release helpline on 0845 4500 215.

## ABBREVIATIONS

The following abbreviations are used throughout this booklet:

“PCA 2009”	Policing and Crime Act 2009
“SOA 2003”	Sexual Offences Act 2003
“SOA 1985”	Sexual Offences Act 1985
“SOA 1967”	Sexual Offences Act 1967
“SOA 1956”	Sexual Offences Act 1956

# LEGAL REFORM

The SOA 2003 removed gender-specific offences (except rape, which can still only be committed by a man) and abolished many offences directed at homosexual activity. It also included important changes to the law in relation to rape which were intended to make it easier to bring successful prosecutions. There were also changes to the law concerning the registration of sex offenders and strengthened provisions intended to tackle sex work and pornography involving children and people trafficking.

Some examples of offences that were abolished by the SOA 2003 are:

- Gross indecency between men;
- Procuring another man to commit an act of buggery with a third man;
- Persistent soliciting or importuning by men (men are now subject to the same laws as women in relation to soliciting).

The PCA 2009 saw further significant changes to the policing of sex work. In particular, a new offence was created in relation to the payment of sexual services where the person being paid is forced, threatened or deceived into providing sexual services. The PCA 2009 amended the SOA 1959 in a number of ways including:

- removal of the term 'common prostitute' from the legislation;
- a new system for dealing with loitering or soliciting;
- the introduction of closure orders for brothels.

All of these offences and powers are dealt with in the main section of this publication. However, other aspects of the PCA 2009

are not addressed such as orders imposed on sex offenders; indecent photographs of children and the licensing changes to sex establishments. This is because the primary aim of this publication is to inform sex workers and their colleagues of their rights and of the legal risks they run.

# OFFENCES RELATED TO SEX WORKING

- STREET WORK OFFENCES
- “CONTROLLING OFFENCES”
- OFFENCES RELEVANT TO THOSE WHO BUY SEX
- OTHER RELEVANT OFFENCES

It is difficult to separate the various offences into distinct categories of street working and indoor working as there is a potential for crossover between the two, for example, controlling prostitution for gain applies to both activities.

We have tried to categorise the relevant offences into 4 areas:

- Street work offences
- Controlling offences – the risk of managing sex working activities
- Offences related to those who buy sex
- Other relevant offences

The next chapter will outline those offences that relate directly to activities which occur in premises used for sex working. Also please refer to the contents page 4 for a detailed overview of the contents.

## STREET WORK OFFENCES

Offences associated with street work	Maximum penalties
<b>Soliciting</b>	<b>Engagement &amp; Support Order/Fine</b>
<b>Kerb crawling</b>	<b>Fine</b>
<b>Sex in a public lavatory</b>	<b>6 mths and/or fine</b>
<b>Highway obstruction</b>	<b>Fine</b>
<b>Disorderly behaviour</b>	<b>Fine</b>

NOTE: THE TERM "COMMON PROSTITUTE" WAS REVOKED BY THE PCA 2009.

The police often target street work over indoor work because it is more visible and it sometimes attracts complaints from the public.

### SOLICITING

It is an offence for a **person persistently** to **loiter or solicit** in a street or public place for the purpose of prostitution.<sup>2</sup>

Please note that 'Kerb Crawling' is also charged as soliciting.

**'Persistently'** is defined as conduct that takes place on two or more occasions in any three month period.<sup>3</sup> If you have any 'Prostitutes' Cautions' recorded against you (see page 82 for details), these can be used as evidence of persistence.

**"Soliciting"** includes any tempting or alluring of prospective customers, through words, winks, glances, gestures, smiles or provocative movements; it also includes mere lingering either on foot or in a vehicle where you have no intention to move on. Likewise the definition can include someone sitting in a window if they are clearly soliciting, for instance wearing revealing clothing, sitting under a red light, in an area where prostitutes are sought (red light area or 'beat').

**"Loitering"** is lingering with no intention to move on, either by foot or in a vehicle.

2. STREET OFFENCES ACT 1959, S1 (1) AS AMENDED BY THE PCA 2009

3. STREET OFFENCES ACT 1959, S1(4) AS AMENDED BY THE PCA 2009

**“Street or public place”** includes any bridge, road or lane, footway, subway, court, square, alley, passageway, doorway or entrance to premises adjoining a street, and any ground adjoining and open to a street. It also covers working from windows and balconies and in hotels. A public place can include any place where the public go, regardless of whether they have the right to go there.

The first two times that you are stopped the police are likely to issue you with a Prostitutes’ Caution – they may go straight to charging you but this is unlikely as they would have problems establishing that you were **persistently** loitering or soliciting; see page 82 for further details of this scheme.

If you do get charged and you think you have been charged unfairly, for example you were in fact shopping or going to meet a friend at the time of your arrest, you can plead “not guilty” and the prosecution will have to prove their case in a trial by magistrates. Be aware that you may get extra hassle from the police following a plea of “not guilty”. However, it is your right to give this plea if you are not guilty of the offence of loitering or soliciting for the purposes of prostitution.

It is up to the police and prosecution to prove **beyond reasonable doubt** that you were in fact soliciting on any particular occasion as opposed to, for example, waiting for a friend. But some magistrates may simply “rubber stamp” what the police say. It’s worth taking careful note of your circumstances and surroundings at the time of your arrest – for example, the exact whereabouts of nearby cars or people – to help you challenge inaccurate statements by the police. The police may try and use the fact that you were in possession of condoms to support other evidence that you were soliciting. However, this is very controversial and in any event condoms cannot be used as sole evidence. If the Court finds you guilty of an offence of loitering or soliciting for the purposes of prostitution they can order you to pay a fine or to attend three meetings with a specified person.<sup>4</sup> The aim of the meetings is to ascertain the causes of your conduct and help you find ways to stop engaging in such conduct. These orders are referred to as **‘Engagement and Support Orders’**.

4. STREET OFFENCES ACT  
1959, S1(2A) AS INSERTED BY  
THE PCA 2009

5. SCHEDULE 1 PCA 2005  
AMENDMENT TO STREET  
OFFENCES ACT 1959

**Failure to comply** with an 'Engagement and Support Order' will result in a breach. This means that you will be summoned to attend Court. Failure to answer the summons can lead to an arrest warrant being issued by the Court. A person subject to an arrest warrant must be brought before a court as soon as practicable but may be detained for up to 72 hours.<sup>5</sup> Where the Order has been breached the Court can revoke the original Order and issue a new one or can issue a fine.

## HIGHWAY OBSTRUCTION

6. HIGHWAYS ACT 1980, S137

It is an offence for a person, without lawful authority or excuse, in any way willfully to obstruct the free passage along a **highway**.<sup>6</sup> "Highway" includes roads, bridges, carriageways, footways and pavements. Male and female street workers are sometimes, though rarely, charged with this offence. The penalty is a fine.

## DISORDERLY BEHAVIOUR

It is an offence to:

- Use threatening, abusive or insulting words or behaviour, or disorderly behaviour; **or**
- Display any writing, sign or other visible representation which is threatening, abusive or insulting, within the hearing or sight of a person (this can include a police officer) likely to be caused harassment, alarm or distress by it.<sup>7</sup>

7. PUBLIC ORDER ACT  
1986, S5.

The offence can be committed in a private or public place but not inside a dwelling.

You can defend yourself by proving that:

- You had no reason to believe that there was anyone within hearing or sight who was likely to be caused harassment, alarm or distress; **or**
- You were inside a dwelling and had no reason to believe that anyone outside the dwelling would hear or see the words or behaviour used; **or**
- Your conduct was reasonable.

The penalty for an offence under this section is a fine, consequently you are unlikely to qualify for legal aid for this offence but speak to the Duty Solicitor or call Release if you need assistance.

If you do work outdoors you should also be aware of the potential for the police or local authority to seek an Anti Social Behaviour Order ('ASBO') – please see page 40 for more details.

Recently, sex working projects have been reporting a rise in the use of local authority civil injunctions to try and stop street working in their local area – the Court should not allow these types of injunctions. The Court of Appeal ruled in 2008 that local councils should apply for ASBOs rather than injunctions<sup>8</sup>

– if you are being threatened with an injunction please contact Release on 0845 4500 215.

**8. BIRMINGHAM CITY  
COUNCIL V SHAFI AND ANOR  
[2008] EWCA CIV 1186**

## **CONTROLLING OFFENCES – THE RISKS OF MANAGING SEX WORK**

<b>"Controlling" offences</b>	<b>Maximum penalties</b>
<b>Keeping a brothel</b>	<b>7 years and/or fine</b>
<b>Causing or inciting prostitution for gain</b>	<b>7 years and/or fine</b>
<b>Controlling prostitution for gain</b>	<b>7 years and/or fine</b>
<b>Keeping a disorderly house</b>	<b>Imprisonment at discretion of Court/ fine</b>
<b>Money laundering</b>	<b>14 years and/or a fine</b>

The law imposes the heaviest penalties in relation to activities which are seen to involve control over prostitution, rather than those merely providing sexual services.

The three controlling offences are keeping a brothel, causing or inciting prostitution for gain and controlling prostitution for gain. They are covered in turn below.



**Remember that you can be guilty of 'keeping a brothel' if you work in shared premises and are involved in the running or management of it.**

## KEEPING A BROTHEL

The law around brothels applies equally to men and women and to heterosexual and homosexual activities.

It is not an offence to work as a prostitute or maid in a brothel, but it is an offence to **keep, manage or act or assist in the management** of a brothel.<sup>9</sup> The penalty is a fine or up to 7 years in prison.

9. SOA 1956, SS33 AND 33A.

The prosecution has to prove 3 things:

- That the premises you are working in would be classified as a brothel; **and**
- That you were aware of this; **and**
- That you were keeping the brothel, managing it **or** assisting in its management.

These components are each looked at in detail below.

### **Would your working premises be classified as a brothel?**

Any premises – for example, private flats, saunas, massage parlours – may be classified as a brothel if they are **used by more than one man or woman** for the purposes of prostitution, whether on the same day or on different days. So, if you **share premises** with someone else and work on alternate days or weeks, the premises will still count as a brothel even though there is never more than one person working at any one time.

Where rooms or flats in one building are let separately to different individuals offering sexual services, the premises as a whole may still count as a brothel if the individuals are effectively working together. Evidence of shared keys, washing and toilet facilities, staircases, tenancy agreements etc. will be relevant.

If you are the only person who provides sexual services on premises, with or without the assistance of a non-working maid, the premises is not a brothel.

### **Were you aware of the circumstances that make the premises a brothel?**

In order to be guilty of keeping a brothel, you have to have been aware of the circumstances which made the premises a brothel. So, if you work on premises for, say, two days a week and have no idea what they are used for on the other days, you have a defence. But the Court may “infer” knowledge if they think you were blinding yourself to the obvious.

### **Were you keeping, managing or assisting in the management of a brothel?**

Working in a brothel, as a maid, sex worker or in any other capacity, is not of itself an offence. The police have to show that you were **managing**, or **assisting in the management of**, the operation in some way. Whether you are the tenant or occupier of the premises is not enough to prove this element of the offence but may have some relevance depending on other circumstances (also see offences relating to tenants on page 32). There are no hard and fast rules as to what activities amount to management. Each individual case will be considered on its own merits, and you should seek legal advice. Some guidance is given below.

The prosecution would have to show that you had some **degree of control** over the running of the business. The following activities are examples of what has been held to amount to a sufficient degree of control, but this is not an exhaustive list:

- Having a say in what services are offered and how much is paid for them
- Taking money from clients and noting its receipt in a cashbook
- Putting up advertisements
- Paying bills
- Hiring and firing staff
- Supplying materials
- Banking and book keeping

Activities such as admitting clients, cleaning, removing rubbish, making coffee or other duties of a trivial nature are **not** usually sufficient to amount to this offence. However, there is no failsafe way to avoid prosecution and the possible seizure

of assets. Any activity involving the taking or safeguarding of cash may be used to allege that control exists.

If you are providing sexual services but the prices and the services have been set beforehand by someone else, and you have no power to discuss or vary them, you are also unlikely to be said to have enough control to be guilty of keeping a brothel.

10. CHILDREN AND YOUNG PERSONS ACT 1933, S3.

11. SOA 1956, S33.

### **Maids**

**Although it is legal to have a maid or housekeeper to assist you and increase your safety, the police may allege that the maid is selling sex and that the premises therefore count as a brothel, especially if s/he is young. They may claim that a person has to be over a certain age in order to be a maid, this is not true although it is a separate offence to allow a child between 4 and 15yrs old to frequent a brothel.<sup>10</sup>**

**Maids or housekeepers in brothels are clearly at risk of being accused of keeping a brothel.<sup>11</sup> However, if your duties are of a menial nature and you have no control over prices or services, generally you will not be committing an offence. When working with a lone sex worker, it may assist your defence if you have a clear, written agreement on what your duties are (e.g. cleaning and raising the alarm in the event of an assault by a client).**

## CAUSING OR INCITING AND CONTROLLING PROSTITUTION FOR GAIN

The offences of causing or inciting prostitution<sup>12</sup> for gain and controlling prostitution<sup>13</sup> are closely related, and so are dealt with together here. They could apply in relation to indoor or street work. The following defined terms apply to both offences:

12. SOA 2003, S52

13. SOA 2003, S53

**“Gain”** means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount; or the good will of any person which is, or appears likely in time, to bring financial advantage.

**“Prostitute”** means a person who, on at least one occasion and whether or not compelled to do so, offers or provides sexual services to another person in return for payment or a promise of payment to themselves or another person.

**“Payment”** means any financial advantage, including the discharge of an obligation to pay or the provision of goods or services (including sexual services) gratuitously or at a discount.

The offence of **causing or inciting prostitution for gain**<sup>14</sup> is committed where a person:

14. SOA 2003, S52.

- Intentionally causes or incites another person to become a prostitute in any part of the world **and**
- Does so for or in the expectation of gain for him/herself or a third person.

What it means to cause or incite is not defined in statute but it covers any conduct that gets, or tries to get, another person to become a sex-worker. So **cause** would include where any physical force, threats, inducements or persuasion leads to someone else becoming a sex worker and **incite** means to suggest, propose, or persuade another to do so perhaps by promising a reward or being deceitful. The penalty is a fine or up to 7 years in prison.

The offence of **controlling prostitution for gain**<sup>15</sup> is committed where a person:

- Intentionally controls any of the activities of another person relating to that person's prostitution in any part of the world **and**
- Does so for, or in the expectation of, gain for him/herself or a third person.

Unlike causing and citing, **control** does not require that the sex worker is forced into prostitution at the outset, only that the sex-worker is now acting under compulsion, direction or instruction. It can be enough to tell a person to carry out a particular activity or to do it in a certain way to be guilty of this offence and, although usually threats or actual violence or blackmail of some sort is usually required, it is enough to control someone through offers of reward.<sup>16</sup> The penalty is a fine or up to 7 years in prison.

16. SEE R V MASSEY [2008]  
1 WLR 937

### **Who is at risk of prosecution?**

Control offences may be applied to any person, including family members, boyfriends or girlfriends and maids. It is also possible to be charged with aiding and abetting someone to commit the offences.

A degree of **control** must be proven beyond reasonable doubt in order to convict for one of these offences. Simply living with, or habitually being in the company of, a prostitute should not therefore be sufficient to lead to a conviction. The old offences of living on the earnings of prostitution or living on immoral earnings no longer exist.

Landlords and those providing services such as "carding" and publishing promotional material should not generally be at risk of conviction for one of these offences due to a lack of control (but see page 32 for landlords). However, pimps and managers of brothels and escort agencies will continue to be at risk.

## KEEPING A DISORDERLY HOUSE

It is an offence to keep a disorderly house – this is a common law offence which means it has been developed by case law through the courts.

To establish this offence the prosecution must prove the following three elements:

- There must be some element of keeping an open house **and**
- The house must not be regulated by the restraints of morality, or must be unchaste or of bad repute **and**
- it must be conducted so as to violate law and good order.<sup>17</sup>

17. SEE R V TAN [1983] QB 1053

The accused must have knowledge that the house is being used in this way and the offence is not confined to a house being used for sexual purposes.

The penalty is a fine and/or imprisonment at the discretion of the Court. Sentences of up to 12 months have previously been upheld by the Court of Appeal.

## MONEY LAUNDERING OFFENCES

Those involved in or associated with controlling prostitution are also often vulnerable to prosecution for money laundering.

It is an offence to acquire, use, or possess criminal property<sup>18</sup> and to conceal, disguise, convert, transfer, or remove it from the UK.<sup>19</sup>

18. PROCEEDS OF CRIME ACT 2002, S329

19. PROCEEDS OF CRIME ACT 2002, S327

Criminal property is money or goods that you know are the benefit of criminal conduct. So, for example, the profits of or wages paid by a brothel would be caught under this definition and you should note that the offences have such a wide ambit that almost whatever you try to do with such property (other than contact HMRC or the police) would make you vulnerable to prosecution. (See the sections on confiscation proceedings at page 87 and on paying tax and tax evasion at page 56 for more information). The penalty is a fine or up to 14 years in prison.

## OFFENCES RELEVANT TO THOSE WHO BUY SEX

Offences for those who buy sex	Maximum penalties
<b>Kerb Crawling &amp; Soliciting</b>	<b>Fine</b>
<b>Paying for the Sexual Services of a Prostitute Subject to Force</b>	<b>Fine</b>
<b>Paying for sex with someone who is under 18</b>	<b>7 years and/or a fine</b>
<b>Paying for sex with someone who is under 16</b>	<b>14 years and/or a fine</b>
<b>Paying for sex with someone who is under 13</b>	<b>Life imprisonment</b>

### KERB CRAWLERS & SOLICITING SEX

Please note that kerb crawling is charged as 'soliciting'.

