



OIFIG AN AIRE DLÍ AGUS CIRT AGUS COMHIONANNAIS  
OFFICE OF THE MINISTER FOR JUSTICE & EQUALITY

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Chairman  
Joint Committee on Justice Defence and Equality  
Leinster House  
Dublin 2



25 September, 2013

**Report of Joint Committee on Justice, Defence and Equality on Hearings and Submissions on the Review of Prostitution Legislation**

Dear David,

I am writing to thank you and your colleagues on the Joint Committee for your report of 27 June last on hearings and submissions on the review of prostitution legislation.

There is a considerable level of public interest in this issue and clearly, a huge effort went into the public consultation process organised by the Committee.

However, before taking any further action, I feel it necessary to invite the Joint Committee to elaborate on some of its conclusions and recommendations.

The committee's core recommendation for legal reform is "a summary offence penalising the purchase of sexual services of another person by means of prostitution, or any request, agreement or attempt to do so". The committee further recommends that "it should at the same time be clarified that no offence is committed by the person whose sexual services are so sold".

Given its clandestine nature, I appreciate the great difficulty that necessarily arises in determining, with any degree of certainty, the extent to which prostitution in Ireland is engaged in voluntarily between consenting adults and the extent to which such activity is coerced by one means or another. The sharp divergence on this point in evidence given to the Joint Committee is noted. For instance, section 2.5 of the Committee's report records the very different views given in direct evidence by current and former prostitutes and states that the stark difference in their opinions was mirrored in written submissions to the Committee. I further note that academics who



gave evidence to the Committee referred to the factual deficit in terms of the quality and extent of information concerning the nature of prostitution in Ireland and the experiences of those involved in it. For that reason (among others), a significant number of academics and other experts who made presentations at the conference on prostitution hosted by my Department in October, 2012 were opposed to following the Swedish legislative approach.

From evidence given to the Committee, it seems that prostitutes or sex workers are not a homogenous group and that the same is true of their clients. Despite the wide spectrum in terms of the nature of prostitution in Ireland ranging from human trafficking for the purposes of prostitution to the purchase or sale of sexual services between fully consenting adults, the Joint Committee appears to be recommending a broadly applicable and indiscriminate offence. I am not suggesting, for one moment, that prostitution should be condoned. My concern is that, as legislators, we have to be careful not to over reach in terms of criminalising human conduct. In establishing criminal offences, legislators must be mindful of the legal and Constitutional rights of both victims and offenders. Consequently, I am obliged to ask whether the Committee considered the legal and Constitutional implications of an absolute ban on the purchase without, under any circumstances, a ban on the sale of sexual services.

For example, against the background of the knowledge deficit referred to above, the apparent blanket ban on the purchase of sexual services proposed by the Committee raises issues about proportionality. Would a total ban on the purchase of sexual services, tied to immunity from prosecution for the seller of such services, regardless of the conduct of the latter, meet a legitimate policy objective and critically, only go so far as is necessary to meet that objective? This proposed immunity for the seller would preclude the prosecution of, for example, a prostitute or sex worker who clearly initiated the transaction or is significantly older than a young adult who purchased sexual services and perhaps, for the first time. Does the Committee intend that immunity from prosecution should apply to an intermediary or pimp who sets up such transactions? If not, does the Committee see any difficulty with it being a criminal offence to act as such intermediary whilst exempting from criminal prosecution a prostitute who provides sexual service voluntarily as opposed to an individual acting under coercion?

A Swedish style offence in this jurisdiction would represent a fundamental departure from the principles of equality underpinning the existing offence of solicitation in the Criminal Law (Sexual Offences) Act 1993. This is a gender neutral offence and criminalises all parties to the transaction, i.e., the buyer, the seller and any third party involved (a pimp, for example). In addition, the penalty structure distinguishes between first and subsequent offences. The markedly different Swedish style offence recommended by the Committee would have to be justified having regard to legal and Constitutional principles in this jurisdiction. Would legislation with the social objective of reducing demand for prostitution, if it were to have the effect of abrogating a defendant's fundamental rights, including the right to equality before the law and a fair trial, be viewed by the courts as "wholly utilitarian", to use language from the Supreme Court judgement in the CC case? These are issues of crucial importance which have not been specifically addressed in the Joint Committee's report.

