

Stopping the Traffick? The problem of evidence and legislating for the ‘Swedish model’ in Northern Ireland

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Abstract

In 2015, after two years of controversy, the so-called ‘Swedish model’—the criminalisation of paying for sex—became law in Northern Ireland as an anti-trafficking measure. Evidence from the ground in Northern Ireland, however, questions the enforceability and appropriateness of a sex purchase ban to significantly reduce or eradicate trafficking in the sex industry. First, it is unclear that criminalisation will change the behaviour of male purchasers, many of whom thought that their actions were already illegal; second, sex workers do not support the law; and third, there are significant difficulties in law enforcement in the context of Northern Ireland, including a lack of police resources.

This article examines mitigating evidence drawn from two sources: findings from a mixed methods study commissioned by the Department of Justice of Northern Ireland—in which we were amongst several co-authors—to support the reform process; and contributions to the consultation held within it.

We argue that the sex purchase ban in Northern Ireland is essentially meant to send a moral message about the unacceptability of commercial sex rather than effectively reduce trafficking. With this conclusion, we aim to contribute to an open and honest debate about the moral foundations of anti-trafficking measures, the role of research evidence in the policy process, and the gap between stated intentions and likely effects of neo-abolitionist measures such as the sex purchase ban in both Northern Ireland and more generally.

Keywords: sex work, human trafficking, Swedish model, criminalisation, Northern Ireland, evidence-based policy

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Introduction

In 2015, the *Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act* was enacted in Northern Ireland (NI). It included legal changes in regard to sentencing, prevention and enforcement of anti-trafficking measures, as well as provisions to improve support for victims of trafficking. All of these aspects were eclipsed by the media coverage and public debate about Clause 6 (later Clause 15), that criminalised the purchasing of sex.

Equally contentious was the research commissioned into the local sex industry by the Department of Justice (DoJ) to inform considerations of Clause 6, whose findings were, according to the Justice Minister, ‘ignored and derided’.¹ While arguing for the law’s appropriateness and its potential to achieve its goals of reducing trafficking for the purposes of sexual exploitation, Clause 6 proponents consistently repudiated the research’s purpose, or indeed the need for any evidence from the locality.² Legislators instead drew evidence from, *inter alia*, a visit to Sweden, from its supporters who contributed to the consultation process, and from a ‘private consultation’ held by the law’s promoter, Lord Maurice Morrow.

Both authors of this article were part of the research team commissioned by the DoJ to carry out the research.³ In this article, we suggest that the repudiation of the research report did not simply spring from prior commitment to the ‘Swedish model’ (the criminalisation of those who buy and the decriminalisation of those who sell sex) evident in the legislation itself. This repudiation was strategically necessary in order to invalidate evidence that, as became clear in time,

¹ Northern Ireland Assembly (NIA), *The Official Report (Hansard)*, 9 December 2014, vol. 100, no. 4, p. 49.

² E Ward, ‘Knowledge Production and Prostitution Law Reform: The case of Ireland North and South’, CSRNI Conference, Queen’s University Belfast, 4 April 2016.

³ We have permission to use interview quotes and survey results for this publication. The reflections on the research process and the public reception of the research as discussed in this paper are entirely our own and do not necessarily reflect the views of other members of the original research team or the NI Department of Justice.

suggested multiple factors mitigating both the appropriateness and the efficacy of the sex purchase ban (SPB) in NI. It is these mitigating factors, or the evidence from the ‘mundane and the routine’⁴ of the sex industry in NI with which this article is concerned.

While the legal changes in Northern Ireland do not conform fully to the ‘Swedish model’—sex workers are not decriminalised and can still be charged with soliciting and brothel-keeping⁵—the adoption of the legislation in 2015 is part of a global move from regulating women who sell sex to regulating men who buy it.⁶ Neo-abolitionist groups, defined as those who promote the SPB, or the so-called ‘Swedish model’ as the go-to policy measure to abolish sex work and reduce trafficking for sexual exploitation, propose shifting ‘the burden from prostitutes to their clients’.⁷ In this view, commercial sex is understood to be predominantly demand-driven and a form of violence against women.⁸

Opponents of the SPB posit that trafficking for sexual exploitation is a result of multiple, interconnected factors, such as poverty, global inequality, oppressive gender norms, and restrictive migration regimes that force people to rely on traffickers to cross borders. In this view, demand for commercial sex is viewed as part of human trafficking but not as the single most important factor, and consequently, demand-focused policy measures will fall short of their goal.⁹ Simultaneously, opponents argue that the law entails a number of negative side-effects, particularly for those who sell sexual services, and problematise the idea of the SPB as an ‘apparatus’¹⁰ that can be transposed from one jurisdiction to another, without reference to context, including history, the legal framework and socio-political institutions.