It is illegal to **solicit** another person (or different people) for the purpose of prostitution in a street or public place.<sup>20</sup> This offence previously had a requirement that the soliciting was persistent and caused a nuisance – this is no longer the case.<sup>21</sup> The penalty is a fine.

20. SOA 2003, S51A

21. SOA 2003, S51A

### PAYING FOR THE SEXUAL SERVICES OF A PROSTITUTE SUBJECT TO FORCE

It is not illegal to pay for the services of a sex worker unless it can be proven that the worker was being exploited by a third party. This law came into force in April 2010 under the PCA 2009.<sup>22</sup> Essentially, a person (A) commits an offence if they make or promise to make a payment for sexual services and a third person (C) has used exploitative conduct leading to the sex worker (B) providing sexual services. Exploitative conduct is considered to be '**force, threats, other forms of coercion, or deception**'. This is a **strict liability** offence in that the person buying sexual services (A) does not need to know that the sex worker (B) has been subject to this treatment. The penalty is a fine.

22. SEXUAL OFFENCES ACT 2003 S53A

23. HOME OFFICES, PROVISIONS IN THE POLICING AND CRIME ACT 2009 THAT RELATE TO PROSTITUTION (SECTIONS 14 -21), HOME OFFICE CIRCULAR 008/2010

The Home Office has laid out definitions for force; threats; coercion and deception.<sup>23</sup>

## **Force**

“Force should be given its ordinary meaning as applied in other legislation” and includes the use of physical violence.

## **Threats**

The use of threats can include physical and psychological violence and could include:

- reporting someone to the immigration authorities or police;
- restricting someone's access to their children, family and friends;
- the withdrawal of accommodation; financial support or other basic necessities;
- withholding the supply of drugs and/ or alcohol;
- ending a relationship or withdrawing love or affection;
- threatening to take action which would leave someone feeling guilty or responsible e.g. threats by C to take own life;
- restriction of movement or other personal freedom;
- telling family or friends about someone's involvement in sex working;
- threats of harm to family and friends.

## **Coercion**

Coercion is intended to include situations of unequal relationships or where someone is being dominated or their vulnerabilities are being exploited. Vulnerabilities could include young age; physical or mental incapacity, illness or disability; drug or alcohol dependence; history of experiencing abuse; economic disadvantage; immigration status.

## **Deception**

“Deception relates to situations where B is deceived into providing sexual services”. This could include deception as to the terms on which the services are supplied or the identity of the person receiving the services.

The Home Office Circular provides a wide definition of these terms and it is worth noting that many of the definitions have not been tested in the courts.



## PAYING FOR SEX WITH SOMEONE UNDER THE AGE OF 18

It is an offence to pay for sex with someone who is under the age of 18. This is a very serious offence and sentences reflect the age of the person whom sex is paid for and whether penetration is involved. The elements of the offence are:

A person (A) commits an offence if –

- he intentionally obtains for himself the sexual services of another person (B), **and**
- he has made or promised payment for those services either directly with B or with a third person, **and**
- B is either under 18 and A does not reasonably believe they are over 18 or B is under 13.<sup>24</sup>

24 SOA 2003, §47

As stated penetration must be established by the prosecution, this is defined through a number of acts and is detailed in s.47(6) SOA 2003.

Where B is under 13 and A is found guilty of the above offence they will face a maximum life imprisonment; if B is between 13 and 16 years old the maximum sentence is 14 years and/or a fine; where B is aged 16 – 18 years old the maximum sentence is 7 years and/or a fine.

## OTHER RELEVANT OFFENCES

Other Relevant Offences	Maximum penalties
<b>Sex in a public lavatory</b>	<b>6 months and/or fine</b>
<b>Assault occasioning actual bodily harm</b>	<b>5 years and /or fine</b>
<b>Clipping (fraud)</b>	<b>10 years and/or fine</b>
<b>Possession of an offensive weapon</b>	<b>4 years and/or fine</b>
<b>Social Security Fraud</b>	<b>7 years and/or finw</b>

## SEX IN A PUBLIC LAVATORY

It is an offence for any person (male or female) to intentionally engage in an **activity** which is **sexual**, if s/he is in a lavatory to which the public or a section of the public has or is permitted to have access, whether on payment or otherwise.<sup>25</sup>

25. SQA 2003, §71

An “activity” which is “sexual” is defined objectively for the purposes of this section as an activity which a reasonable person would, in all the circumstances (but regardless of any person’s purpose) consider to be sexual. The penalty is up to 6 months in prison or a fine.

## ASSAULTS ARISING FROM S&M / FETISH SERVICES

If you offer sado-masochistic services involving the infliction of blows or other injuries intended or likely to cause injury, and that injury amounts actual bodily harm, you may be charged with assault. This can carry a prison sentence.

The following are examples of injuries that would usually lead to prosecution if detected: loss or breaking of teeth, loss of consciousness, multiple bruising, minor fractures, minor (but not superficial) cuts requiring stitches; and, psychiatric injury.<sup>26</sup>

26. SEE CPS CHARGING STANDARDS FOR ASSAULT OCCASIONING ACTUAL BODILY HARM

Although assault usually requires an absence of consent, it has been held that it is not in the public interest that a person should harm another in order to gratify sexual desire. So, the fact that the client requested or consented to the blows may be no defence.

In order to avoid inadvertently doing something that the client does not want to do, you should consider agreeing a ‘safe word’ with the client in advance, which they may use during the session to indicate that they want to stop.

## CLIPPING

If you take money from a potential client intending not to perform the service offered, you are guilty of fraud under s2 Fraud Act 2006. The client has not committed an offence him/herself, unless you are under age or you are being forced, coerced or deceived into sex working or s/he has been kerb crawling. Although some clients may not wish to report the incident others will have no qualms, although they may have problems in proving their case.

## POSSESSION OF AN OFFENSIVE WEAPON

It is an offence to carry an offensive weapon in a public place without lawful authority or reasonable excuse. The penalty is a fine or up to 4 years' in prison, or both.

**"Offensive weapon"** means any article made or adapted for use for causing injury to the person, or intended by the person having it with him/her for such use by him/her or by another person. This would certainly include articles such as knives, guns or broken bottles. Other articles, such as a handbag or umbrella, could qualify as offensive weapons if the police can show that you intended to cause injury with them, or if you admit that you did.

**"Public place"** includes any place to which, at the material time, the public have or are permitted to have access, whether on payment or otherwise.

This law has been applied in the past to equipment used for sadomasochistic activities.

Once it has been shown that you had an offensive weapon with you in a public place, it is up to you to show that you had lawful authority or a reasonable excuse for possessing it. For example, if you were carrying a knife because you were on your way to do a carpentry job. Carrying an offensive weapon in order to defend yourself if attacked is not a reasonable excuse; in fact a knife can often escalate a situation and end up being used against you. There are other ways to stay safe on the street, see page 118 for suggestions.

## FALSE IDS

It is legal to use any name you want. However, if you have given a false name with the intention of avoiding outstanding fines or the disclosure of a criminal record, or other legal obligations, you could be charged with fraud, obstructing a police officer in the execution of his/her duty or, very rarely, attempting to pervert the course of justice. If you give a false name and this is discovered, it may jeopardise your chances of getting bail.

## **SOCIAL SECURITY FRAUD**

If you're claiming benefit at the same time as working, and have not declared it to the Department for Work and Pensions, you may be guilty of an offence. Most cases are charged under the Social Security Administration Act 1992, s111A but more serious cases can be prosecuted under the Fraud Act 2006.

If you are found out, which can happen if – for example – you get involved with the police for any reason, you will be investigated. You may be asked to repay any overpayments and/or you may be prosecuted and fined by a Court. In serious cases you may face imprisonment.

Your benefit cannot be withdrawn solely because of past fraud. The investigation has to show that you are no longer entitled. If you have received more money than you were entitled to because of a genuine error, you cannot be guilty of fraud.

If you have problems in relation to your benefits, or are concerned about fraud, you should seek legal advice. Also please see page 56 regarding paying taxes.



# SEX WORKING AND PREMISES

- ALLOWING CHILDREN IN BROTHELS
- PLANNING REGULATIONS
- LICENSING
- LANDLORDS
- TENANTS
- CLOSURE OF PREMISES

### Other indoor offences

**Allowing children in brothels**

**Breach of planning regulations**

**Breach of Licence**

**Landlord knowingly allowing  
use of premises as a brothel**

**Tenant knowingly allowing  
premises to be used as a brothel  
or for use for prostitution**

**by a single person**

**Closure of Premises**

### Maximum penalties

**6 months and/or fine**

**Fine**

**Fine**

**6 months and/or fine**

**6 months and/or fine**

**Civil order – breach  
can result in 51 weeks  
imprisonment and/  
or a fine**

Even if you are working alone, or working in a brothel without any responsibility for the running of the business, there are other potential problems which you should be aware of which are set out below.

27. CHILDREN AND YOUNG  
PERSONS ACT 1933, S.3.

## ALLOWING CHILDREN IN BROTHELS

It is an offence to allow a child or young person who is between the ages of 4 and 15 years inclusive, and for whom you are responsible, to reside in or frequent a brothel.<sup>27</sup> The penalty is a fine and/or up to 6 months' custodial sentence and a conviction could be used against you in care proceedings. Furthermore, the police are more likely to take an interest in the property if children are present.

28. USEFUL GUIDANCE IS  
AVAILABLE AT THE SMALL  
& MEDIUM ENTERPRISE  
HUB ([WWW.THESMEHUB.COM/SITES/DEFAULT/FILES/COMPLETE%20GUIDE%20TO%20LEGAL%20REQUIREMENTS.PDF](http://WWW.THESMEHUB.COM/SITES/DEFAULT/FILES/COMPLETE%20GUIDE%20TO%20LEGAL%20REQUIREMENTS.PDF))

## PLANNING REGULATIONS<sup>28</sup>

Even if you are working alone, you may be in breach of planning regulations. If you work from home, the test is whether or not the main use of your property remains residential. Factors relevant to this include the proportion of space given over to business, numbers of clients, whether there are employees and the potential nuisance to neighbours. If you rent residential premises primarily for the purpose of work, you risk being found in breach of the regulations. In practice, the planning authorities tend to become involved only as a result of complaints from neighbours or police interventions. They can enter your property if they give you 24 hours' notice<sup>29</sup> or if you consent. If they think you are breaching regulations, and if they decide to take action and are successful, you will be asked to stop working. If you persist, you may be prosecuted and fined. The bigger and noisier your operation, the more likely you are to face intervention.

29. SECTION 196 TOWN AND  
COUNTRY PLANNING ACT 1990

## LICENSING

If you are providing or advertising massage services and you live in London, a licence is required under the London Local Authorities Act 1991. A London licence can be refused or revoked by the borough council on various grounds, including the following

- There is a likelihood of nuisance being caused by reason of the conduct, management or situation of the premises or the character of the relevant locality or the use to which any premises in the vicinity are put;
- The persons concerned or intended to be concerned in

the conduct or management of the premises used for massage services could be reasonably regarded as not being fit and proper persons to hold such a licence;

- The premises have been or are being improperly conducted.

You can appeal to the Magistrates' Court against a refusal or revocation within 21 days starting on the day on which you are notified of the refusal or revocation in writing.

If you are outside London, there may be similar licensing requirements. Check what the position is in your area by consulting your local authority. Failure to have a licence, or working outside the boundaries of the licence, is a criminal offence punishable by fine.

## LANDLORDS

It is an offence for a **landlord to let premises knowing that they are to be used as a brothel, or willfully to allow their continued use as a brothel**.<sup>30</sup> The penalty is a fine and/or six months in prison.

30. SOA 1956, S34.

A landlord commits no offence by allowing premises to be used for prostitution by a single person. However, if the landlord charges an inflated rent, this may be used as evidence for the offence of controlling prostitution for gain. In these circumstances, it must be proven beyond reasonable doubt that the landlord had a sufficient degree of control over the prostitution.<sup>31</sup>

31. SOA 2003, S33.

## TENANTS

It is an offence for a **tenant, occupier or any person in charge of premises knowingly to permit them to be used as a brothel**.<sup>32</sup> The penalty is a fine and/or six months in prison. If a tenant is convicted of this offence, the landlord may have the right to terminate the lease.

32. SOA 1956, S35.

In contrast to the landlord's situation, it is also an offence for a **tenant knowingly to permit their premises to be used for prostitution by a single person**, even though that person is not doing anything illegal.<sup>33</sup> The penalty is a fine and/or six months in prison.

33. SOA 1956, S36.

Using premises for prostitution may be a **breach of your tenancy agreement** if it prohibits "illegal or immoral" use. If your landlord finds out s/he might ask you to stop working and/or start possession proceedings; often the police put pressure



on landlords to do so, however, you cannot be evicted overnight. The landlord will have to take you to Court, following strict procedures. If you have problems, contact a solicitor, Law Centre or Citizens' Advice Bureau.

## CLOSURE OF PREMISES

Closure Orders are a type of Anti Social Behaviour order ('ASBO'), ASBOs are civil orders preventing certain behaviour or activities – breach of these orders are a criminal offence and can result in imprisonment. This section deals specifically with Closure Orders in relation to premises. The next section of this booklet details the law relating to ASBOs. These are civil orders preventing certain behaviour or activities – breach of these orders are a criminal offence.

## BROTHELS

Since April 2010 the Courts have had the **power to temporarily close** down properties which are being used in relation to activities connected to **certain sexual offences** when specific criteria are satisfied.<sup>34</sup>

The relevant sexual offences are:

- Paying for the sexual services of a child<sup>35</sup>
- Causing or inciting child prostitution or pornography<sup>36</sup>
- Controlling a child prostitute or a child involved in pornography<sup>37</sup>
- Arranging or facilitating child prostitution or pornography<sup>38</sup>
- Causing or inciting prostitution for gain<sup>39</sup>
- Controlling prostitution for gain<sup>40</sup>

You will note that the offence of keeping a brothel<sup>41</sup> is **not** one of the specified offences. However, you should be aware of the possibility for closure, particularly if the premises you are working from is also your home or if you are the owner of a property. The police and prosecution may argue that as the premises is a brothel there is reasonable suspicion that one of the controlling offences exists.

34. SECTION 21 AND  
SCHEDULE 2 POLICING AND  
CRIME ACT 2009

35. SOA 2003, S47

36. SOA 2003, S48

37. SOA 2003, S49

38. SOA 2003, S50

39. SOA 2003, S52

40. SOA 2003, S53

41. SOA 1956, S33

There are two stages to the closure process.

### Closure Notices

A closure notice is the first stage in a property being closed down. It notifies of the intention to apply for a full closure order.

For a **Closure Notice** to be issued initially by the police the following conditions must be fulfilled:<sup>42</sup>

42. SOA 2003, S136B

- There must be reasonable grounds to believe that during the three months before the Notice is issued the premises had been used for activities relating to **one or more of the specified offences**.
- There must be reasonable grounds to believe that a Closure Order is **necessary** to prevent the premises from being used for activities relating to one or more of the specified offences.
- Reasonable steps must have been taken to identify the person who resides in the premises, or who has control/responsibility for the premises.

It is important to be aware that a closure notice can be issued even if someone has not been convicted for one of the relevant offences.

The notice will be served by a copy being attached to at least one prominent place on the premises and as far as is reasonably practicable by giving it to people identified as residing in or having control/responsibility of the premises. Reasonable force can be used to enter premises if this is necessary to ensure service of the Notice.

The closure notice will have effect until the Court has ruled on an application for a Closure Order.

### Closure Orders

The Court must hear the application for a Closure Order within **48 hours** of the notice being issued. This is obviously a very short timeframe and can cause difficulties in getting legal representation. If you do not have a solicitor you should **call the Release helpline** as soon as possible so that you can be referred to a lawyer. It is possible for the hearing to be adjourned for up to 14 days and lack of adequate representation or insufficient time to gather evidence would be a valid reason for this. The Court can, and probably will, order that the Closure

Notice continues to be effective during any adjournment period. For the Order to be made the same conditions as for the Closure Notice must be satisfied.<sup>43</sup>

Hearsay evidence (i.e. reporting what someone else has said) is allowed when applying for, or defending against, a Closure Order. The effect of the Order is to close the premises altogether, including to owners and residents, for up to three months. This can be extended for a further three months if another application is made.

The Court can make provision for access to any part of the premises, during the closure period.

It should be noted that a Closure Order cannot be made where only one person has obtained all of the sexual services in question. This is consistent with the purpose of the Order being to address anti-social behaviour associated with brothels.

### **Associated offences**

Remaining on, or entering, the premises without reasonable excuse, whilst an Order or Notice is in force is a criminal offence which is punishable by a fine of up to £5,000 or 51 weeks imprisonment or both.

### **Ancillary issues**

Closure of premises can cause a number of other problems if you are the tenant of that property.

Rent will continue to be payable and whilst Housing Benefit may continue there will still be the issue of rent for anywhere you stay during the period of closure.

Landlords will normally start possession proceedings to take the property back once the Order has been made, using the grounds for the closure as reason for the tenancy to be terminated.

This is likely to cause ongoing difficulties if applying for social housing in the future as you are likely to be considered to have made yourself intentionally homeless.