In what follows, we draw on findings from the aforementioned study and on the debates relating to the proposed law in the NI Assembly and the Justice Committee as part of the promulgation process, as well as on media interviews with key policy-makers. We foreground the mitigating factors identified in these sources in regard to the SPB, in the context of the literature on the law reform process.¹¹ Those factors suggest that the law may not change the behaviour of 1) those who buy sex, 2) those who sell sex, and 3) that there are significant differences between NI and Sweden, most notably regarding the enforcement of the SPB in the jurisdiction arising from evidence-gathering. Our findings suggest that the law may have no impact on trafficking for the purpose of sexual exploitation in Northern Ireland. We conclude that the law was therefore less about implementing effective anti-trafficking measures than about a moral positioning in relation to commercial sex *per se*. Our focus here on the relationship between evidence and a law reform process moreover points to the manner in which evidence can be used and misused in the context of trafficking for the purpose of sexual exploitation.

The Context in Northern Ireland

Prior to the 2015 Act, practices in Northern Ireland relating to prostitution, such as soliciting and advertising of prostitution, were governed primarily under the Sexual Offences (Northern Ireland) Order 2008. The Sexual Offences Act (2003) included laws against trafficking and the Policing and Crime Act (2009) made it illegal to buy sex from someone who had been subject to force. The purchasing of sex, *per se*, was not however a crime.¹²

⁴ R Matthew, *Prostitution, Politics and Policy*, Routledge, Abingdon, 2008, p. 136.

⁵ In Northern Ireland, the offence of ‘brothel-keeping’ will continue to be applied to sex workers working together in the same place, meaning they can be charged with ‘brothel-keeping’. The Swedish law, in contrast, decriminalises the sex worker.

⁶ T Sanders and R Campbell, ‘Why Hate Men Who Pay for Sex? Investigating the shift to tackling demand and calls to criminalise paying for sex’ in V Munro (ed.), *Demanding Sex? Critical reflections on the supply/demand dynamic in prostitution*, Surrey, Ashgate, 2008, pp. 163–180.

⁷ See for example, A Erwin, ‘Sex worker Laura Lee’s challenge to new prostitute law put on hold’, *Belfast Telegraph*, 14 March 2016, retrieved 20 June 2016, <http://www.belfasttelegraph.co.uk/news/northern-ireland/sex-worker-laura-lees-challenge-to-new-prostitute-law-put-on-hold-34538217.html>

⁸ See for instance, J Nieme, ‘What We Talk About When We Talk About Buying Sex’, *Violence Against Women*, vol. 16, no. 2, 2010, pp. 159–172.

⁹ See for instance, C Vance, ‘States of Contradiction: Twelve ways to do nothing about trafficking while pretending to’, *Social Research*, vol. 78, no. 3, 2011, pp. 933–948; S Milivojevic and S Pickering, ‘Trafficking in People. 20 years on: Sex migration and crime in the global anti-trafficking discourse and the rise of the “Global Trafficking Complex”’, *Current Issues in Criminal Justice*, vol. 25, no. 2, 2013, pp. 585–604.

¹⁰ M L Skilbrei, ‘The Sex Purchase Ban in Sweden and Norway: Evaluating law-in-action’, Gender ARC NUIG/UL Seminar NUIG, Ireland, 11 September 2015.

¹¹ Ward, 2016; G Ellison, ‘Criminalising the Payment for Sex in Northern Ireland: Sketching the contours of a moral panic’, *British Journal of Criminology*, vol. 57, issue 1, 2017, pp. 194–214.

¹² See: E Hawthorne, ‘Women in Northern Ireland involved in Prostitution’, *Irish Probation Journal*, vol. 8, 2011, pp. 142–164.

Very little attention (academic and other) was paid to the sex industry or to sexual exploitation and up to ten years ago police in the jurisdiction did not consider trafficking to be a problem.¹³ Reflecting a global phenomenon, prostitution, linked to trafficking for the purpose of sexual exploitation, moved into public and political discourses in Northern Ireland in the last decade, led by a ‘powerful constellation of lobbying advocacy and faith groups’ working at a community and national level and affiliated to international movements.¹⁴

Maurice Morrow (Democratic Unionist Party), a member of the Northern Ireland Assembly and a creationist Christian, drew from this constellation in presenting his bill to the Assembly.¹⁵ It was sponsored by *Christian Action Research Education* (CARE), a conservative Christian lobby organisation that, for example, opposes abortion, same-sex marriage and divorce. As became evident in the public consultation process, the bill was fully supported by *Women’s Aid* (NI), an organisation that runs shelters for victims of domestic abuse and views sex work as violence against women. Support for the bill also came from neo-abolitionist activists in the Republic of Ireland, such as *Rubama*, a faith-based organisation working with ‘women affected by prostitution’ with the ultimate goal of facilitating women’s exit out of sex work, and the *Immigrant Council of Ireland*, the organisation that led the successful anti-prostitution campaign *Turn off the Red Light* in that jurisdiction.¹⁶

The Study

The study commissioned by the DoJ was conducted between April and August 2014 in time for consideration by the NI Assembly in October. The law was debated in the Justice Committee and in the Assembly between September 2013 and September 2014 and voted on on 20 October—just four days after the research report was circulated. Designed to understand the experiences and demographics of sex workers and clients, the research examined topics such as the relationship between sex work and trafficking and the likely effects of the SPB. The first baseline study of the sex industry in the jurisdiction, it provided quantitative and qualitative insights and drew on online surveys with sex workers (n= 171) and clients (n=446) and semi-structured interviews with sex workers (n=19), clients (n=10), officially identified victims of trafficking (n=2), and law enforcement and service/providers in the field (n=18).¹⁷

The study showed that the Northern Irish sex industry differs from other European contexts in some regards. There is very little street-based sex work in Northern Ireland, with a total number of around 20 people selling sex outdoors. Sex work is predominantly advertised online and arranged via phone. Sex workers meet clients in their own apartments, in hotels, in the client’s home or in so-called ‘houses’—small brothels run by an agent or booker, with usually only one or two sex workers present at the same time. Similarities to other locations across Europe include the high percentage of migrant sex workers (around 65%), particularly from within the European Union (EU). The majority of sex workers work independently (85% of respondents in the online survey). It is generally new migrants who work with an agent or another third party who keeps part of their earnings in return for managing bookings, travels and accommodation, as they are more likely to lack the language and organisational skills and necessary knowledge to work independently. Our research suggests that the majority of migrant sex workers working with/for a third party were aware that they would be working in prostitution before moving; nevertheless, they were vulnerable to exploitation and abuse. Sex workers described threats and violence from agents, deception regarding working conditions and payment, and not being protected from violent and abusive clients.

Some of the incidents described by sex workers might qualify legally as trafficking. Police records report 26 confirmed cases of trafficking for sexual exploitation in Northern Ireland between 2009 and 2014, including three British/Irish nationals who were trafficked internally. In our online survey, 3% of respondents (n=3) stated that they had been trafficked at some point. These numbers, in combination with our findings from interviews with sex workers, police officers and service providers, clearly indicate that the majority of people working in the Northern Irish sex industry are not victims of trafficking.

¹³ R Dudley, ‘Crossing Borders: Preliminary research on human trafficking in Northern Ireland’, *Women’s Aid*, Belfast, 2006.

¹⁴ Ellison, p. 6.

¹⁵ For a detailed discussion of the arguments presented by policy-makers in support of the bill, see: S Huschke, ‘Victims Without a Choice? A critical view on the debate about sex work in Northern Ireland’, *Sexuality Research and Social Policy*, vol. 14, issue 2, 2017, pp. 192—205.

¹⁶ E Ward, ‘The Irish Parliament and Prostitution Law Reform: A neo-abolitionist shoe-in?’ in E Ward and G Wylie (eds.), *Feminism, Prostitution and the State: The politics of neo-abolitionism*, Abingdon, Routledge (forthcoming 2017).