### **Closure Orders & Drugs**

The police and courts also have the power to close down premises where there is use, supply or production of Class A drugs and serious nuisance or disorder.<sup>44</sup> If the police reasonably suspect the existence of both these factors, they can issue a Closure Notice. The effect of this is that only those who have a right to access those premises (e.g. tenant/owner) can enter. Anyone else who attempts to access the premises will be committing an arrestable offence.

The same procedure outlined above applies.

If a Closure Order is made, the premises will be sealed for at least 3 months and no one will be allowed to enter during that time. Anyone attempting to do so will be arrested.

44. ANTI SOCIAL BEHAVIOUR ACT 2003, PART 1.

Closure Orders apply to both residential and business premises.

At the time of publication the government is consulting on changes to the way in which anti-social behaviour is dealt with by police and local authorities. One suggestion is to replace current Closure Orders, including the one relating to brothels, with one single Order called the 'Community Preventative Order'.<sup>45</sup> If this proposal is accepted the scope and effect of the Order would remain the same as for current Orders. The only difference is that instead of immediately closing the premises it would be possible for the police or Local Authority to impose restrictions on the use of the premises. This is obviously much less severe than the premises being closed and breach of the restrictions will attach a lesser punishment. Check with Release for developments and changes in the law at [www.release.org.uk](http://www.release.org.uk) or 0845 450 0215.

45. 'MORE EFFECTIVE RESPONSES TO ANTI-SOCIAL BEHAVIOUR' AT 4.3, HOME OFFICE, 2011



# TRAFFICKING OFFENCES

There are various offences of **trafficking people either within the UK or in or out of the country, for sexual exploitation.**<sup>46</sup>

46. SOA 2003, §§57-59.

You commit one of these offences if you intentionally arrange or facilitate another person's:

- Arrival in the UK; **or**
- Travel within the UK; **or**
- Departure from the UK; **and**

You intend to do anything, **or** you believe that another person is likely to do something to, or in respect of, that person,

- After their arrival but in any part of the world; **or**
- During or after the journey and in any part of the world; **or**
- After their departure but in any part of the world,

Which, if done, will involve the commission of a **relevant offence**.

**"Relevant offence"** means:

- Any offence under Part 1 of the SOA 2003 (which includes most sexual offences);
- Taking, or permitting to be taken, any indecent photograph of an under 18 year-old;
- Various sexual offences in Northern Ireland; **and**
- Anything done outside England and Wales and Northern Ireland which would be an offence if it were done in England and Wales or Northern Ireland.

Please note that there is **no requirement for anyone to have been forced into sex work** for these offences to have been committed. The penalty for any of the offences is a fine or up to 14 years in prison. For further information, contact your solicitor or call Release.

# ANTI SOCIAL BEHAVIOUR

There are a range of powers for the police, local authorities and courts to tackle “anti-social behaviour”. These powers are used against sex workers, to restrict activities which may be offensive to the public. Please note that the UK Government has launched a consultation with a view to replacing ASBOs in the near future.

These powers can have a massive impact on your life, liberty and home and you need to understand what they mean and how to try and avoid action being taken against you. The key powers are explained below.

### ANTI-SOCIAL BEHAVIOUR ORDERS (“ASBOS”)<sup>47</sup>

ASBOs can be imposed on anyone aged 10 years and above, in two situations:

- Upon application by the local police, British Transport police, local authorities, registered social landlords, housing action trusts and English County Councils; **or**
- Upon sentencing for a criminal offence. In these circumstances, there is no need for an application to have been made for an ASBO.

An ASBO can only be imposed if the Court is satisfied that a person has acted in an anti social manner and it is necessary to protect persons from further anti-social conduct by the defendant.

**Anti-social conduct** is conduct which “...causes or is likely to cause harassment, alarm and distress to one or more persons not

47. CREATED BY THE CRIME AND DISORDER ACT 1998 AND RELATE TO BEHAVIOUR OCCURRING ON OR AFTER 1 APRIL 1999.



of the same household as the person against whom the order is made.”<sup>48</sup>

In order to obtain an ASBO, it must be proved beyond reasonable doubt that the alleged past acts of anti-social conduct took place. It must then be decided by the Court, on balance, whether an ASBO is necessary to prevent future anti-social conduct.

Hearsay evidence (i.e. reporting what someone else has said) is allowed when applying for, or defending against, an ASBO. The Court has the power to ban the defendant from doing anything as long as it concludes that these measures will protect the public from further anti-social conduct by the defendant. Bans could include association with certain named persons, exclusion from certain areas and prohibitions from certain behaviour. The bans can last for anything between two years and life. The ASBO takes effect as soon as it is pronounced.

An **Interim Order** can be made at an initial Court hearing held in advance of a full hearing upon an application for an ASBO. An Interim Order is a temporary ASBO which can impose the same prohibitions and has the same penalties for breach as an ASBO.<sup>49</sup>

A breach of an ASBO is a separate criminal offence.

Police will bring a prosecution through the CPS in respect of any breach, which must be proved beyond a reasonable doubt and live witnesses called. Hearsay evidence is not allowed in these circumstances.

The maximum punishment for a breach is 6 months at the Magistrates' Court and 5 years at the Crown Court.

You can defend yourself using the **reasonable excuse defence**, if you can prove that you had a reasonable excuse to breach the ASBO. This could include, for example, entering a geographical exclusion zone in order to access a drug project or other support service with which you are engaged. There is no guarantee, however, that such a defence will succeed. It is possible to appeal against an ASBO. For further information or advice on this or any other aspect of ASBOs, please contact your solicitor or call Release.

Note: the Anti-Social Behaviour Act 2003 also gives the police powers to disperse groups of people who have gathered in areas designated as anti-social hotspots.

**At the time of publication the government is consulting on changes to the way in which anti-social behaviour is dealt with by police and local authorities. From the consultation paper produced by the Home Office it appears that the government intend to abolish ASBOs and replace them with two separate orders. The Criminal Behaviour Order replaces the existing criminal proceedings ASBO, which is currently used by the courts on conviction of any criminal offence. The Criminal Behaviour Order would be imposed in addition to the court's sentence for the criminal offence, not a substitute for it. It would be available in all criminal courts, and could be given to anybody over the age of criminal responsibility (10 years old).**

**The Crime Prevention Injunction replaces the ASBO injunction, Interim ASBO and Individual Support Orders. It is proposed that a Crime Prevention Order will only require the civil burden of proof, i.e. on the balance of probabilities. This injunction would impose conditions on the individual preventing certain behaviour, as well as positive requirements to ensure underlying problems are addressed. Check with Release for developments and changes in the law at [www.release.org.uk](http://www.release.org.uk) or 0845 450 0215.**



# ADVERTISING

- OBSCENE ARTICLES
- INDECENT DISPLAYS
- CARDING IN PUBLIC TELEPHONES
- SOLICITING
- ADVERTISING ON THE INTERNET

## Advertising offences

## Maximum penalties

**Publishing an obscene article**

**5 years and/or fine**

**Indecent displays**

**2 years and/or fine**

**Placing adverts for prostitution  
on a public telephone**

**6 months and/or fine**

**Unauthorised advertising**

**Fine**

**Criminal damage valued  
at less than £5k**

**6 months and/or fine**

It is not illegal to advertise sexual services, except in the following circumstances.

## OBSCENE ARTICLES

It is an offence, though rarely charged, to publish an obscene article.<sup>50</sup>

This offence applies to anything to be read or looked at and any sound or picture recording. The test is whether the effect of the article is such as to deprave or corrupt those who see it.

Publishing means any act of distributing, circulating, selling, or lending the article or showing or playing it if it is in visual or audio form.

50. OBSCENE PUBLICATIONS  
ACT 1959, S2

As a consequence of this offence, some directories, such as the Yellow Pages and Thomson, are reluctant to display adverts from massage parlours and escort agencies. The penalty is a fine or up to 5 years in prison.

There is also scope for prosecution under the common law offence of conspiracy to corrupt public morals or outrage public decency. These are brought to prosecution even less often – contact Release for further advice if you need it.

## INDECENT DISPLAYS

It is an offence, though rarely charged, to **'publicly display'** any **'indecent matter'**.

The offence was brought in to counter the problem of posters advertising prostitution in shop windows but **matter** includes any materials other than an actual human body or human body part.

It is enough that the matter is visible from a public place, it does not have to be set within a public place itself.

Indecent has its normal dictionary meaning and it will be a matter for the jury whether something is indecent or not. Matter that is merely suggestive or euphemistic is unlikely to fall within the test. The penalty is a fine and/or up to two years in prison.

## “CARDING” IN PUBLIC TELEPHONES

It is an offence to place on, or in the immediate vicinity of, a public telephone an advertisement relating to prostitution.<sup>51</sup>

This does not apply in relation to telephones in places where under 16 year-olds are not allowed. The penalty is a fine or up to six months in prison.

People employed to insert prostitutes' cards in telephone kiosks also risk being prosecuted for unauthorised advertising.<sup>52</sup> It is more likely that a charge will be brought under the above section. There is also a risk of being charged with criminal damage.

51. CRIMINAL JUSTICE AND POLICE ACT 2001, S46.

52. TOWN AND COUNTRY PLANNING (CONTROL OF ADVERTISEMENTS) REGULATIONS 1992.

## SOLICITING

“Loitering or soliciting” in a street or public place for the purpose of prostitution is a form of advertising,<sup>53</sup> and is an offence (see page 13).

53. BEHRENDT V BURRIDGE  
(1976) CR APP R 202

## ADVERTISING ON THE INTERNET

It is difficult to be prosecuted for advertising sexual services on the Internet. Because internet sites can be viewed anywhere in the world, in theory you could be subject to the laws of whatever country your advert is seen in, this is particularly so if your website is hosted offshore or in another country.

Under English law, the acts of soliciting or obscene publication could be said to have taken place, so you should take care to follow the advice given in the relevant sections above about the elements of these offences.

In any event, you should take care before paying others to place an advertisement on the Internet on your behalf. If you do so, you should ensure that you are able to check the advert yourself independently, to make sure it has in fact been placed, and that it stays on the Internet for the agreed period of time.



# TROUBLE FROM COERCERS AND PERPETRATORS OF CRIME AGAINST SEX WORKERS

- RAPE
- ASSAULT
- CRIMINAL INJURIES COMPENSATION
- INJUNCTIONS
- REFUGES

People involved in sex work have the right to public protection of the law as do other citizens. Crimes committed against them including robbery, grievous bodily harm, stalking, rape (or any offence under law) should be taken seriously by the police. If you are uncertain about whether you want to report a crime to the police and would like to talk this through with someone contact UKNSWP (Tel: 0161 629 9861/ [www.uknswp.org](http://www.uknswp.org)) to find out information about your local sex work support project. If you decide not to report a crime to the police you



have the option of reporting the incident to an “ugly mugs” incident report scheme within a local sex work support project, this would give you the option of information being used to alert other sex workers and of the information being passed on anonymously to the police should you consent. Some police forces treat crimes against sex workers as hate crime, this means sex workers will be taken seriously and should get an enhanced response.

## RAPE

The SOA 2003 introduced important changes to the law about rape which are intended to make it easier to convict rapists. The current law is explained below.

The fact that the victim of an alleged rape is, or has been, a sex worker should not affect the case, although it may be brought up in Court. It's advisable to be upfront with the police at the start about your sex working status. If you believe you have been raped, you should try to go to a Sexual Assault Referral Centre (SARC) as soon as possible. This will allow you to get medical care as well as for forensic or DNA evidence to be taken, which can be stored for you. You can then decide whether to go to the police later (even months later) or can have the centre give anonymous information to the police on your behalf. In the London area, these centres are called The Haven Project's (there are three Haven Projects in London details of which are on page 126. Please contact UKNSWP project for details of your local SARC or contact your local hospital). If there is no SARC in your area go to your local police station and ask to speak to a specially trained police officer. These officers are trained to work with victims of rape and serious sexual assault. These officers are very supportive and understand fully that rape by a client, someone pretending to be a client, a boyfriend or a pimp is **just as serious** as rape by a stranger. If convicted your attacker should not receive a lighter sentence because you are a sex worker.

Only you can decide whether to press charges. If you decide to do so, you will need evidence to support your statement of what happened, for example, evidence that sexual intercourse took place and evidence of injuries to show that you were forced into it. You will need to be prepared to see it through

and to help the police locate your attacker. If you decide to make a full statement and the matter goes to court, you may be treated as a “vulnerable witness” and be allowed to give evidence via video link, or behind a screen. This is known as ‘Special Measures’, people who have been raped are almost always granted special measures.

The police have also been known to be supportive where illegal immigrants have been victims of sexual assaults. Although the immigration authority may be informed, often such women are not deported. Your application is likely to be more favorably looked upon if you support the criminal investigation.

If you want to prosecute but the Crown Prosecution Service does not accept that you have enough evidence, it is possible to press charges yourself. Seek the support of agencies such as the International Collective of Prostitutes, Women Against Rape, Legal Action for Women, Rights of Women or other agencies listed on page 124.

Whether you decide to report a rape or other sexual offence to the police or not, you are entitled to help and support. If you go to a SARC, they will ask if you would like a referral to an Independent Sexual Violence Advisor (ISVA). ISVAs are specially trained to work with victims of rape and sexual assault from shortly after the incident, through the criminal justice process (if you report formally) and into aftercare. If you choose not to formally report, you can contact an ISVA yourself and still receive help and support. Go to [www.thesurvivorstrust.org](http://www.thesurvivorstrust.org) or [www.rapecrisis.org.uk](http://www.rapecrisis.org.uk) to find locations of SARCs and ISVAs and other services for victims in your local area. Many sex work support projects offer support to sex workers who have been victims of rape, sexual assault and other crimes, some have specialist ISVAs for sex workers.

If you choose not to report to the police, consider linking into your local sex work support project to report into their ‘UGLY MUGs or “Dodgy Punters” incident report scheme. This information is then used to warn other sex workers of people who may pose a risk to them. For a list of sex work projects in the UK, go to [www.uknswp.org](http://www.uknswp.org).

## The Offence

The offence of rape can only be committed by a man. The victim can be a man or a woman. A person commits the offence of rape if he intentionally penetrates the vagina, anus or mouth of another person without their consent, and without reasonably believing that there was consent. Even if the prosecution cannot prove actual penetration, the defendant could still be found guilty of attempted rape.

If the defendant claims that he believed that the victim consented to the penetration, the Court will decide whether that belief was reasonable, taking into account all of the circumstances, including any steps the defendant took to ascertain whether there was consent. It is easier to prove that there was no consent (and therefore that it was rape) if you can prove any of the following circumstances:

- Your attacker intentionally deceived you as to the nature or purpose of the penetration; **or**
- Your attacker intentionally induced you to consent to the penetration by impersonating a person known personally to you; **or**
- Someone was, at the time of the alleged rape or immediately before it began, using violence against you or causing you to fear that immediate violence would be used against you; **or**
- Someone was, at the time of the alleged rape or immediately before it began, causing you to fear that violence was being used, or that immediate violence would be used, against another person; **or**
- You were, and your attacker was not, unlawfully detained at the time of the relevant act; **or**
- You were asleep or otherwise unconscious at the time of the relevant act; **or**
- Because of your physical disability, you would not have been able at the time of the alleged rape to communicate to your attacker whether you consented; **or**
- Someone had administered to you or caused to be taken by you, without your consent, a substance which may have rendered you stupefied or overpowered at the time of the alleged rape.

### **Other Relevant Sexual Offences:**

**The following are all also offences in UK Law:**

**Vaginal rape using penis**

**Section 1 Sexual Offences Act 2003 (Rape)**

**Vaginal rape using hand**

**Section 2 Sexual Offences Act 2003 (Assault by penetration)**

**Vaginal rape using object**

**Section 2 Sexual Offences Act 2003 (Assault by penetration)**

**Anal rape using penis**

**Section 1 Sexual Offences Act 2003 (Rape)**

**Anal rape using hand**

**Section 2 Sexual Offences Act 2003 (Assault by penetration)**

**Anal rape using object**

**Section 2 Sexual Offences Act 2003 (Assault by penetration)**

**Kiss/suck/lick mouth or face**

**Section 3 Sexual Offences Act 2003 (Sexual Assault)**

**Kiss/suck/lick breast or chest**

**Section 3 Sexual Offences Act 2003 (Sexual Assault)**

**Kiss/suck/lick other part of body**

**Section 3 Sexual Offences Act 2003 (Sexual Assault)**

**Fondle breast/buttock/genital**

**Section 3 Sexual Offences Act 2003 (Sexual Assault)**

**Masturbate self**

**Outraging Public Decency- Common Law**

**Exposure**

**Section 66 of the Sexual Offences Act 2003**

**Oral rape (penis in mouth)**

**Section 1 Sexual Offences Act 2003 (Rape)**

**Oral sex of vagina (forced cunnilingus)**

**Section 2 Sexual Offences Act 2003 (Assault by penetration)**

**Anal-oral contact**

**Section 2 Sexual Offences Act 2003 (Assault by penetration)**

**Urination / Defecation on you without your consent**

**Outraging Public Decency Common Law or Section 3  
Sexual Offences Act 2003 (Sexual Assault)**

**Ejaculation on face or body**

**Section 3 Sexual Offences Act 2003 (Sexual Assault)**

## ASSAULT

Assault and battery, whether sexually motivated or not, are also offences that you do not have to tolerate just because you are a sex worker.