¹⁷ For more details on the methodology and ethical considerations, see: S Huschke *et al.*, *Research into Prostitution in Northern Ireland*, 2014, pp. 16-34, retrieved 14 December 2015, <https://www.justice-ni.gov.uk/publications/research-prostitution-northern-ireland>.

This paper draws on findings from the study, complemented by reflections on the research and dissemination process and an analysis of the public debate around the SPB. We investigated how research evidence was discussed and used (or ignored) in the public debate, based on the publicly available proceedings of the policy debate in the Northern Irish Assembly and the Justice Committee and media reports commenting on the proposed law.

Implementing the Sex Purchase Ban on the Ground: The views of clients and sex workers

In this section, we raise and consider two possible mitigating factors that emerged in the study—the attitude of the clients and of sex workers towards the proposed criminalisation—that might reduce the potential of the SPB to achieve its first goal in the chain of causality—its capacity to reduce demand for commercial sex in Northern Ireland.

The SPB: What the clients said

The sex purchase ban contained in Clause 6 is intended to prevent people from paying for sexual services out of fear of being arrested and sentenced to up to one year in prison or payment of a fine. Thus, the efficacy of an SPB requires, firstly, knowledge about the law and the implications of a transgression, and secondly, a compliant change in behaviour of the client. In relation to knowledge of the law, our client survey indicated that 36% of clients living in Northern Ireland either thought it was *already* illegal to pay for sexual services, or were not sure about the legal status of the act. In other words, over one-third purchased sex regardless of its legal status even in a context of significant media coverage of the proposed SPB in the year before our study was conducted. Moreover, many clients do not inquire about the legality of paying for sex before they engage in it for the first time. Knowledge about the legal context is, if at all, acquired over time by talking to sex workers or reading about it in internet forums. We furthermore found that the majority of clients would not stop paying for sexual services if it was criminalised, as Table 1 below shows, but would try to ensure that they were not detected. In our survey, respondents could tick multiple boxes in reply to this question (e.g. being more careful *and* doing it less often).

Table 1: What would you do if paying for sexual services was illegal in Northern Ireland?

I would....	%
...only see the escorts/sex workers that I trust	42%
...be more careful	38%
... stop using sexual services in Northern Ireland	15%
... not do anything differently	13%
... do it less often	11%
... stop using sexual services altogether	7%

While responses to hypothetical scenarios do not necessarily indicate behaviour, and the lawmaker's intentions to promote the implications of criminalisation through public education could have an impact, the pattern is startling: the vast majority of respondents would not stop purchasing sex even if it was criminalised while only 15 per cent (68 respondents) would stop using sexual services in Northern Ireland.

The main reason for this apparent disregard for the legal framework might be that paying for sex was already 'felt' to be illegal. In the context of Northern Ireland's morally conservative society, commercial sex constitutes a taboo and is usually carried out in secret, so not much would change for clients.¹⁸ This was acknowledged by the Police Service Northern Ireland (PSNI). One officer commented during the oral consultations: '*the nature of our society means that people who use prostitutes are already taking a significant risk with their reputation*' and that it is therefore '*very difficult to determine what further impact this [Clause 6] will have on their behaviour*'.¹⁹

On the basis of these doubts regarding behaviour changes in those who pay for sex, it could be suggested that the SPB may not dramatically alter the numbers of those who purchase sex in Northern Ireland, or not significantly reduce the

¹⁸ For an in-depth discussion of clients' motives, attitudes and experiences, see: S Huschke and D Schubotz, 'Commercial Sex, Clients and Christian Morals: Paying for sex in Ireland', *Sexualities*, vol. 14, no. 2, 2016, pp. 192-205.

¹⁹ Northern Ireland Assembly, Committee for Justice (NIA CfJ), *Report on the Human Trafficking and Exploitation (Further Provisions and Support for Victims) Bill* (NIA 26/11-15), para 3116, retrieved 7 June 2016, <http://www.niassembly.gov.uk/globalassets/documents/reports/justice/report-on-human-trafficking-bill.pdf>

demand for commercial sex, though clients may change the ways in which they contact and meet up with sex workers in order to minimise the risk of being caught.

Our evidence from the online survey and interviews with sex workers suggests further mitigating factors discussed below.