Prosecutions can be brought even where there is no injury, but simply where you have been caused to fear and expect immediate and unlawful violence or where unlawful force has been inflicted on you. Unlawful force is force that you don't consent to or that can't be justified by reference to self-defence or crime prevention, (for example see the discussion on S&M and consent at page 26). Where you have been caused injuries, such incidents can be prosecuted under different titles, like ABH or GBH.

As discussed under the offence of rape above, do not hesitate to seek assistance where you have been the victim of assault or if you need support to see the prosecution through.

## CRIMINAL INJURIES COMPENSATION AUTHORITY (CICA)

If you have suffered physical and/or mental injury as a result of a violent crime, you may be able to get compensation from the CICA (see contact details on page 126), whether or not your attacker has been prosecuted or convicted in a Court. It is important, however, that you have reported the incident to the police and co-operated with any subsequent investigation. You should be aware that where a victim of crime has themselves previously committed criminal offences this can reduce in part or in whole any compensation offered by CICA. In pursuing your claim, you can seek the help of organisations such as the English Collective of Prostitutes or Legal Action for Women (see page 124 for contact details) or your local Citizens' Advice Bureau or Law Centre.

## INJUNCTIONS

If you are suffering from persistent harassment or aggression from a particular source, you can apply through a solicitor for an injunction to stop the behaviour. If the injunction is breached, the police can arrest the offender, who will be in contempt of Court and may face imprisonment.

Injunctions can be implemented quickly in an emergency. Legal aid is available.

You can also report someone for harassment under the Protection From Harassment Act 1997 - the police can issue a harassment order in cases where there is evidence for stalking or harassment.

## **REFUGES**

Another course of action to consider, where you are suffering from persistent aggression from a particular source, is seeking accommodation in a safe refuge. In these circumstances, you can seek help from organisations such as Women's Aid, Refuge, or Crisis (see page 125 for contact details).



# PAYING TAX AND TAX EVASION

Sex workers are **liable<sup>54</sup> to declare their earnings** to HMRC and pay income tax, National Insurance Contributions and, depending on their income, VAT, by filing annual returns where necessary. Sex workers are also liable to declare income from any other sources, such as interest received on any bank accounts held.

54. [WWW.HMRC.GOV.UK/MANUALS/BIMMANUAL/BIM65100L.HTM](http://WWW.HMRC.GOV.UK/MANUALS/BIMMANUAL/BIM65100L.HTM)

If you are employed, your employer should pay you through a Pay As You Earn (PAYE) scheme. Under this scheme your Class 1 National Insurance Contributions and any income tax due on your earnings should be paid directly to HMRC on your behalf on a monthly basis. Therefore, only if you have any other untaxed income or have a significant amount of income liable to tax over a year (in excess of £35,000 after any personal allowance due for the year to 5 April 2012<sup>55</sup>) will you need to make an annual income tax return to HMRC.

55. [WWW.HMRC.GOV.UK/RATES/IT.HTM](http://WWW.HMRC.GOV.UK/RATES/IT.HTM)

If you are wholly self-employed, or even just moonlighting, you should register with HMRC within 3 months of starting work or advertising for work. A fine can be levied if you do not register within this time frame. You do not have to give your profession as a sex-worker when you register; you can say entertainer or masseuse or something else more general that fits in with what you do.



**Release has received many calls from sex workers who have good relationships with their local police and communities but then find themselves raided by HM Revenue and Customs (HMRC) and made subject to investigations, fines, and in the worst cases, prosecutions, simply for non payment of tax. This in turn often causes problems with neighbours and brings them to the attention of their local police. It is therefore clearly necessary for workers in a field such as this to keep on top of their tax affairs and any payments due to HMRC in this respect.**

It is important to get **good tax advice** early on to help you with your record keeping and expenses as this will ensure that you don't pay too much tax. It will also assist you to get whatever working benefits you are eligible for. By obtaining correct and timely advice you reduce the risk of paying fines, surcharges and interest for being late with either filing your tax return or making payments due in respect of your tax and National Insurance liabilities.

However, if you have previously undeclared income or are involved in sex-work in a way that amounts to a criminal offence so that the money on which you wish to pay tax could be considered the benefit of criminal conduct you should be aware that accountants have a duty under anti-money laundering regulations<sup>56</sup> to notify the authorities that you have broken the law. Before taking such a step you may want to contact Tax Aid, Release or HMRC's confidential helpline to go over your options and the likely consequences and/or benefits of self-reporting. Certainly, although the tax will remain due and some civil penalties will have to be paid, a criminal prosecution is less likely where you have self-reported to HMRC<sup>57</sup> than where you have been found out. Where a criminal prosecution does follow in such a case, you will receive a lesser penalty for having self-reported and co-operated.

Also, although sex-work itself is legal, many of the circumstances surrounding it are not (e.g. keeping a brothel etc). Therefore, even if you pay your tax, there is a risk that the remainder of your income may be seen as the benefit of

56. S330 PROCEEDS OF CRIME ACT 2002

57. [WWW.HMRC.GOV.UK/PROSECUTIONS/CRIM-INV-POLICY.HTM](http://WWW.HMRC.GOV.UK/PROSECUTIONS/CRIM-INV-POLICY.HTM)

criminal conduct and could be made subject to civil forfeiture proceedings under s240 Proceeds of Crime Act 2002 (see page 87). It seems in practice, however, that such enforcement action is only likely where your illegal earnings are significant and where you have not been paying tax.

You may be worried about **information sharing** between HMRC and the police, unfortunately there is no guarantee that this will not happen. Information can be shared further to a production order issued by a court in limited circumstances<sup>58</sup> or further to the initiative of HMRC where they believe that it is in the public interest<sup>59</sup> to do so. Be reassured, however, that the use and disclosure of information by HMRC is tightly regulated by the Commissioners for Revenue and Customs Act 2005, sections 17 to 23, and remains protected also by the Data Protection Act 1998. Indeed HMRC state on their official website: 'disclosures while carrying out former Inland Revenue functions will be rare.'<sup>60</sup> Of course, there is a risk that information will be shared that could support a criminal prosecution against you in relation to your sex-working activities, but this is most likely to materialise where the police are already investigating you and so seek a production order. So, do weigh this risk against the real risk that you are also liable to criminal prosecution and financial penalties for failing to pay your taxes.

The **legal risks** if you do not pay your taxes are firstly, that **you will be investigated by HMRC**. In most cases civil investigations and penalties are pursued by HMRC, but criminal investigations do take place where there is, amongst other aggravating factors: 'wider criminality'; money laundering; deliberate concealment; or, where false statements have been made in the course of a civil investigation.<sup>61</sup> In very limited circumstances you can be **placed under surveillance**<sup>62</sup> by HMRC. However, HMRC are more likely to contact you directly with a disclosure notice<sup>63</sup> to provide them with certain information. Where they think that forewarning you in this way of their investigation might cause you to do something to prejudice it, they can apply to the Court for a warrant to enter and search your property using reasonable force.<sup>64</sup> It is an offence to willfully obstruct the lawful execution of such a warrant with a maximum punishment of 51 weeks in prison.<sup>65</sup>

58. SEE E.G.: S55 DRUG TRAFFICKING ACT 1994; AND S345 AND 350 OF THE PROCEEDS OF CRIME ACT 2002. SEE ALSO: S19(2)(B) AND S19(3) ANTI TERRORISM, CRIME AND SECURITY ACT 2001.

59. S20 COMMISSIONERS FOR REVENUE AND CUSTOMS ACT 2005

60. HMRC.GOV.UK/MANUALS/IDGMANUAL/IDG46050.HTM

61. HMRC CRIMINAL INVESTIGATION POLICY: WWW.HMRC.GOV.UK/PROSECUTIONS/CRIM-INV-POLICY.HTM.

62. POWERS ARISE UNDER THE REGULATION OF INVESTIGATORY POWERS ACT 2000 AND THE POLICE ACT AND THE POLICE ACT 1997

63. S62 SERIOUS ORGANISED CRIME AND POLICE ACT 2005

64. S66 SERIOUS ORGANISED CRIME AND POLICE ACT 2005

65. S67 SERIOUS ORGANISED CRIME AND POLICE ACT 2005

66. R V STEED [2011] EWCA  
CRIM 75 & R V MAWJ [1987] 1  
WLR 1388.

67. R V HUDSON [1956] 2  
QB 252

Second, you may be charged with the common law offence of **cheating the public revenue**. The offence can be committed simply by omission - i.e. dishonestly failing to declare a tax or a National Insurance liability<sup>66</sup> - or by dishonestly making a false statement with the intention of deceiving or prejudicing HMRC.<sup>67</sup> The penalty is 'at large' which means that there is no maximum sentence given. There is also the statutory offence of fraudulent evasion of income tax contrary to s144 Finance Act 2000. The maximum penalty is 7 years in prison. In either case, you may also be made subject to confiscation proceedings under the Proceeds of Crime Act 2002 (see page 87). Finally, whether or not you are criminally prosecuted, you will be liable to repay the tax owed plus interest.

# DEALINGS WITH THE POLICE

- RIGHT TO BE TREATED FAIRLY AND WITH RESPECT
- POLICE MISCONDUCT
- SEARCH OF PREMISES
- STOPS ON THE STREET
- RIGHTS ON ARREST
- TAKING OF PHOTOGRAPHS, FINGERPRINTS AND DNA
- IN POLICE CUSTODY
- CHILDREN OF DETAINEES
- RETURN OF SEIZED PROPERTY

## RIGHT TO BE TREATED FAIRLY AND WITH RESPECT

You may be investigated, arrested and charged by any branch of the police, sometimes this will be the vice or club squads or the neighbourhood police. The police are moving away from the term 'vice' and are using terms such as 'human/ sexual exploitation commands' .

If you resist a lawful arrest, you may be charged with obstruction of a police officer or assault. If you feel that you have been unfairly treated or unlawfully dealt with, you may lodge a complaint against the police officer/s. If you suffer from any physical injuries or damage to property, you may initiate a civil action against the police.

You have a right to be treated fairly and with respect whilst in police detention.

## POLICE MISCONDUCT

If the police ask for sexual services in return for not reporting you for an offence, they are breaching their code of professional

conduct and committing an offence. If you report them, they should be subjected to disciplinary action or criminal charges. The most common offence is 'misconduct in a public office' and many police officers have been charged with this for asking for 'special favours'.

If you suffer ill treatment at the hands of the police you may have grounds for a civil action against them, for example, harassment, wrongful imprisonment, assault, intimidation or wrongful interference with goods.

You can also complain to the Independent Police Complaints Commission and their conduct may be investigated (see page 126 for contact details).

In these circumstances, it may be helpful to seek advice at a local law centre or Citizens' Advice Bureau, from your local sex work support project (contact UKNSWP on 0161 629 9861) or from your solicitor.

## SEARCH OF PREMISES

### **Without consent**

The police may enter your premises without your consent if they have a search warrant or an arrest warrant relating to someone they reasonably believe to be on the premises. They may search the premises without your consent if they have a search warrant or if they make an arrest on your premises.

- identify themselves and, if not in uniform, produce their warrant card;
- show you the search (or arrest) warrant; and
- give you a copy of the search (or arrest) warrant.

The police should conduct the search at a reasonable hour unless it appears that entry then would frustrate the purpose of the search. The police may use reasonable force to gain entry.

A search warrant only authorises entry on one occasion.

It must be dated and it must be executed within three calendar months of the date of issue. When the police have completed the search they must record on the warrant if any articles or persons were found, and seized.

Officers from other relevant authorities may sometimes accompany the police in searches. For example, the social

services, immigration, planning authorities and the Inland Revenue.

### **With consent**

Most police searches take place with the consent of the occupants. If you give your consent for the police to conduct a search on your premises without a warrant, you may ask them to leave at any time and they should do so.

## **STOPS ON THE STREET**

If you are stopped by the police:

- If they are not in uniform, then ask to see their warrant card
- Ask why you have been stopped and, at the end, ask for a record of the search
- You may be stopped and searched if the police have a reasonable suspicion that you are soliciting or have in your possession a controlled drug or an offensive weapon or sharp article.

## **RIGHTS ON ARREST**

- You do not have to say anything to the police, BUT if you are later charged with a crime and you have not mentioned, when questioned by the police, something that you later rely on in court your silence may be used against you at trial as evidence of your guilt. You should not normally be questioned until you are being interviewed at the police station.
- There may be a good reason why you do not wish to say anything to the police and you should not be intimidated into answering questions. You are entitled to have a solicitor when being questioned. If you do not have one, you may ask for the Duty Solicitor. The Duty Solicitor at the police station is independent, is NOT employed by the police and is FREE.
- If you have requested a Duty Solicitor and none is available, you have a right to remain silent during a police interview until one is available. It is NOT wise to discuss the case with the police until you have consulted privately with a solicitor.
- There may be times when, if you give an innocent explanation for what you have done, the police

may leave you alone. HOWEVER, it is always best NOT to discuss the case with the police until you have consulted with a solicitor. **There is no such thing as an 'off the record chat' or a 'friendly chat' with the police.** Anything you say can later be used against you in court.

- You have a right to read the police Code of Conduct which governs your rights and how you should be treated.
- You have a right to speak to the Custody Officer, who is responsible for your welfare.
- You have a right to have someone notified of your arrest (not to make a phone call yourself), although this may be delayed in exceptional circumstances.

## TAKING OF PHOTOGRAPHS, FINGERPRINTS AND DNA

There are some exceptions, but generally when you are arrested the police have the right to take your fingerprints, photographs, DNA and other non-intimate samples (such as hair), without your consent. Intimate samples, such as blood, semen, urine, pubic hair, and swabs from orifices other than the mouth require your consent before they are taken but note if you do not give your consent and the matter goes to trial, the Court could use this as evidence of your guilt.<sup>68</sup>

Currently such data can be retained by the police indefinitely; however, the law on retention has recently been subject to challenge and is set to change. The rules will depend on your age and whether or not you have been convicted. Please phone the Release helpline on 0845 4500 215 for advice on your case.

68. POLICE AND CRIMINAL EVIDENCE ACT 1984, S 62(10)

## IN POLICE CUSTODY

Normally the police can only detain you for a maximum of 24 hours before you are charged or released. This period may be extended to 36 hours in serious cases. The police may apply to the Magistrates' Court for further extensions in exceptional circumstances.

Once the police have completed their investigations following your arrest, one of the following four things may happen:-

- You are released without further action.
- You are released with an obligation to return to the station at a later date (on bail).
- You receive a caution for an offence (a caution will form part of your criminal record – please see page 90 for more information on criminal records).
- You are charged with an offence. You may be released on bail to attend the Magistrates' Court or you may be kept in custody and taken to the hearing from the police station.

You may not get bail if:-

- your name and address cannot be ascertained or the police have grounds to believe that it is false;
- you have a history of failing to appear in answer to bail;
- there is a risk that you might commit a further offence while on bail;
- there is a risk that you might interfere with investigations;
- there is a risk that you might intimidate witnesses; **or**
- detention may be necessary for your own protection and safety.

Bail may be granted with conditions attached such as a restriction of access to certain areas.

Failure to answer to bail will result in a warrant of arrest being issued against you. This means that you will have committed a further offence unless you can show 'good cause' to the court for failing to attend.

## MEDICAL TREATMENT IN CUSTODY

If you request a clinical examination, an appropriate health care professional must be called as soon as practicable to assess your clinical needs. If you are suffering from a minor ailment or injury which does not need attention, the police do not have to call a doctor even if you request one. However, the ailment or injury must be recorded in the custody record and, if there is any doubt, an appropriate health professional must be called.



If you are suffering from harmful effects due to withdrawal from a drug (including alcohol) on which you are dependent, where there is any doubt police should always act urgently to call an appropriate health care professional or an ambulance. You have a right to request to see your own doctor, but they may not be willing to attend and are entitled to charge a fee for attending to you.

Upon examining you, the police doctor will assess your condition. This is crucial for health reasons as well as your legal position in terms of your fitness for interview by the police. If you need to take any medication, you may only do so under supervision. If you are on prescribed medication, the police doctor can only issue a prescription based on his short clinical findings because he has no knowledge of your medical history.

If you have your prescription and need to take your medication, you can:-

- Ask for an assessment by the police doctor, following which he may issue a similar prescription and allow you to take your medication under his supervision; **OR**
- Show the police your prescription and instruct them that they can call your doctor to confirm that you need your medication; **OR**
- Show the police your prescription, and they may collect it for you, and then allow you to take it under supervision; **OR**

If the above is not possible, you may authorise a responsible adult in writing to collect the medication on your behalf and to include in your authorisation letter the name of your Custody Officer and his contact number for verification purposes.

The police should not disallow you from taking your medication unless:-

- They believe that it would compromise their safety; **or**
- The police doctor is unavailable.

If no doctor is available or there is going to be a delay, the police are not specifically required to give you a reason for the delay or a time estimate for the doctor's arrival. However, the police should follow their Code of Practice which requires them to treat you fairly.

If you have been unfairly treated or unreasonably prevented from taking your medication, you may lodge a complaint to the Independent Police Complaints Commission (IPCC) or contact your solicitor.

## CHILDREN OF DETAINEES

The police are legally obliged to ensure that the children of mothers being detained in custody are looked after. Usually the police will ensure that a relative or friend will be taking care of them. If this is not possible, the police may contact Social Services. (See the section on Sex Working Parents at page 98) Please consult a family solicitor, if you have any problems. If you have difficulty in contacting a solicitor, please contact Release on 0845 4500 215.

## RETURN OF SEIZED PROPERTY

If the police seize any property which belongs to you in the course of an enquiry or an investigation (for example, condoms, clothes, money, videos or sex equipment) they must return it to you if:-

- you are not charged with an offence; **or**
- you are charged with an offence and the items seized will not be used as evidence against you; **or**
- the items seized are not involved in any other criminal investigations; **or**
- the items seized have not been used in the commission of an offence; **or**
- the police have no reasonable grounds to believe that you are not the legal owner of the item/s.

If the police refuse to return any item/s seized from you, you may make an application to the Magistrates' Court for an Order that the police return your property under the Police (Property) Act 1897, s1. Please consult a solicitor or a civil liberties organisation such as Release if you need any clarification or assistance.



# ENTRAPMENT/ AGENTS PROVOCATEURS

An agent provocateur is an individual who induces another to commit an offence which they would not otherwise have committed.

The police sometimes carry out operations where they may pose as clients. A police officer doing this would be an agent provocateur if he explicitly requests any extra services after a massage, as he would be enticing you to commit an offence. However, if you offer the extra services before he asks for them, he is not entrapping you as he is not actively inviting or inducing you to commit that offence. Likewise if it was always your intention of providing such services if the opportunity arose and the police do no more than give you the opportunity, this is unobjectionable in law.<sup>69</sup>

Although the commission of the offence has been induced by an agent provocateur, this is not a defence in English law. Usually it will be taken into account as a mitigating factor in sentencing, and, rarely, it may lead to evidence being excluded if it was unfairly obtained by the agent provocateur or if its admission would be prejudicial. Even more rarely, court proceedings may be discontinued as a consequence of police activity (see 'Abuse of Process').

69. R V LOOSELY [2001] 1  
WLR 2060



# SURVEILLANCE

## **Covert (secret) surveillance**

This includes activities such as telephone tapping and the secret use of cameras. Most of these activities interfere with the individual's right to privacy.<sup>70</sup> However, they are permitted where they are necessary and proportionate in order to prevent crime and protect the rights of others.

All forms of police surveillance must be justified in these terms. Covert surveillance must be carried out in accordance with the Regulation of Investigatory Powers Act 2000 and its code of practice. This requires surveillance to be authorised by warrant. Authorisation may only be granted if the action is necessary, proportionate and will be of substantial value in the prevention or detection of serious crime and this cannot reasonably be achieved by other means.

In this context, serious crime may include criminal activity which results in substantial financial gain or if the activity involves a large number of persons in pursuit of a common purpose. It is possible that sharing a room or premises with others for the purposes of sex working would fall within this definition.

It is unusual for covert surveillance such as telephone tapping to be carried out in cases of individual sex working, unless the police suspects a syndicated operation or drugs are involved.

## **Overt (open) surveillance**

This is more likely to occur in relation to less serious crime. For example, in the course of searching premises under a warrant, the police may record the search by photograph or video, and may present such footage as evidence in court.

70. HUMAN RIGHTS ACT 1998, ART. 8.



# ABUSE OF PROCESS

In some circumstances the actions of the police in the course of their investigations will mean that a prosecution cannot go ahead even when a criminal offence has in fact been committed. This is because normal procedure has not been followed and this has resulted in unfairness to the defendant.

### Local practice

Where police have adopted a policy (official or otherwise) of not arresting and prosecuting offences this effectively gives workers an implied permission to operate. This could create a legitimate expectation against prosecution and so any future prosecutions may be unfair and stayed as an abuse of process.<sup>71</sup> These are cases where the Court concludes that you cannot receive a fair trial or that it would be unfair to try you. This test has a very high threshold and, in practice, it is very difficult to meet.

71. R V JOHN BARRETT AND OTHERS, 3 FEBRUARY 2007

### Prosecution

Before a sex worker is prosecuted for a criminal offence, as with any offence, the CPS must consider whether or not there is enough evidence and also if it is in the public interest to prosecute.

Special consideration should be given to the prosecutions of trafficked sex workers and the possibility of not imposing penalties on those who have been trafficked and then compelled to engage in offending.<sup>72</sup> Essentially a victim of trafficking should not be prosecuted where there is credible evidence that force or duress has been used to make the person commit a crime.<sup>73</sup> See the section on victims of trafficking at page 38 for further details.

72. LM AND OTHERS [2010] EWCA CRIM 2327 AND ARTICLE 26, COUNCIL OF EUROPE CONVENTION ON ACTION AGAINST TRAFFICKING HUMAN BEINGS 2005

73. R V O [2008] EWCA CRIM 2835





# GETTING LEGAL HELP

- AT THE POLICE STATION
- GOING TO SEE A SOLICITOR
- PAYING PRIVATELY
- CITIZENS ADVICE BUREAUX

## AT THE POLICE STATION

Legal advice and assistance is available to everyone **FREE** of charge, irrespective of their financial standing.

You have a right to have a solicitor with you at the time of interview, and if you do not have details of one, you may ask for the Duty Solicitor.

The **duty solicitor** at the police station is independent, is **NOT** employed by the police and is **FREE**. The duty solicitor is approved by the Criminal Defence Service.

Also, note that The Duty Solicitor scheme at the police station is different to the legal aid scheme for representation at court. There is no difficulty in changing representative between these stages so long as you have not signed forms for the Duty Solicitor, whilst in the police station, to represent you also at court. So, **make sure you know what you are signing** and tell the Duty that you want to shop around, before deciding on who you want to represent you at court.

## GOING TO SEE A SOLICITOR

Legal Aid is overseen by the Legal Services Commission which offers two schemes. These are the Community Legal Service, for funding civil cases, and the Criminal Defence Service which offers advice and representation to those facing criminal charges.

You should consult a solicitor who is approved by the Legal Services Commission. Solicitors who are under the Community Legal Service scheme display the logo shown below.

*Community  
Legal Service*



Solicitors approved by the Criminal Defence Service specialise in criminal law and will have the logo below displayed in their office window.

*Criminal  
Defence Service*



In order to access the Criminal Defence Service you will generally have to pass the 'interests of justice' test and in some cases a financial test too.

It is often difficult to pass the interests of justice test where the offence with which you are charged does not carry a sentence of imprisonment (such as soliciting or kerb-crawling) but always speak to a solicitor to see whether there are special circumstances in your case that mean you could qualify.

If you are in receipt of certain welfare benefits, or of a low enough income, you will automatically pass the financial element.

Otherwise an assessment of capital and income will be required.

Indeed, even if you are granted legal aid, you may have to make contributions to the cost of your defence in criminal cases.

Please note that the Government is consulting on wide sweeping changes to the legal aid scheme so always get up to date advice from a solicitor about your eligibility.

Your solicitor will explain the interests of justice test and financial calculations that need to be done in your first consultation. You should ensure that you inform your solicitor correctly about your finances and the facts of your case because if you provide false information, your public funding may be taken away and / or you may be investigated by the police or HMRC.

There are also solicitors who offer a free or low-cost initial interview, should you be ineligible for legal funding. You can find out about local legal aid solicitors' firms by telephoning Community Legal Service Direct on 0845 345 4345 (9.00a.m. -

5.30p.m., Monday-Saturday) or by conducting a search on their website at [www.directgov.uk](http://www.directgov.uk). Alternatively, call Release.

Be aware, once legal aid for representation at court has been granted, it is very difficult to obtain a transfer to another firm; an application has to be made to the court and these are rarely granted. So it is wise to shop around before making a commitment.

Remember also that regardless of which solicitor you instruct, you also have a right to counsel. That is, you have a right to be represented in court, through their instruction, by a barrister or other higher court advocate of your choice – you do not have to accept their in-house advocate.

## **PAYING PRIVATELY**

You may pay privately for the services of a solicitor or a barrister. Historically, you could only instruct a barrister through a solicitor, so you would have needed to retain the services of both if your matter is to be tried in the Crown Court. However, Barristers who are registered on the Bar Council Public Access Directory can be instructed directly.

If you have access to the Internet, you can get a list of solicitors in your area by searching at [www.solicitors-online.com](http://www.solicitors-online.com) and a list of public access barristers by searching at [www.barcouncil.org.uk/about/find-a-barrister/public-access-directory/](http://www.barcouncil.org.uk/about/find-a-barrister/public-access-directory/)

Find out the costs involved before making a commitment. It is wise to shop around.

## **CITIZENS ADVICE BUREAUX (CAB)**

CABs and Law Centres can sometimes offer free independent legal advice in many areas such as housing, welfare benefits, debt and employment, irrespective of your means although they often work on a legal aid contract also. These organisations can rarely provide representation for you at court.

To access a CAB or Law Centre in your local area, please refer to the telephone directory or if you have access to the Internet, look at [www.lawcentres.org.uk](http://www.lawcentres.org.uk) for Law Centres and, for CABs, look at [www.nacab.org.uk](http://www.nacab.org.uk).



# GOING TO COURT

- **USEFUL TIPS**
- **LEGAL ADVICE AND REPRESENTATION**
- **CHECKING IN**
- **REPRESENTING YOURSELF**

## USEFUL TIPS

- See a solicitor before the first hearing.
- If you do not have a solicitor on the day, see the court usher who should direct you to a Duty Solicitor.
- Arrive on time, preferably 30 minutes early.
- Be prepared to wait around as the court can be very busy and your case might not be called into court for a few hours.
- If you are unable to appear because of an emergency, contact the court and your solicitor immediately.
- Dress appropriately.
- Be polite and courteous.
- Bring a friend or relative with you or somebody from your local sex work support project.
- If at all possible, do not bring children under 16 to court as they will not be allowed in the courtroom when your case is called on.

## LEGAL ADVICE AND REPRESENTATION

If at all possible, you should see a solicitor before the first hearing or at least arrange to meet the solicitor at court. Please note that there will only be a short time between being charged at the police station and your first appearance at court. It is best to get advice before you go to court.

You can find out about local solicitors' firms by telephoning Community Legal Service Direct on 0845 345 4345 (9.00a.m. - 5.30p.m., Monday-Saturday) or by conducting a search on their website at [www.directgov.uk](http://www.directgov.uk). See the section on Getting Legal Help at page 74.

If your matter is to be heard at the Magistrates' Court and you do not have a solicitor, there will usually be a Duty Solicitor available either at the court or on call to give you free advice and representation on your first appearance. Ask the usher (they may be wearing a black gown and carrying a clip board) or a member of the Court staff for the Duty Solicitor. If no Duty Solicitor is available, or if your matter is to be heard at the Crown Court and you have no legal representation, you need to explain to the court that you have not received legal advice. The Court may then adjourn your matter to another date and will expect you to have arranged legal representation by the next hearing date.

Duty Solicitors are independent and are not employed by the police or the court. They are approved by Criminal Defence Service and they specialise in criminal cases. Their service is provided free of charge. They can discuss your case with you and give you legal advice.

## CHECKING IN

Always arrive early, preferably 30 minutes before you are due to appear in Court. If you were charged at the police station, you will have been given a bail sheet which will inform you of the time you need to arrive. If you have received a summons in the post to attend Court, you should also arrive on time.

If you are late or fail to attend without a reasonable excuse, it is very likely that the Court will issue a warrant of arrest. When apprehended by the police, you will remain in custody until you can be put before the Court where it will be decided whether your failure to attend amounts to a further criminal offence or if you have a 'reasonable excuse' defence.

The Court can also refuse to renew your bail and keep you in custody. This may affect your chances of getting bail in the future and possibly impact on your sentence.

If some emergency prevents you from attending, you should contact the Court and your solicitor immediately to explain.

When you arrive at Court, you should find out in which courtroom you are due to appear. Go to the main reception, or check the notice board, where you will find a list with your name and details of the courtroom.

Find the courtroom and wait to speak to the usher, who will make a note of your name, and may ask if you are going to plead guilty or not and whether you have a solicitor. If you do not have a solicitor, inform the usher and s/he should direct you to the Duty Solicitor.

## **REPRESENTING YOURSELF**

If you do not want any legal representation, you may represent yourself.

Before the hearing, make notes of your case, write down the questions you intend to ask, and prepare a clear statement that you can read out. You may have a friend attend with you to support you but they cannot address the Court or present the case on your behalf.

If you are unsure about a point of law, do not hesitate to ask the judge.

Before your sentence is passed, you are permitted to present to the Court your 'mitigating circumstances' – details about you or the offence that may persuade the Court to adopt a more lenient approach. Examples include difficult personal circumstances, a clean record, remorse, family support and obligations. If it is suggested that you have previous convictions, you should ask the court to see a record of them so you can check that the record is accurate.





# PENALTIES

- PROSTITUTES' CAUTIONS
- FORMAL CAUTIONS, CONDITIONAL CAUTIONS, AND FINAL WARNINGS
- FINES
- COMMUNITY ORDERS AND TREATMENT REQUIREMENTS
- CUSTODIAL SENTENCES AND SUSPENDED SENTENCES
- CONFISCATION PROCEEDINGS

The penalties that may be imposed for the offences referred to may vary from a fine to a treatment order, time in prison, or a combination. In the earlier sections of this booklet we highlighted the maximum sentence available for an offence, in practice it is extremely rare for maximum sentences to apply. If you need advice about this area please contact Release on 0845 4500 215.

In deciding upon the appropriate sentence, the judge or magistrate will consider the following:-

- Mitigating circumstances
- Aggravating factors
- Seriousness of the offence
- Previous convictions
- Personal circumstances

## PROSTITUTES' CAUTIONS

There is an undertaking in place between the Metropolitan Police Commissioner and the Chief Officers of the Provincial Police Forces that someone who has not been previously been convicted of soliciting under s1(1) Sexual Offences Act 1959 will not be charged with an offence under that section unless they have received two 'Prostitutes' Cautions'.<sup>74</sup> Saying this, a

**74. HOME OFFICE CIRCULAR NO. 109/1959, REPLACED IN RESPECT OF CHILDREN UNDER 18 YEARS OLD BY HOME OFFICE CIRCULAR NO. 20/2000.**

75. COLLINS V WILCOCK  
[1984] 3 ALL ER 374

police officer does not have the power to stop and detain you to administrate such a caution<sup>75</sup> so if you don't cooperate, you may be arrested and charged for the offence. These types of cautions cannot be issued to anyone under the age of 18.

'Prostitutes' Cautions' are not formal Cautions as discussed below. The behaviour leading to a Prostitutes' Caution may not itself be evidence of the criminal offence of soliciting or loitering, it only requires that two constables who have witnessed the activity have reasonable cause to believe that you have committed such an offence. Moreover, you do not have to admit guilt to receive a Prostitutes Caution.

76. HOME OFFICE CIRCULAR  
NO. 006/2010

Although this scheme provides protection against early and unnecessary criminalisation, it appears only to have survived<sup>76</sup> the changes under the PCA 2009 because it allows police to gather evidence of persistence to substantiate a criminal charge. In fact, the PCA 2009 repealed s2 Sexual Offences Act 1959 which allowed for Prostitutes' Cautions to be expunged; however, where you believe that the Prostitutes' Caution was wrongly administered, seek legal advice, as it may be subject to Judicial Review.

## FORMAL CAUTIONS, CONDITIONAL CAUTIONS & FINAL WARNINGS

The caution administered to you upon arrest ("You do not have to say anything. But it may harm your defence.....") is **NOT** a formal caution.

A formal **caution** is not a criminal conviction; it is a statutory disposal offered by the police as an alternative to court proceedings and that goes on your criminal record as a mark that you have engaged in low-level criminal conduct. It may or may not have conditions attached.

A formal caution can only be issued against you if:-

- There is sufficient evidence for a conviction; **and**
- It is not in the public interest to instigate proceedings; **and**
- You have admitted guilt; **and**
- If you have consented to a caution.

The decision as to whether you should be given a formal caution is within the discretion of the police. Formal cautions are usually

given to those who have not been previously cautioned. The police can also offer you a **conditional caution**. The same preconditions as for a formal caution apply, but a conditional caution will be offered instead where the conditions would make for an appropriate and effective way to address your behaviour or make reparation for the effects of the offence on the victim or community.

**Rehabilitation** conditions can include: drug treatment; alcohol treatment; anger management courses; and driving rectification classes.

**Reparation** conditions can include: repairing damage caused to property; restoring stolen goods; paying modest financial compensation; apologising to the victim.

NEVER agree to a caution or a conditional caution unless you have committed the offence AND the police can prove it. Those aged 17 and under do not receive cautions but are subject to the very similar **Final Warning** scheme which sees a young person receive a **reprimand** for a minor first offence, and a **warning** for a second offence before being dealt with by the court process. Where a previous warning was issued more than two years ago and the offence is not so serious to require being charged, a third chance, or **Final Warning** can be given. Like cautions these are marked on your criminal record, but unlike cautions, young people can be referred to the Youth Offending Team for support and assistance in moving away from criminal behaviour.

## FINES

The amount of the fine will depend on various factors, including:-

- The seriousness of the offence committed
- Any previous convictions
- Your ability to pay
- Your personal circumstances
- The practice of that particular Court

The Court should not impose a fine which will take you more than 12 months to pay off. Give a realistic answer when the

Court enquires about your ability to pay. If you are unable to pay in a lump sum, notify the Court and request for payment by instalment. It is possible for payments to be deducted directly from your benefits or wages. Always, however, take some cash with you, even if it is as little as £5 to court as the court will usually expect the first payment on the day that you are sentenced; be aware that the dock officers have the power to search you – don't say you have less on you than you do. If you fall behind with your payments, contact the fines enforcement officers at the Court to explain why and try to rearrange payment, i.e. to pay a lesser sum. This will demonstrate that you are responsible and they are more likely to be sympathetic and helpful. You may be asked to attend a further means enquiry to assess your circumstances.