The SPB: What sex workers said

While the new law casts sex workers as crime victims, and thus their collaboration is not *necessary* for prosecution (if there is enough other evidence available), their attitudes will contribute to availability, frequency and the conditions under which sex is bought and sold. In other words, the response of sex workers to the proposal is a factor in the law's implementation.

Of the 171 sex workers that took part in the online survey, only 2 per cent thought that criminalising clients was a 'good idea' and only 8 per cent thought it would reduce trafficking for sexual exploitation. This lack of support for the law from sex workers is mainly linked to their concerns about the negative side effects of the law in regard to their working conditions. During interviews with sex workers, we asked an open-ended question about how things might change if paying for sexual services was made illegal. Only 3 of the 79 comments (4%) referred to positive effects, such as a decrease in violent clients. Eight suggested that there might be fewer clients, but viewed this negatively, as it would reduce their income and threaten their livelihood. Instead, the majority of sex workers (both in the online survey and face-to-face interviews) felt that criminalisation would worsen their situation.

Sex workers worried that it would lead them to take greater risks, as they would have to be even more secretive about selling sex, e.g. not be able to work from the same (safe) premises but have to move locations frequently. Some thought it might increase the involvement of organised crime groups and 'pimps' who would benefit from their need to work in more hidden ways. They were also concerned that it would turn away some of their 'decent clients', forcing them to offer services to other, potentially violent, clients in order to make a living. Finally, sex workers stated that they would be less likely to report crimes committed against them or others to the police, because of fears of being arrested or being forced to reveal client details, thus further reducing their earning potential. As one sex worker put it: *'This bit about not criminalising the sex worker is utter rubbish—you cannot criminalise one half of an equation and hope that it doesn't affect the other half.'*

In addition, sex workers felt ignored by policy-makers and viewed the law as lacking an evidence-base, as illustrated below:

'Part of the problem with this is that I used to respect government and I used to think they did things because they really put a lot of information into learning about things and making real decisions based on real facts. They are not making any decisions based on facts. (...) I feel so disillusioned. Because they don't care about me, because they are not interested in what I have to say. It is not about whether it is right or wrong or whether anybody is getting hurt. It is all based on morals.'

Thus, our research indicates that both clients and sex workers may not support the law through corresponding change in behaviour other than adapting their modus operandi. Strikingly, sex workers feared its overall impact as being negative for them rather than positive.

Implementing the SPB in the Northern Ireland Context: The views of experts

In this section, we discuss evidence from our study supplemented by relevant contributions from both the DoJ and the PSNI to the consultation process, particularly mitigating factors related to the effectiveness of the law in Northern Ireland, as highlighted by these actors. While the DoJ's view was, from the start, that the ban was 'unworkable',²⁰ the PSNI, as we will see below, offered it a qualified welcome.

Doubts about the effects and effectiveness of the sex purchase ban

Both the DoJ and the PSNI argued during the consultation process that legislators promoting a policy transfer from Sweden needed to take local context into consideration. The DoJ pointed to the difficulties raised by the knowledge-

²⁰ H McDonald, 'Plans to reform Ulster prostitution laws are unworkable, says Justice Minister', *The Guardian*, 21 April 2014.

gap²¹ in relation to the sex industry in NI in the first instance and proposed the removal of Clause 6 from what was otherwise welcome legislation because there was ‘no evidence base available to back up the change being proposed’.²² The Department moreover argued for a separation of sex work from trafficking for legislative purposes and that, on foot of the pending research, legislators could return to consider prostitution at a later stage, a view supported by other witnesses such as Amnesty International (NI) and the Law Centre in Belfast, an organisation that works with victims of trafficking. However, the majority of Assembly members dismissed the distinction between these facets of the sex industry as irrelevant and argued that local context was not important in their deliberations.