DO NOT ignore unpaid fines as the enforcement procedure will be initiated against you. A warrant of arrest or a distress warrant instructing bailiffs will be issued against you. This may result in you losing your belongings or spending time in custody. If you feel unable to cope with your debts on your own, seek free help from a Citizens' Advice Bureau, Law Centre or debt counseling service.

## COMMUNITY ORDERS & TREATMENT REQUIREMENTS

Community Orders are served in the community and can be very onerous and strictly enforced; they can only be imposed if the underlying offence is sufficiently serious.<sup>77</sup>

Community Orders are made up of several different **requirements**, depending on what the court and probation services think will best meet the aims of sentencing most applicable to you – i.e. punishment; reduction of crime, including by deterrence; reform and rehabilitation; protection of the public; and, reparation.

Requirements can include:<sup>78</sup> unpaid work; activities such as education or skills training; programmes like the drink impaired drivers programme; curfew; exclusions prohibiting you from entering a certain place or area; residence at a particular place; supervision; or treatment for mental health issues or drug or alcohol dependency.

Before imposing both **Drug Rehabilitation Requirements** and **Alcohol Treatment Requirements** under a Community

77. POWERS OF CRIMINAL  
COURTS (SENTENCING) ACT  
2000, S35

78. CRIMINAL JUSTICE ACT  
2003, S177

Order, the Court must be satisfied that you are drug or alcohol dependent and that you are willing to comply. The Treatment and Testing period must be for at least six months and may take the form of treatment as a resident in a specified institution or place. For Drug Rehabilitation Requirements, the Court may require you to attend court at monthly intervals to review your progress.

If you fail to comply with a Community Order either by failing to attend, being regularly late for meetings, or failing to engage when attending, this will put you in breach. After a first warning, **breach proceedings** will commence at Court and you can then be made subject to more onerous requirements or you can be re-sentenced for the original offence, including to prison in some cases.

**A Community Order is different to an Engagement and Support Order which is also served in the community. An Engagement and Support Order is only available where you are convicted of the offence of loitering or soliciting for the purpose of prostitution; see page 15 for further details.**

## **CUSTODIAL SENTENCES & SUSPENDED SENTENCES**

**Imprisonment** is reserved for the most serious cases.

Remember, where you are given a sentence of imprisonment, you are likely to be **released on licence half-way through** the sentence, or earlier. Also, time you have spent on remand in custody, or under an electronic curfew whilst on bail can be deducted from the time you have to spend inside. When sentencing the Judge will make explicit how and when you are to be released on licence, or eligible for release, is to be calculated in your case. Whilst on licence, you must abide by whatever terms and conditions are considered necessary to prevent you from reoffending and to protect the public. Such conditions can include, for example, drug testing.

A **Suspended Sentence** is reserved for less serious cases and it means that you do not have to go to prison if you comply with certain requirements or unless you commit another offence. The list of requirements is the same as for Community Orders. The longest you can have a suspended sentence hanging over you for, is 2 years.

## CONFISCATION PROCEEDINGS

The Courts are empowered by the Proceeds of Crime Act 2002 to confiscate your money and property in a number of situations.

### Lifestyle Offences

The law is that where certain types of offences<sup>79</sup> or types of offending<sup>80</sup> take place, a person has a 'criminal lifestyle'.<sup>81</sup> A number of offences qualify but particularly relevant are the following:

- Keeping or letting premises for use as a brothel;<sup>82</sup>
- Causing or inciting prostitution for gain;<sup>83</sup>
- Controlling prostitution for gain;<sup>84</sup>
- Concealing criminal property or assisting another to retain criminal property<sup>85</sup> (a.k.a. 'money laundering');
- Causing, inciting, arranging, or facilitating child prostitution or pornography or controlling a child prostitute or a child involved in pornography.<sup>86</sup>

You will also be found to have a criminal lifestyle where you are convicted of an offence that took place over at least six months or where your offence constitutes conduct forming part of a course of criminal activity. A course of criminal activity is made out if you are convicted of four offences at the same time (and where you have benefited from each of them) or if you are convicted separately for two such offences in the six years prior to your current conviction.

Where you are found to have a criminal lifestyle, the Court assumes that all of the property (including money) that has been transferred to you, held by you, or spent by you in the six years prior to your arrest was the proceeds of crime and therefore the whole value of this property (called 'the recoverable amount') can be made subject to a Confiscation Order.

79. SEE SCHEDULE 2 OF  
POCA 2002  
80. PROCEEDS OF CRIME ACT  
(POCA 2002), s75  
81. OF POCA 2002, s6(4)(A)  
82. SEXUAL OFFENCES ACT  
1956, s 33 OR 34  
83. SEXUAL OFFENCES ACT  
2003, s52  
84. THE SEXUAL OFFENCES  
ACT 2003, s53  
85. POCA 2002, s 327 AND 328  
86. SEXUAL OFFENCES ACT  
2003, s 14, 48, 49 AND 50

You can show that these assumptions are wrong by producing evidence of the source of all the money and other assets that have passed through your hands in the last 6 years. Helpful evidence can include wage-slips from your employer, a copy of a tenancy contract from the lodger who pays you rent or a statement from a relative that they lent or gave you specific property and why. The Court looks at every detail, so you will want to get your own copy of your bank statements for the last 6 years as soon as possible so that you can have the best chance of explaining things. It is much easier to do this on bail than on remand, so if you think you may be vulnerable to such proceedings, you might want to start keeping records of your lawful income straight away.

You can also defeat the assumptions by showing that there is a serious risk of injustice if they are made,<sup>87</sup> in that there would be double-counting of the same money if they were applied literally. The safeguard does not extend to arguments that you would suffer hardship by virtue of the order.

**87. S10(6)(B) PROCEEDS OF CRIME ACT 2002**

The Court will value your assets as they stand at the time (minus any Court fines, preferential debts, or legitimate and evidenced third party interests). This becomes the amount that you are required to pay, or the 'available amount'.

However, where you have given property away, or sold items for less than they are worth, the Court has the power to consider such transfers as false and assume that you are still able to access the value of that property and so this value is included in the available amount.

You should be aware that if the court finds that you have benefited from criminal conduct and values the benefit as being worth a particular amount, then any assets or money you have, even if from a legitimate source, can be included in the amount you have to pay the court.

A Confiscation Order must usually be paid on the date it is made, but the Court can grant 6 months, or in exceptional circumstances 12 months, to pay.<sup>88</sup> On making the Order, the Court will fix a term of imprisonment that you will have to serve if you do not pay and, depending on the size of your available amount, this can be quite lengthy. Any sentence is served after any other sentence that you may face BUT, serving the time does not wipe out the debt and you will continue to owe and be charged interest upon this until it is paid.

**88. S11 PROCEEDS OF CRIME ACT 2002**



## Particular Criminal Conduct

If you do not have a 'criminal lifestyle' the Court will look to see whether you have benefited from the particular criminal conduct that has been proved or admitted in the current proceedings, including TICs (offences taken into consideration). Benefiting from criminal conduct means that you have obtained property as a result of, or in connection with, your offence.<sup>89</sup>

Your benefit is assessed as the value of the property you obtained (not the profit you made) and, again, property can mean anything from money to cars and houses. The amount of this benefit becomes the recoverable amount, and the procedure outlined above for life-style offences then applies.

## Civil Recovery

There is also scope for confiscation of your assets where you have not been convicted of any offence although the detail of these procedures is outside the scope of this book.<sup>90</sup> However, you should be aware that if the police or Customs find you in possession of large amounts of cash that they have reason to suspect was obtained by you through unlawful conduct or is intended for use in unlawful conduct, they can seize this money, and civil proceedings will then begin in the Magistrates' Court to forfeit this money. Sometimes, where the Crown Prosecution Service has failed to secure a conviction and so cannot use the confiscation powers detailed above, they will seek forfeiture under this method.

89. S74(4) POCA 2002

90. SEE CHAPTER 2 IN POCA 2002 FOR CIVIL RECOVERY PROCEEDINGS IN THE HIGH COURT AND CHAPTERS 3 AND 4 FOR CASH FORFEITURE PROCEEDINGS IN THE MAGISTRATES' COURT.

# CRIMINAL RECORDS

A criminal record is a record of any criminal convictions, cautions or arrests held about an individual on the Police National Computer (PNC). Information contained on the PNC may be consulted in relation to Court proceedings. The Court will want information on relevant criminal convictions and cautions when determining sentence. The PNC will also be checked when carrying out a search of criminal convictions or cautions in respect of an application for employment. Whether a criminal record has any impact on employment will depend on whether the convictions are spent or on the type of employment sought; this will be discussed further in the section below 'Criminal records & Employment'.

### **The Rehabilitation of Offenders Act 1974**

The Rehabilitation of Offenders Act 1974 ('the 1974 Act') provides a statutory framework for the disclosure of convictions and cautions. According to the 1974 Act, if no offences have been committed in a set period of time after a conviction/ caution (called the 'rehabilitation period') and the sentence was less than two and a half years in prison, the conviction/ caution becomes 'spent' (forgotten). On the other hand, a sentence of more than two and a half years will never become spent.

Please see the table below for further information on rehabilitation periods. Note, however, that if you are convicted of a further offence during the rehabilitation period, the original offence will not become spent until the end of the rehabilitation period for the second offence.

Once a conviction is spent it cannot normally be mentioned in Court, or referred to in some other circumstances. In general, with some exceptions, it really can be forgotten.

The Act only applies to the United Kingdom. So if, for example, someone was to apply for a visa to visit another country, and was asked to disclose previous convictions, they would be governed by the law of the other country. Many countries have much harsher rules than the UK. For more information about travelling abroad when you have a criminal record contact the Release legal helpline.

**To work out your rehabilitation period, you must know when you were first convicted and what sentence you received. If you received a prison sentence, you need to know how long you were sentenced for. Any new convictions after this date will alter your rehabilitation period. There are different arrangements if you have committed a motoring offence and the matter was not dealt with by a fixed penalty notice (FPN).**

**Table of Rehabilitation Periods****Sentence****Rehabilitation Period**

**Imprisonment, detention in a young offender institution, or youth custody, for more than 6 months but not more than 30 months.**

**10 years for adults  
5 years for under 18s**

**Imprisonment, detention in a young offender institution, or youth custody, of 6 months or less**

**7 years for adults  
3 ½ years for under 18s**

**Detention and Training Order where person aged at least 15 on conviction**

**5 years if order greater than 6 months  
3 ½ years if order less than 6 months**

**Detention and Training Order where person aged under 15 on conviction**

**1 year after order expires**

**A fine**

**5 years for adults  
2 ½ years for under 18s**

**Engagement and Support Order**

**6 months**

**Community Order**

**5 years for adults  
2 ½ years for under 18s**

**Bind Over to keep the peace or to be of good behaviour or Conditional Discharge**

**The date the order or bind over ceases or one year, whichever is the longer**

<b>Sentence</b>	<b>Rehabilitation Period</b>
<b>Attendance Centre Order</b>	<b>1 year after the order expires</b>
<b>Referral Order</b>	<b>When the Referral Order Contract is completed</b>
<b>Secure Training Order</b>	<b>1 year after the order expires</b>
<b>Hospital Order</b>	<b>5 years from the date of conviction or 2 years after the order expires, whichever is longer</b>
<b>Disqualification and other orders imposing disability, prohibition or other penalty</b>	<b>The date the order ceases to have effect</b>
<b>Absolute Discharge</b>	<b>6 months</b>
<b>Conditional Caution</b>	<b>3 months</b>
<b>Simple Caution/ Reprimand/ Warning</b>	<b>Spent immediately</b>

The following sentences will never become spent:

- life imprisonment;
- imprisonment, detention in a young offender institution, or youth custody for a term exceeding 30 months;
- detention during Her Majesty's pleasure;
- detention under the PCC(S)A 2000, S91, for life or for a term exceeding 30 months;
- custody for life;
- imprisonment for public protection under the S225 CJA 2003;
- S226 detention for public protection under the CJA 2003;
- S227 or s228 an extended sentence under the CJA 2003.
- detention during Her Majesty's pleasure;

**If you have been given a simple or conditional caution and you are asked if you have any criminal convictions, you should say no. If you are asked whether you have a criminal record you will normally say no as simple cautions, reprimands and warnings become spent from the moment they are issued. Conditional cautions become spent 3 months after the date they are given.**

## CRIMINAL RECORDS & EMPLOYMENT

### **What impact does a criminal record have on your employment prospects?**

Having a criminal record can make it harder to find work. However, the 1974 Act offers protection to people who have been convicted but have not offended again within a certain period of time. As stated earlier, where a rehabilitation period has ended and a conviction has become 'spent' it is no longer necessary to disclose that conviction.

The exception to this is if the employment involved is considered to fall within the exempted professions. Professions falling within this category will always have to disclose convictions or cautions and will be subject to enhanced searches by the Criminal Record Bureau ('CRB').

**The following is a list of exempted professions:**

Medical practitioner

Barrister (in England and Wales), advocate (in Scotland),  
solicitor;

Chartered accountant, certified accountant;

Dentist, dental hygienist, dental auxiliary;

Veterinary surgeon;

Nurse, midwife;

Ophthalmic optician, dispensing optician;

Pharmaceutical chemist;

Registered teacher (in Scotland);

Any profession to which the Professions Supplementary to  
Medicine Act 1960 applies and which is undertaken following  
registration under that Act.

Chartered psychologist

Legal executive

Taxi driver

Judicial appointment

Court clerk

Police officer

Member of the military

Prison officer

Probation officer

Any employment involving work with children or vulnerable  
adults will also be subject to an enhanced search by the CRB.

**If your conviction is spent, you do not have to tell employers about it on application forms or during interviews for most jobs. If your conviction is not spent, you should tell an employer about your record if you are asked.**

**If you are applying for an 'exempted' job, you must tell the employer about your criminal record, including any spent convictions. This applies to certain jobs involving work with children and vulnerable people, and some other specific professions such as medicine and law. For these jobs you may be required to tell your prospective employer about all convictions, including spent convictions.**

**If you have to disclose any conviction it may help to give an employer a good reason why you should not be rejected because of it. If the conviction related to a personal problem which has now been sorted out it may help to explain this. Although it is not always the case, some employers are more understanding about criminal convictions than you might expect. It is sometimes advisable to write a disclosure letter to employer when applying for jobs so that you can fully explain the circumstances around your conviction. A sample disclosure letter can be obtained from the Apex Trust (<http://www.apextrust.com>).**

### **Notifiable Occupations**

In some circumstances the police will contact an employer after they have arrested someone for an offence and the person arrested falls within what is known as a notifiable occupation. This process is not governed by legislation but is based on guidance issued by the Home Office.

The general rule is that the police should maintain confidentiality in relation to an arrest/ conviction unless disclosure is justified on the basis of substantial public interest considerations. Those who work with children or vulnerable people are likely to find that their employer would be contacted. For further information about this contact Release.





# SEX WORKING PARENTS

- CARE PROCEEDINGS
- CRIMINAL RISKS
- PRISON

## CARE PROCEEDINGS

Many sex workers are great parents and there will not generally be cause for the local authority's Social Services department to intervene simply because you are a sex-worker.

However, where your working practices are such that there are concerns that your child is suffering or is likely to suffer significant harm because of the standard of care you provide, the local authority may seek to intervene under the Children Act 1989.

Harm is defined as ill treatment or the impairment of health or development, including for example impairment suffered from seeing or hearing the ill treatment of another.<sup>91</sup>

The local authority can take a number of steps including conducting a child protection conference. It is very important to attend a child protection conference as it is your opportunity to answer any concerns that the professionals and others involved with your child may have; you are entitled to be assisted by a legal advisor.

The local authority may also take formal steps such as issuing care proceedings to apply for a Care or Supervision Order. You will normally be given notice of such proceedings or the intention to apply for them. However in emergency circumstances the local authority may apply without notice.

In any of the above circumstances, you should immediately seek legal advice if you are told they are starting legal proceedings. The Law Society runs a helpline that can provide you with details of

91. SECTION 31(9) OF THE CHILDREN ACT 1989, AS AMENDED BY THE ADOPTION AND CHILDREN ACT 2002:

local solicitors who are specialist in childcare law. If you would like more advice on this please call the Release helpline on 0845 4500 215.

## CRIMINAL RISKS

Whatever the attitude of social services, you should know that it is an offence to allow a child between the age of 4 and 16 years old to reside in or frequent a brothel.<sup>92</sup> The maximum punishment is six months in prison and or a fine.

## PRISON

Always arrange for an appropriate adult to look after your child when you are working and try and have a suitable guardian standby in the event that you are arrested and/or have to go to prison. If an appropriate adult cannot be found, your child will be taken into care, and eventually they may be fostered or adopted.

If you are pregnant there are specialist facilities in prison for you to give birth and to keep your baby with you up until the age of 18 months.

# SEXUAL TRANSMISSION OF INFECTION

- INTENTIONAL
- RECKLESSNESS

It is possible for a client who transmits a sexual infection to a sex worker to be prosecuted and face imprisonment. Equally, a sex worker who transmits a sexual disease to a client could face the same. Cases in this area are rare, but are treated very seriously and the Crown Prosecution Service (CPS) has issued detailed guidance to their lawyers on the subject.

The law in this area does not draw a distinction between genders. Any person, male or female, can transmit an infection to any other person. This includes people of the same sex. It is also important to note that a person who does not disclose their sexual infection prior to having consensual intercourse with another is NOT guilty of rape.

Transmitting an infection that has serious, and/or potentially life-threatening consequences for the infected person can be viewed as 'grievous bodily harm' (GBH). The definition of this legal term is simply, 'really serious harm' and in the past, HIV and Hepatitis B infections have been successfully prosecuted by the CPS and resulted in prison terms for the defendants. It is unclear what exactly would constitute really serious harm, especially given the developments in medical science which make such conditions manageable – expert evidence will usually be called at trial. As mentioned above, there are very

few examples from which to draw upon, but by applying the same logic, less harmful infections such as Chlamydia could form the basis of an assault or actual bodily harm (ABH) charge.

There are two scenarios in which a prosecution could result.

## INTENTIONAL

An intentional infliction of GBH is an exceptionally serious crime and carries a maximum sentence of life imprisonment.<sup>93</sup> The prosecution will have to prove that the defendant intended to infect the victim, and that they were in fact infected by the defendant. This involves complex medical and scientific analysis, and will possibly require details of the victim's sexual history to determine from whom and when the infection was contracted. If the defendant admits to intending to infect their sexual partner, but the date of infection can't be proved, the defendant can still be prosecuted for attempting to commit this offence, and the same possibly penalties apply. Usually, however, prosecutions are brought on the less serious reckless basis, detailed below.

93. SECTION 18 OFFENCES  
AGAINST THE PERSON ACT  
1861

## RECKLESSNESS

The second scenario exists where the infected person recklessly infects another. 'Reckless' in this context has a specific legal definition that requires the defendant to have foreseen that some bodily harm may arise from their actions, but they still took that risk. In order to establish this, the prosecution will have to show that the defendant knew, or ought to have known, that they were infected, and that they understood there was a chance that their sexual partner may contract the infection. Once again, complex medical and scientific evidence will be required, as will in most cases, the sexual history of the parties. In cases of this nature, the charge is simply causing GBH as there is no intention to do so. This is still a serious crime and carries a maximum penalty of 5 years in prison.<sup>94</sup>

It is important to note if the 'victim' consented to taking the risk of infection, this can be a defence to such a charge. A person will have been deemed to consent if they knew about the defendant's condition. This knowledge can come about by the defendant expressly telling the other that he/she is infected,

94. SECTION 20 OFFENCES  
AGAINST THE PERSON ACT  
1861

but can also be established where the 'victim' becomes aware of the condition on their own (for example, hearing from a third party or visiting the defendant during treatment for the condition). Whether or not the victim consented to the risk will be determined by the jury.

The knowledge of the infected person is relevant in these situations. This will be especially important to any sex worker who may suspect that they have a sexually transmitted infection. Knowledge in one form or another is required for both the offences set out above. This is another issue for the jury to decide, and can be easily established where there is evidence of a diagnosis of the condition prior to the sexual act. However, knowledge can still be proven in other circumstances. For instance, if the defendant had been told to take a follow up examination after a preliminary test showed an infection, but then failed to do so; or the defendant displayed clear symptoms that indicated a sexual disease so they ought to have known about it; or that a previous sexual partner has recently been diagnosed with an infection and it is likely that the defendant has become infected.

In any event, such problems can be avoided by regular sexual health checks and the practice of safe sex. Evidence that a defendant took reasonable steps to prevent infecting another can illustrate that they were not acting recklessly and certainly didn't intend to infect anybody.



# SEXUALLY EXPLOITED CHILDREN AND YOUNG PEOPLE

- CRIMINALITY V. CHILD PROTECTION
- AGE OF CONSENT

When it comes to young sex workers, there can be tension between the criminal law and the duty of the state to protect young people.

## CRIMINALITY VS. CHILD PROTECTION

Anyone aged 10 years and over is deemed to be fully responsible for their actions and can be cautioned or charged with soliciting or any other offence.

However, local authorities have a duty to safeguard and promote the welfare of children who are in need, and to investigate cases where a child **is suffering, or is likely to suffer, significant harm**.<sup>95</sup> Any child involved in prostitution is said to be at risk of significant harm, both physically and emotionally.

95. CHILDREN ACT 1989.



**Guidelines have been issued in relation to the treatment of young people involved in prostitution, by the Department of Children, Schools & Families (now the Department for Education). The guidance, 'Safeguarding Children and Young People from Sexual Exploitation: Supplementary guidance to Working Together' (2009) is available to download at: [www.education.gov.uk/publications/eOrderingDownload/00689-2009BKT-EN.pdf](http://www.education.gov.uk/publications/eOrderingDownload/00689-2009BKT-EN.pdf)**

The guidance states that:

Children who are sexually exploited are the victims of sexual abuse and should be safeguarded from further harm. Sexually exploited children should not be regarded as criminals and the primary law enforcement response must be directed at perpetrators who groom children for sexual exploitation. Action to safeguard and promote the welfare of children and young people who are sexually exploited should be child-centred and focus on the child's needs.<sup>96</sup>

The identification of a child or young person involved in sexual exploitation, or at risk of being drawn into sexual exploitation, should **always** trigger the agreed local safeguarding children procedures. If someone believes a child is at risk then they should always refer their concerns to the local authority social care department.<sup>97</sup>

Where a parent, professional, or another person (including the police) refers a child to the Local Authority children's social care, the child should be regarded as a "child in need" under the Children Act 1989. A course of action should be decided within **24 hours** and will normally be borne out of discussions with the professionals involved. If it is decided that action is required an **initial assessment** will be undertaken by social services, this must be completed within **7 days**. The Local Authority children's social care should decide whether:

- Is this a child in need? (section 17 of the Children Act 1989)
- Is there reasonable cause to suspect that this child is suffering, or is likely to suffer, significant harm? (section 47 of the Children Act 1989)

96. DCSF, 'SAFEGUARDING CHILDREN AND YOUNG PEOPLE FROM SEXUAL EXPLOITATION: SUPPLEMENTARY GUIDANCE TO WORKING TOGETHER' (2009), FOREWORD.

97AS ABOVE AT CHAPTER 6.

Agencies with statutory child protection powers must, **at all stages**, consider whether the child may be in need of urgent action to secure their safety because of the risk to the child's life or likelihood of serious harm.<sup>98</sup>

The law does allow children as young as 10 to be arrested for an offence, this may lead to them being given a reprimand or warning or charged and appear before the youth court in the usual way. In these circumstances, if you are under 17, you should have an "appropriate adult" with you at the police station. This would usually be a parent, friend or guardian, but could be anyone aged 18 and considered appropriate or above who is not employed by the police. However, in relation to sex working offences young people are rarely dealt with through the criminal justice system.

98. AS ABOVE AT POINTS  
6.25 – 6.29.

## AGE OF CONSENT

The age of consent for heterosexual and homosexual sex is 16 in England, Wales, Scotland and Northern Ireland. It is illegal to engage in sexual activity with anyone under the age of consent. The under-age person is not themselves committing an offence. Those engaging in sexual activity with under 18 year-olds may be committing various other offences, which are outlined on page 25. If you need further information, contact a solicitor or law centre, or call Release.



# NON-BRITISH SEX WORKERS

- WORKERS
- VICTIMS OF TRAFFICKING
- EMPLOYERS

## WORKERS

If you are **subject to immigration** control and do not have leave to work but do so nevertheless you will be considered to be **working illegally**. Illegal working can have a seriously negative impact on your immigration history that can be weighed against you when applying to enter or remain in the UK in the future or impact on any existing leave to remain. Also, if discovered by the authorities, you could face detention and removal, subject to any other claims you may have. If you are in difficulty, contact a solicitor registered with the Office of the Immigration Services Commissioner or one of the agencies listed in this publication that specialise in immigration matters.

It is a **criminal offence** to **knowingly possess a false identity** document with the intention of using it to establish a registrable fact about yourself or of inducing another person to do so.<sup>99</sup> Albeit there are some limited protections derived from the Refugee Convention for genuine asylum seekers who use such documents to enter the UK and claim asylum,<sup>100</sup> using someone else's passport or driving licence to get a job or open a bank account to pay your wages, for example, remains a criminal offence. The maximum penalty is 10 years on indictment, but in practice, sentences rarely exceed 2 years for simple possession even where the intention is to undermine immigration control.

99. SECTIONS 25 AND 26 OF THE IDENTITY CARDS ACT 2006 APPLY.

100. SEE S31 OF THE IMMIGRATION AND ASYLUM ACT 1999

If you are convicted of any offence and a sentence of imprisonment for 12 months or more is imposed, the Secretary of State has a duty<sup>101</sup> to make you subject to a **deportation order** unless one of a number of exceptions apply, e.g. there would be a breach of your rights under the European Convention of Human Rights or under the Refugee Convention, for example. It is also open to the court to recommend for deportation in other circumstances, but these are rarely used in practice. Ask your lawyer to advise you on how these provisions are likely to relate to your case before considering your plea.

Also, remember that even where an automatic recommendation for deportation is not made, as with illegal working, any conviction can be weighed against you by the Immigration and Asylum Tribunals when determining a substantive claim for leave to enter or remain in the UK.

Contact either the Migrant Helpline or Asylum Aid for information and advice (details can be found on page 126).

## VICTIMS OF TRAFFICKING

Do not be frightened of seeking help in the UK if you are a victim of trafficking. There are measures in place to protect you against your trafficker and there is safe temporary accommodation available. If you need help contact either the Migrant Helpline or Asylum Aid (see page 126 for contact details).

The UK has a **legal duty to protect victims of trafficking** as a result of the Council of Europe's Convention against Human Trafficking. Trafficking is defined in Article 4 of this Convention and, in general terms, it involves the use of coercion or fraud to exploit a person either for prostitution or some other purpose. These obligations extend to all state agents, including the police, the Crown Prosecution Service and the immigration authorities. As a result, it is important to say if you are a victim of trafficking when dealing with these agencies: if you consent, they will make a referral to the UK Border Agency or the UK Human Trafficking Centre who in turn will assess whether there are reasonable grounds to believe that you are genuinely a victim of trafficking. They will make this initial decision within 5 days and if it is positive, you will be granted 45 days leave to remain in the UK for you to reflect on what you want to do and to recover from your experience and, if you want, to be placed in a safe house. To obtain permission to remain in the UK for longer

than 45 days, you must apply for refugee status, humanitarian protection or discretionary leave. Whether or not you qualify will depend on all the circumstances of your case and the situation in your country of origin and the fact that you have been trafficked will assist your case but may not be decisive. Aside from these grounds, you will be granted 12 months' discretionary leave to remain in the UK if you assist the police with their enquiries about the trafficker(s) and if you do not wish to return home.<sup>102</sup>

If you are charged with a criminal offence, it is particularly important to **notify your legal representative that you are a victim of trafficking** as this will affect whether or not you are charged, whether you have a defence, and if not, what your sentence should be. In particular, you may have the defence of duress where: you genuinely believed that if you didn't commit the offence you or someone else would be killed or seriously injured; a reasonable person with your belief and in your situation would have done what you did; there was not an opportunity for you to escape and go to the police; and, you did not cause yourself to be subject to such difficulties.

Duress is a very high threshold to meet, however, and even where it is not made out but you are a credible victim of trafficking, the Crown Prosecution Service are required to consider whether it is in the interests of justice to prosecute.<sup>103</sup> In making such a decision, the CPS will take into account a number of factors including the nature of the offence with which you are charged and your role in it, whether the offence was a direct consequence of your trafficked situation, whether violence, threats, or coercion was used against you, and whether you were in fear.

As a victim of trafficking, **compensation** is theoretically possible through the Criminal Injuries Compensation Scheme, and a civil action for damages can be brought against your trafficker for false representations, false imprisonment, battery, assault and harassment.<sup>104</sup>

102. SEE UK BORDER AGENCY ASYLUM PROCESS GUIDANCE ON SPECIAL CASES 'VICTIMS OF TRAFFICKING: GUIDANCE FOR COMPETENT AUTHORITIES' AT PAGE 35 OF 45, UPDATED 2/2/11 [HTTP://WWW.UKBA.HOMEOFFICE.GOV.UK/SITECONTENT/DOCUMENTS/POLICYANDLAW/ASYLUMPROCESSGUIDANCE/SPECIALCASES/GUIDANCE/COMPETENTGUIDANCE?VIEW\\_BINARY](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/ASYLUMPROCESSGUIDANCE/SPECIALCASES/GUIDANCE/COMPETENTGUIDANCE?VIEW_BINARY)

103. SEE R V O [2008] EWCA CRIM 2835 AND THE CPS LEGAL GUIDANCE ON HUMAN TRAFFICKING AND SMUGGLING [HTTP://WWW.CPS.GOV.UK/LEGAL/H\\_TO\\_K/HUMAN\\_TRAFFICKING\\_AND\\_SMUGGLING/#A37](http://www.cps.gov.uk/legal/h_to_k/human_trafficking_and_smuggling/#A37)

104. SEE AT, NT, ML AND AK V DULGHIERU [2009] EWHC 225 (QB)

105. S21 IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006, S21

106. S15 IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006

107. WWW.UKBA.HOMEOFFICE.GOV.UK/SITECONTENT/DOCUMENTS/EMPLOYERSANDSPONSORS/PREVENTINGILLEGALWORKING/CURRENTGUIDANCE-ANDCODES/COMPREHENSIVEGUIDANCEFEB08.PDF?VIEW=BINARY

108. ISSUED UNDER S23 IMMIGRATION, ASYLUM AND NATIONALITY ACT 2006 AND AVAILABLE HERE: HTTP://WWW.UKBA.HOMEOFFICE.GOV.UK/SITECONTENT/DOCUMENTS/EMPLOYERSANDSPONSORS/PREVENTINGILLEGALWORKING/CURRENTGUIDANCEADCODES/ANTIDISCRIMINATION-CODE2008.PDF?VIEW=BINARY

## EMPLOYERS

It is a **criminal offence** to knowingly employ a person who does not have permission to work in the UK.<sup>105</sup> The maximum sentence is 2 years in prison.

It is also a **civil offence**, punishable by a fine, to unknowingly employ a person who does not have permission to work in the UK.<sup>106</sup> There is a statutory defence available where you have had sight of specified original documents (such as a passport), taken reasonable steps to check its validity, and kept copies; please note, it may be necessary to check your employees on a yearly basis. The UK Border Agency has issued step by step guidance for employers on staying within the law.<sup>107</sup>

You also have a statutory **duty** under the Race Relations Act 1976 **not to discriminate** against workers or potential workers on racial grounds. It is therefore not acceptable to refuse to consider an applicant just because they appear to be foreign and, indeed, it could result in a civil action against you. There is a statutory code of practice<sup>108</sup> available to help you navigate your competing obligations.

# SEX WORK & DRUGS

- DRUG OFFENCES
- CRACK, HEROIN AND SEX WORK
- SAFER DRUG USE

Sex work and drugs are a dangerous combination. Involvement with controlled drugs increases the risk of getting involved in the criminal justice system and can dramatically increase the risks to your safety that are associated with sex work. This has become a particular problem where the use of crack cocaine or heroin is concerned.

The most important way of minimising risks to your safety is to avoid using drugs while you are working.

In the following paragraphs, we set out basic information about the laws that are mostly likely to be relevant. If you want further information, you should contact your solicitor or call Release. The UK Network of Sex Projects has an excellent guide: 'Keeping Safe: Safety Advice for Sex Workers in the UK' ([www.uknswp.org/resources/RSW2.pdf](http://www.uknswp.org/resources/RSW2.pdf) or contact 0161 629 9861)

## DRUGS OFFENCES

The main drugs offences are created by the Misuse of Drugs Act 1971 (the "MDA 1971"). This creates the basic offences of possession, supply and production, as well as the cultivation of cannabis, importation/exportation of drugs and drug use on premises. It also sets out the penalties for breaches of the law in relation to controlled drugs.

The MDA 1971 does not deal with all drugs but only those that



Parliament considers to be the most harmful to individuals and society. It categorises controlled drugs into two sets of lists. The first set of lists puts controlled drugs into three classes, "Class A", "Class B" or "Class C". The class signifies the severity of the maximum sentence for offences relating to that drug. The most severe sentences are applied to Class A drugs. The second set of lists are the five schedules. The schedule will dictate, amongst other things, the circumstances in which a drug can be lawfully possessed or supplied and whether it can be prescribed.

### **Possession and supply**

It is illegal to possess, produce, supply or possess with intent to supply any controlled drug, unless you are licensed to do so. If you have a controlled drug in your possession, even if you are just holding on to it for someone else, you will be guilty of possession.

If you hand a controlled drug to someone else, even if no money is changing hands, you could be charged with supply. Sentences, especially for supply or intent to supply (including giving or selling to friends), can be severe. Possession of even a small quantity of a controlled drug can lead to a charge for intent to supply. Surrounding factors other than quantity will be relevant when a court considers whether there was intent to supply. Sentences for drug offences depend upon the quantities involved, previous convictions and other relevant circumstances. (Please see Release's 'Drugs & the Law' which can be downloaded for free at: [www.release.org.uk/shop](http://www.release.org.uk/shop)).

### **Medicines Act 1968**

Many drugs used recreationally are not controlled under the MDA 1971 but by the Medicines Act 1968. This covers drugs such as Diazepam which are legal to possess under prescription but not to supply to others or to produce without authorisation. Prosecutions are unusual and sentencing is therefore difficult to predict. They would be substantially less than for a drug controlled under the MDA 1971.