In response to a DoJ official’s comment that while there may be international patterns in how the sex industry is expressed, local information was required, one Committee member argued:

‘Some of us do not need any research or evidence. For some of us the very principle of purchasing a woman is sexual violence, full stop. That is a principled position, and some people do not need to have an evidence base to come to the conclusion that men are currently empowered to continue to subject that type of activity upon women.’²³

Developing its argument for the removal of Clause 6, the DoJ made the case that a ‘bigger picture’ than criminalisation of demand was required when considering legislation. Moreover, Clause 6 raised the possibility of unintended consequences which could be contrary to its intentions. Exploration was needed of the possible negative impact of the ban on: 1) extremely vulnerable people who could become further removed from access to police and other forms of assistance, 2) the economic circumstances of those in the sex industry and their families, and 3) those who would choose to remain in prostitution including their possible exposure to riskier behaviour. Finally, legislators needed to know why people got into prostitution in the first place.²⁴

Both the DoJ and the PSNI voiced concerns about the law’s intention to protect sex workers. Our interviews with police officers for this study indicated that opposition to Clause 6 from within the PSNI was founded on its possible negative implications for sex workers. Echoing the views of sex workers that emerged in our survey, one officer commented:

‘There are concerns that we could put sex workers in a really difficult position that they’re not going to go to one central location and just remain there, they’re going to go out to the customer, because the customer’s going to be too scared to come to a brothel.’

Another officer stated that the fear of being incriminated in the offence of purchasing might push people in the sex industry further away from police protection and ‘away to the edges of society’.

Concerns about unintended consequences of Clause 6 were iterated by the PSNI during the Assembly’s oral hearings and constituted the basis for its qualified support. In the words of one officer:

‘[M]ost of the groups operating in prostitution into the island of Ireland, including Northern Ireland, come from outside the jurisdiction, and the legislation and the proposals may send a strong message. I am not sure how much of a deterrent it will be but at least it is a strong message (...). However there is a qualification in our own mind about the service and our relationship and contact with the rest of those who are prostitutes.’²⁵

In addition, the PSNI was not convinced by the evidence from Sweden on the impact of its law on trafficking for sexual exploitation. In an interview, a police officer in charge of collaborating with the Swedish police on international human trafficking explained:

‘Now, I’m not going to criticise the Swedes on the Swedish model, but they had no idea this was going on in Sweden. So we said, well listen, this crime gang from Romania are all based in your jurisdiction, you need to look at this crime gang. [But instead] there are significant resources against punters as opposed to seeking out the gangs involved in trafficking.’

This point was raised within the Assembly proceedings where a PSNI official told the legislators that ‘there is still a significant prostitution in Sweden. More so there is still a significant human trafficking problem in Sweden’.²⁶

²¹ This concern led to the commissioning of our research in the first place.

²² NIA CfJ, para 147.

²³ NIA CfJ, para 268.

²⁴ NIA CfJ, para 3489—3492.

²⁵ NIA CfJ, para 3045.

²⁶ NIA CfJ, para 3187.

However, turning again to local conditions, the PSNI offered the Assembly evidence to suggest that Clause 6 might not be enforceable in any event and it is to this evidence, captured in both our research and in the oral proceedings, that we now turn to for the final mitigating factor.

Problematic Policy Transfer: Critical differences between Sweden and Northern Ireland

During the public consultation, DoJ officials raised questions about the appropriateness of transferring a policy from one context to another given differences in the legal frameworks of Northern Ireland and Sweden. These differences were spelt out by the PSNI in the oral consultation and emerged in the interviews conducted during our research.

First, as a post-conflict society facing continuous levels of community violence, Northern Ireland's police resources are often stretched. One officer told the Justice Committee: *'We have to decide how to use our finite resources against the most serious harm visited on society.'*²⁷ The PSNI made clear that from its point of view, there were not enough resources available to conduct wide-ranging investigations into sex purchasing between two consenting individuals, and instead, policing would focus on high-end risk or on organised crime. In the words of one officer:

*'We envisage that, if the law was passed, prosecutions [of clients] may then flow. However, these would flow from major investigations that are ongoing into organised crime groups.'*²⁸

Consequently, the PSNI offered 'qualified support' for Clause 6 because of its potential to assist in serious crime investigations and prosecutions related to criminal gangs, not because of its impact on the sex industry in general. The PSNI officer was unambiguous in his comment to the Assembly:

*'We welcome the focus on victims and on what other legislative tools may be brought to bear on human trafficking and prostitution; however, our focus would be on organised crime groups.'*²⁹

A further mitigation, identified by the PSNI, was potential difficulties arising from differences in evidence gathering norms and legalities. In an interview, a PSNI officer explained that enforcement of the SPB in Sweden relies on 'sensitive intelligence gathering methods' such as telephone interception (i.e. listening in on the phone conversations between clients and sex workers), surveillance cameras in private apartments or hotel rooms and operations by undercover officers. In Northern Ireland, such tactics need approval from the authorities under the Regulation of Investigatory Powers Act (RIPA), and are meant to be employed only in cases of serious crime, including terrorism. An interviewed police officer commented:

'Our assessment is that in that scenario of (...) a non-trafficked girl conducting herself as a prostitute, and a non-controlling person who wants to buy a sexual service, then the consensual act between those two adults doesn't trigger the point of serious criminality, where we can use any covert tactics. Surveillance—you would really struggle to justify that as a tactic.'

The only other form of evidence that might allow prosecution of a client in cases of consensual sex between individuals, as opposed to organised crime and trafficking cases, is from the sex worker. As we saw above, investigations might not assume cooperation from sex workers.

Drawing together strands of differences between Northern Ireland and Sweden, a PSNI witness told the Assembly:

*'I think that we are starting out from a different base level of prostitution in Northern Ireland [compared to Sweden](...) However, we also have a different legal system, so because the law (in NI) will not allow them, we are precluded from some of the operations that the Swedes conduct.'*³⁰

A close consideration of the protracted debates produced during the law's promulgation within the Assembly is beyond the scope of this article.³¹ However, as we argue, a striking aspect of the promulgation process was the repudiation by the legislators of the need for locally grounded evidence, whether mitigating or otherwise, and the reliance instead on the exemplar of the Swedish law and a belief as to the appropriateness of its transfer to Northern Ireland. In response to a

²⁷ NIA CfJ, para 3084.

²⁸ NIA CfJ, para 3035.

²⁹ NIA CfJ para 3045.

³⁰ NIA CfJ, para 3241.

³¹ Ward, 2016; Ellison; Huschke.

comment from a DoJ official as to the impossibility of assessing the impact of Clause 6 on local conditions in the sex industry due to a lack of local knowledge, one Committee member stated:

‘It is a classic “knock it into the long grass” argument that Northern Ireland is very different from the rest of the world. The fact is that a lot of these traffickers are coming from other parts of Europe. A lot of these women are coming from places such as Romania, Bulgaria or Latvia, but we are different, so the classic way to get rid of Lord Morrow’s Bill would be to kick it into the bushes by saying that we need more research. What is radically different about Northern Ireland that is not already known through the thousands of studies that have been carried out on prostitution in the rest of Europe? What is so different about us that requires these studies?’³²

In a further brief exchange about the need for local knowledge, the Justice Committee chair queried why the Department needed to carry out any research in the first place given the ‘inextricable link’ between trafficking and prostitution.³³ Another Committee member, frustrated that the Department could not simply support Clause 6 without seeking further information, commented:

‘Clause 6 is vital to reducing prostitution and all of the things that go along with it—all of the sexual diseases, the murders and the beatings. Clause 6 is vital to protect these women. If you do not support it, the charge will be laid at your Department that it is supporting prostitution.’³⁴

Throughout the consultation process, the effectiveness of the law in Sweden was cited by its supporters as transferrable to Northern Ireland.³⁵ Swedish feminist and anti-prostitution campaigner Gunilla Ekberg, in her capacity as advisor to the Bill’s proponent Lord Morrow, told the Justice Committee during the oral evidence sessions that, based on its impact in Sweden, the law would work in Northern Ireland. Following this statement, Assembly members argued that the potential of Clause 6 was not contingent on local conditions or local attitudes and many referred to the adoption of such a ban in Norway, Iceland and elsewhere to support the case for transferring the policy to NI.³⁶ On the other hand, evidence presented to the committee regarding alternative policy measures to reduce trafficking and violence in the sex industry, such as the decriminalisation of sex work in New Zealand, was simply ignored. The law was enacted despite opposition from the principal institution tasked with its implementation, the Department of Justice, and a qualified welcome from the PSNI based on, *inter alia*, a belief as to the law’s utility in the jurisdiction in relation to serious crime only and not in relation to the majority of interactions in the sex industry which involve two consenting adults.