## PRODUCTION, SUPPLY OR USE OF DRUGS ON PREMISES

### Personal liability

It is illegal for occupiers of premises knowingly to permit on those premises:

- The production or attempted production of any controlled drug;
- The supply or attempted supply of any controlled drug;
- The preparation of opium for smoking;
- Smoking cannabis, cannabis resin or prepared opium.<sup>109</sup>

109. MDA 1971, S8.

“Occupiers of premises” includes anyone “concerned in the management of premises”. This will certainly include managers of projects operating at residential or day centres and may include some employees. It would also include landlords, tenants or owners of residential or work premises.

### Closure of Premises

The police can now close down residential or business premises where there is a reasonable suspicion of Class A drug use, production or supply on those premises together with **serious nuisance** or **disorder**. Please see page 33 for more information.

## ADMINISTERING DRUGS WITHOUT CONSENT

It is an offence to **administer a substance with intent**.<sup>110</sup>

110. SGA 2003, S61.

This offence is committed where a person intentionally administers a substance to, or causes a substance to be taken by, another person (B):

- Knowing that B does not consent; and
- With the intention of stupefying or overpowering B, so as to enable any person to engage in a sexual activity that involves B.

The penalty is up to 10 years' imprisonment.

If you think you may have taken a substance without your knowledge, for example in a drink, and you think you may have

been overpowered while under the influence of that substance, you can report it to the police and a prosecution could be brought under this section.

## CRACK, HEROIN AND SEX WORK

Some people come into the sex industry directly as a result of their crack/ heroin use. The impact of these drugs on the sex industry is significant. In particular, it is thought to have led to a reduction in the prices paid for sexual services in many cases. It is very bad idea to use crack or heroin when you are working. These drugs reduce your inhibitions and could lead you to engage in activities which are unsafe or which you would not otherwise agree to. It can also lead workers to engage in a much longer session with a client, for much lower pay.

### Alcohol and drugs

**Alcohol and drugs can affect your awareness and ability to recognise and act on your instinct. They can also prevent you using your safety strategies to best effect.**

You are much more at risk if you are under the influence of drink or drugs. Try not to use when you are working.

If you do use when you are working, try to use an amount that keeps you stable. Use just enough so you are not withdrawing but not so much that you are 'drunk', 'gouching' or 'off your head'. If you are in any of these states, you may be less likely to use your safety strategies effectively, and might be targeted by some people.

Letting customers know you use drugs gives them more opportunity to take advantage of you. It can allow them to tempt you with drugs rather than cash, which means you might lose out on the cash you need.

### Spiked drink, drugs and food

If your client offers you a drink in private, ask for an unopened can or bottle, or serve yourself. Don't take any drink you haven't seen prepared from start to finish. Make sure your client is happy to drink from the same bottle or glass as you.

If your client offers you food in private, don't accept it unless it's pre-packed and still in its sealed wrapper, or you have seen it prepared from start to finish. Make sure your client is happy to eat the same food.

Avoid accepting drugs from or taking drugs with clients; you can never be sure what they are or what they have been cut with.

KEEPING SAFE: ALCOHOL AND DRUGS

TAKEN FROM UKNSWP

Safety Advice for Sex Workers in the UK 7

Clients who use crack are not easy work. Often they may ask workers to engage in bizarre activities. Some clients who use crack can manipulate workers and take control of sessions by promising more crack at the end of the session. There is also an enhanced risk of violence. Use of crack (and cocaine) can lead to problems with ejaculation (known as 'coke dick') and this can often be a trigger point for violence when clients are unable to ejaculate and then blame the sex worker for this. Crack use also makes the user feel 'invincible', act aggressively and these things increase the user's vulnerability to violence and exploitation.

## SAFER DRUG USE

The risks associated with drug use can be dramatically reduced by avoiding injecting. If you are injecting, you must use clean needles, water and other paraphernalia in order to avoid infection with blood borne viruses. Local agencies providing support to drug users or sex workers may offer a needle exchange service, and may be able to provide you with advice to help you reduce the risks to your health. You can also get injecting equipment free from most pharmacies.

If you want help or advice in relation to drug use, contact your local drug treatment services, call Release or call Frank (please see useful contacts for details).



# SAFETY

- PREVENTION
- SELF DEFENCE

Sex work can be dangerous. The UK Network of Sex Work Projects has an excellent and detailed resource providing advice on ways to stay safe: Resource for Sex Workers: Safety Advice for Sex Workers in the UK (2008): [www.uknswp.org/resources/RSW2.pdf](http://www.uknswp.org/resources/RSW2.pdf)

## PREVENTION

Here are some ideas for ways to try and prevent getting into a dangerous situation.

### Seek information and advice

- There may be a local project, drop-in, or outreach service for sex workers. Go there, find out what services are available to you, and seek safety advice. Your local GUM may be able to offer advice.
- Many projects give out free personal safety alarms
- Consult Ugly Mugs lists via your local sex work project or online warning boards and pass on information about dangerous clients.
- Report into Ugly Mugs if anything happens to you, even if you also report to the police.
- Take advantage of any self-defence classes on offer locally.

### Avoid drink and drugs

- Don't use drugs or alcohol while you are working. They make you less alert and less able to maintain control of the situation.
- Don't take drinks from clients or, if you must, watch them being made in order to avoid spiking.

## **Be prepared**

- Think carefully about safety measures that are appropriate for your particular work situation.
- Wear shoes that come off easily or that you can run in. Long earrings or hoops may be pulled – try small earrings or clip-ons instead. Avoid necklaces, scarves and across the body shoulder bags, which can all be tightened around your throat.
- Try not to carry any money with you-if you must, hide it in different places about your person. That way, if the worst happens and you are robbed, you won't lose it all
- Carry a personal safety alarm, a torch and a whistle.
- Always keep an eye out for concealed weapons or things which could be used as weapons. If you are considering carrying a weapon yourself, remember that it could end up being used against you, also you could be prosecuted if found with a weapon as it's an offence.
- Above all, trust your own instincts and common sense. If you feel uncomfortable about someone, it is probably safer to avoid them.

## **Keep in touch**

- Team up with a colleague and work out a system to keep in touch with each other and raise the alarm if help is needed.
- Carry a mobile phone when meeting clients and have a pre-drafted text ready to send to a friend or colleague if you need help.
- Give that friend a time frame for notifying the police or your local sex work support project if you are not back when you say, make sure the friend has your details and the phone numbers of police & support project.
- If you are working on the street, ask a friend to take vehicle numbers.

## **Approaching a car**

- When you approach a client's car, study the client, anyone else in the car, the registration number and the door lock system.
- Arrange price, service and location outside the car.
- Have a brief conversation with the client, observing his body language.

- Wave goodbye to a work partner, or pretend to, and shout the expected return time.

### **Working indoors**

- If you work indoors, make an effort not to have objects lying around that can be used as weapons, but have things tucked away that you can arm yourself with.
- Bear in mind, however, that these could be used against you.
- Have a safe room with a door stopper and a phone in it, so that you can be safe while phoning the police.

### **If you are attacked**

- Create a disturbance. Screaming “Fire” can be more effective than “Police” or “Help”.
- If there are people around, try to appeal to a specific individual for help rather than to everybody generally.
- If you are in the street, try to run into a shop or café where there are people.
- If you are indoors, make as much noise as you can – throw objects around, break windows, scream.
- If you can run away – run, shout, set off alarms, put obstacles in the way of the attacker.
- If you can’t run away – fight physically using everything that you can, e.g. umbrella, nail file. Kick, bite, scratch, hit with something handy. Bear in mind the advice about self defence below.
- If you can’t run or fight – try not to show your fear and talk your way out.

## **SELF DEFENCE**

If you injure someone, you risk being charged with an offence such as assault, assault occasioning actual or grievous bodily harm, or malicious wounding. However, you are allowed to use reasonable force to defend yourself against an attack. What counts as reasonable force will depend on all the circumstances, including your assessment of the situation at the time and the fact that you have acted instinctively in the heat of the moment. You must have acted in response to an attack. If you fall upon the aggressor when the attack is over, or when he is running away, your actions could be seen as revenge rather than self defence. It is not necessary for you actually to be attacked first before you are lawfully able to defend yourself. And there is no duty



to retreat rather than defend yourself in the face of an actual or threatened attack.

## **PURSUING LEGAL ACTION AND COMPLAINTS**

If you are attacked, the legal system is there to protect you as much as anyone else. Complaints and legal action can be difficult and time consuming, but there are services available to help you and sometimes taking action can make a difference for you and others. Approach your local law centre, Citizens' Advice Bureau for help, contact your solicitor or call Release.

# CHILD SEX OFFENCES

There is a range of offences concerning sexual abuse and children, some of which are summarised below for information purposes.<sup>111</sup> Advice in relation to these matters is outside the scope of this book and they are therefore not covered in any detail. Unless otherwise stated, “**child**” means someone under the age of 16.

**111. PROTECTION OF CHILDREN  
ACT 1978 AND SOA 2003.**

## RAPE AND OTHER OFFENCES AGAINST CHILDREN UNDER 13

- Rape of a child under 13
- Assault of a child under 13 by penetration
- Sexual assault of a child under 13
- Causing or inciting a child under 13 to engage in sexual activity

## CHILD SEX OFFENCES

- Sexual activity with a child
- Causing or inciting a child to engage in sexual activity
- Engaging in sexual activity in the presence of a child
- Child sex offences committed by children or young persons
- Arranging or facilitating commission of a child sex offence
- Meeting a child following sexual grooming

## FAMILIAL CHILD SEX OFFENCES

- Inciting a child family member to engage in sexual activity

## **INDECENT PHOTOGRAPHS OF CHILDREN**

- Taking, distributing or possessing indecent photographs or pseudo-photographs of persons under the age of 18

## **ABUSE OF CHILDREN THROUGH PROSTITUTION OR PORNOGRAPHY**

- Paying for sexual services of anyone under 18
- Causing or inciting prostitution or pornography involving anyone under 18
- Controlling a prostitute who is under 18 or someone under 18 who is involved in pornography
- Arranging or facilitating prostitution or pornography involving anyone under 18

The penalties for these offences range from a fine up to life imprisonment. If you need further information, you should contact a solicitor or call Release.

## **THE SEX OFFENDERS REGISTER**

Part 2 of the SOA 2003 re-enacts, with certain amendments, Part 1 of the Sex Offenders Act 1997. This is not aimed at sex workers and is outside the scope of this book, but it is mentioned here briefly for information purposes.

The Register and its associated powers allow the police to monitor convicted sex offenders and people who pose a risk of sexual harm. This means people who have been convicted of offences such as rape, sexual assault, incest and child sex offences (including causing or encouraging the prostitution of children). Such people may be required to notify the police of their name and address so that they can be included on the Sex Offenders Register.

For further information, contact a solicitor or law centre, or call Release.

# USEFUL CONTACTS

## NATIONAL SERVICES

### LEGAL SERVICES

#### **Release**

[www.release.org.uk](http://www.release.org.uk)  
0845 450 0215

#### **Liberty**

[www.liberty-human-rights.org.uk](http://www.liberty-human-rights.org.uk)  
020 7403 3888  
(Monday and Thursday 6:30pm-8:30pm,  
Wednesday 12:30pm-2:30pm)

#### **Immigration Advisory Service**

[www.iasuk.org](http://www.iasuk.org)  
0844 974 4000 (London office)  
Various numbers throughout the UK –  
please check the website

#### **Community Legal Service Direct**

[www.communitylegaladvice.org.uk](http://www.communitylegaladvice.org.uk)  
0845 345 4345

#### **Rights of Women (family law advice)**

[www.rightsofwomen.org.uk](http://www.rightsofwomen.org.uk)  
020 7251 6577

#### **Citizens Advice Bureau**

[www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) (includes details of local offices)  
If in Wales call 0844 477 2020  
If in England call 08444 111 444

#### **Law Centres**

Visit: [www.lawcentres.org.uk/lawcentres](http://www.lawcentres.org.uk/lawcentres)  
to find details of local law centres

**Apex Trust Jobcheck Helpline**

(advice on ex-offender employment matters including CRB checks and disclosure of criminal records)

[www.apextrust.com](http://www.apextrust.com)

0870 608 4567

**SEX WORKERS ORGANISATIONS****The International Prostitutes Collective****The English Collective of Prostitutes**

[www.prostitutescollective.net](http://www.prostitutescollective.net)

020 7482 2496

**International Union of Sex Workers**

[www.iusw.org](http://www.iusw.org)

07772 638 748

**TLC Trust**

[www.tlc-trust.org.uk](http://www.tlc-trust.org.uk)

**DRUGS ADVICE****Release**

(for specialist advice – office hours only)

[www.release.org.uk](http://www.release.org.uk)

0845 450 0215

**Talk to Frank**

(national drugs helpline)

[www.talktofrank.com](http://www.talktofrank.com)

0800 77 66 00 (24 hours)

**DOMESTIC VIOLENCE****Women's Aid / Refuge Crisis**

[www.womensaid.org.uk](http://www.womensaid.org.uk)

(24 hours) 0808 2000 247

**MEDICAL (NON-EMERGENCY)** - in an emergency, dial 999**NHS Direct**

[www.nhsdirect.nhs.uk](http://www.nhsdirect.nhs.uk)

(24 hours) 0845 46 47

**COMPLAINTS AGAINST THE POLICE****Independent Police Complaints Commission**

[www.ipcc.gov.uk](http://www.ipcc.gov.uk)

08453 002 002

## **VICTIM OF RAPE/SEXUAL ASSAULT OR OTHER CRIME**

### **Haven Project – Camberwell, London**

King's College Hospital,  
Denmark Hill, London  
[www.thehavens.co.uk](http://www.thehavens.co.uk)  
020 3299 1599

### **Haven Project – Paddington, London**

St Marys Hospital,  
Praed Street, London  
[www.thehavens.co.uk](http://www.thehavens.co.uk)  
020 3312 1101

### **Haven Project – Whitechapel, London**

The Royal London Hospital,  
9 Brady Street, London  
[www.thehavens.co.uk](http://www.thehavens.co.uk)  
020 7247 4787

### **Victim Support**

[www.victimsupport.org](http://www.victimsupport.org)  
0845 30 30 900

### **Criminal Injuries Compensation Authority (CICA)**

[www.cica.gov.uk](http://www.cica.gov.uk)  
0800 358 3601

## **SUPPORT FOR THOSE WHO HAVE BEEN TRAFFICKED**

### **Asylum Aid**

[www.asylumaid.org.uk](http://www.asylumaid.org.uk)  
0207 354 9264  
(Tuesday only- 1-4pm)

### **Migrant Helpline**

[www.migranthelpline.org.uk](http://www.migranthelpline.org.uk)  
01304218725 or 07590963201

### **Poppy Project**

[www.eaves4women.co.uk](http://www.eaves4women.co.uk)  
020 7735 2062

### **Salvation Army Safe House**

0845 434 9159

## TAX ADVICE

### **Tax Aid**

[www.taxaid.org.uk](http://www.taxaid.org.uk)  
0345 120 3779  
(Monday – Friday 10am-12midday)

### **HMRC confidential tax and benefits line**

0845 608 6000

## LOCAL SERVICES

**For local services please contact the UK Network of Sex Work Projects who have a comprehensive database of projects throughout the UK:**

[www.uknswp.org](http://www.uknswp.org)  
0161 629 9861

## SCOTLAND

### **SCOT-PEP**

70 Newhaven Road, Edinburgh, EH6 5QG  
For advice on the law in Scotland  
[www.scot-pep.org.uk](http://www.scot-pep.org.uk)  
0131 622 7550

## WALES

### **StreetLife (Safer Wales)**

[www.saferwales.com](http://www.saferwales.com)  
029 2046 1564

## NORTHERN IRELAND

### **Belfast Health and Social Care Trust**

Public Health Nursing  
Service for Commercial Sex Workers  
07786 338 020

# OTHER RELEASE PUBLICATIONS

## Other Release Publications

'Drugs and the Law'

'Young People, Their Rights & the Law'

'Bust Card'



These, and other drug specific publications, are available to download for free at [www.release.org.uk/shop](http://www.release.org.uk/shop)





# Release

**Drugs, The Law & Human Rights**

**Tel:** +44 (0) 20 7324 2979  
**Fax:** +44 (0) 20 7324 2977  
**Email:** [ask@release.org.uk](mailto:ask@release.org.uk)  
**Web:** [www.release.org.uk](http://www.release.org.uk)

**ISBN - 0-904932-24-9**  
**Release Publication 2011 ©**

**"Sex Workers and the Law" outlines: the criminal offences related to sex working and the buying of sexual services; offences specific to premises used for sex working; the law around anti social behaviour orders; dealing with the police and the criminal justice system more generally; criminal records; trafficking offences; advice on tax and the rules around non British sex workers. In short, it is hoped that this publication will be a practical guide for those whose sex work and those involved in the industry as well as statutory and voluntary agencies, and other professionals who come into contact with those involved in the sex industry.**

**Release is a charity which since 1967 has offered advocacy, education, campaigning and the only free helpline specialising in drug-related legal issues. Our advice is professional and confidential and it is our aim to promote understanding of drug-related issues and to support an often marginalised section of society.**

**"This excellent, much needed and well researched publication provides sensible and invaluable advice for those working in the sex industry"**

**Sebastian Gardiner, Barrister, 25 Bedford Row**

# **Release**

**Drugs, The Law & Human Rights**

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