Proponents of the SPB furthermore relied heavily on the personal accounts of a small number of survivors of prostitution, who described the sex industry as inherently violent and supported the ban. At the same time, the experiences of current sex workers which drew a much more nuanced picture of the sex industry were dismissed as irrelevant or non-representative.³⁷ One committee member advised that evidence from ‘so called prostitutes’ collective groups’ be treated with extreme suspicion. It would be better, he said, to talk to prostitutes individually when they are ‘not being coerced by their pimps and controllers, rather than the so-called groups which are clearly front people’.³⁸

In the end, the Justice Minister suggested that the research he commissioned precisely to allow an interrogation of the Swedish law and its impact in NI was dismissed because the findings ‘portrayed the views of sex workers who had until then not been heard and because it destroyed a lot of the stereotypical imagery of prostitution’.

Conclusion

This article has sought to identify, from the research evidence of the study and from contributions to the oral and written consultation on the part of the PSNI and the Department of Justice, critical factors that might mitigate the impact of the sex purchase ban as a mechanism enacted to reduce both the sex industry in Northern Ireland and trafficking for the purpose of sexual exploitation.

We highlighted three mitigating factors: 1) many clients are likely to continue paying for sex, either because they are unaware of the laws around commercial sex, or because the sex purchase ban does not actually change the context for purchasing sex, as paying for sex was already felt to be ‘illegal’; 2) the majority of sex workers operating in Northern

³² NIA CfJ, para 268.

³³ NIA CfJ, para 293.

³⁴ NIA CfJ, para 370.

³⁵ Ward, 2016.

³⁶ Ward, 2016.

³⁷ Huschke, 2016

³⁸ NIA CfJ, para 3223.

Ireland do not support the law and may not cooperate with law enforcement; and 3) there are likely to be significant problems with its enforcement due to limited police resources and the improbability of undercover evidence gathering being sanctioned without the involvement of organised crime. These factors challenge both the appropriateness of an SPB in NI and its potential to work as an anti-trafficking strategy. Our predictions seem accurate in light of the fact that in the first year after its enactment, only one arrest was made under the new law.³⁹

In conclusion we raise two points. Firstly, following Wagenaar and Altink,⁴⁰ this article illustrates the generalised resistance to ‘evidence’ that characterises the promulgation of prostitution policy, made more complex when legislators turn their minds to the relationship between commercial sex and trafficking. There is no reliable evidence that the law works as claimed⁴¹ and witnesses in the consultation, not least of all the police force, challenged assumptions about the effectiveness of the SPB in Sweden. Regardless, its proponents were still untroubled about claims as to the success of the law in Sweden.

Secondly, more specifically, the adoption of an SPB in Northern Ireland was essentially meant to send a moral message about the unacceptability of commercial sex rather than to achieve progress in the fight against trafficking. Ellison makes the case that the legislation emerged from a classic moral panic and was driven by a particular local combination of Northern Ireland’s protestant community and radical feminists, with the former concerned to shore up feelings of collapse in its traditional value system.⁴² Hence, it was necessary for those in favour of the SPB to repudiate the need for and value of local research and to disregard the mitigating factors raised by the PSNI in relation to the implementability of the ‘Swedish model’ in Northern Ireland. It is notable that the PSNI’s identification of mitigating factors, especially the difficulty with the covert tactics required to gather evidence, did not make any difference to the eventual adoption of the proposal. It may be indeed that the Assembly members who voted for the adoption of the SPB were content with the PSNI’s view that Clause 6 might at least ‘send a message’, regardless of the actual effects on the sex industry. If this is correct, we can conclude that evidence regarding the actual effectiveness of the SPB is of little interest to the proponents of the ‘Swedish model’.

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³⁹ Ironically, three sex workers were arrested together with this one client. The women were charged with brothel-keeping (each other), exemplifying how little has changed for the sex workers that the ‘Swedish model’ is meant to protect. See H McDonald, ‘First arrest made under Northern Ireland’s new offence of paying for sex’, *The Guardian*, 5 November 2015, retrieved 16 June 2016, <https://www.theguardian.com/society/2015/nov/05/northern-ireland-offence-of-paying-for-sex-first-arrest>

⁴⁰ H Wagenaar and M Altink, ‘Prostitution as Morality Politics or Why It Is Exceedingly Difficult to Design and Sustain Effective Prostitution Policy’, *Sexuality Research and Social Policy*, vol. 9, 2012, pp. 279—292.

⁴¹ Huschke *et al.*, pp. 168—169.

⁴² Ellison.