It is not clear from the Committee's recommendations, the Committee's views of the health issues and concerns raised before the Committee relating to introduction of the proposed Swedish model. I would greatly value your Committee clarifying its conclusions on this important aspect of the matter in the context of the submissions it heard and received.

I will, of course, be seeking the views of the Attorney General on the report but, in the meantime, would be grateful if the Committee could further explain the thinking behind its core recommendation.

Another recommendation of the Committee is that an offence of recklessly permitting a premises to be used for the purposes of prostitution should be introduced. However, the Committee's conclusions do not discuss this recommendation. I would appreciate it if the Committee would elaborate its views concerning the circumstances in which such an offence would be used, the proposed evidential burden for such an offence and the defences, if any, that would be available to an accused owner, landlord or lessor of property. To put it another way, in practical terms, what, in the Committee's view, would an owner, landlord or lessor of property need to do to avoid prosecution for such an offence?

Again, I would like to thank the Joint Committee for undertaking the public consultation process.

I look forward to hearing from you in due course.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Alan Shatter', is written over a horizontal line.

Alan Shatter T.D.

Minister for Justice and Equality





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**RE:** *Report of the Joint Committee on Justice, Defence and Equality on Hearings and Submissions on the Review of Prostitution Legislation*

Dear Minister,

Thank you for your letter dated 25<sup>th</sup> September last concerning the above Report, in which you asked various questions and made various comments, in respect of which you asked the Joint Committee to provide further elaboration on some of our conclusions and recommendations.

On behalf of the Joint Committee, I enclose below the relevant responses to the questions or comments raised in your letter.

**QUESTION/COMMENT:** *"... the great difficulty that .. arises in determining, with any degree of certainty, the extent to which prostitution in Ireland is engaged in voluntarily between consenting adults and the extent to which such activity is coerced by one means or another."*

**ANSWER:** Prostitution is by nature clandestine. However, it is not and cannot be completely hidden, as it is available to and reliant on access by clients or buyers of sex. Further, prostitution can be studied, and clear evidence based on such explorations was presented by academic researchers as well as investigative journalists. Their unambiguous conclusion was that prostitution in Ireland is organised and that coercion is present. The views of the journalists were further supported by the evidence of senior Gardaí to the Committee on 6<sup>th</sup> February 2013. We were also informed that the entry age into prostitution is very young, and that individuals younger than 18 are involved in commercial sex in prostitution in Ireland, despite all the prohibitions put in place.

Research indicates that prostitution further depends on migrant women of impoverished background, who nowadays constitute the majority of people selling

sex in Ireland. Therefore, when we consider the issue of 'consent' we remain mindful of the above. On the basis of the knowledge gathered, the Committee does not support the notion that contemporary prostitution is based on a relationship between consenting adults, which in turn compels us to act to strengthen the regulations in a different way.

See for example the evidence of Superintendent Fergus Healy, as follows: "Some of these individuals are associated with organised crime groups both in the jurisdiction and their countries of origin. It is highly probable that a large percentage of the monies generated from the industry is being redeployed into organised crime groups, domestically and internationally."

This comment raises an important point about the nature of 'consent.' Fundamentally, the Committee has discerned that there is a distinction between adult consensual sex and prostitution. The Committee's proposed legislation (as in the Swedish law) is not defining adult consensual sex as an offence. It is defining the buying of a person for the purpose of sexual gratification as an offence. The 'consent' of the person is obtained within the context of, on the one hand, a person who because of the need for money agrees to sexual acts which otherwise they would *not voluntarily* allow with that person and on the other hand a person with money who can demand the sexual acts of their choice. This is the commercialisation of sex as a product to be bought; it is not two equal individuals engaging in a mutual sexual experience. The approach recommended by the Committee removes consent as the defining factor in whether sexual exploitation and harm exist as it considers these to be inherent to the prostitution exchange regardless of the degree of consent.

The Minister's comment also raises an issue about the definition of 'coercion'. First, the vast majority of evidence presented to the Committee outlined how *coercion* is integral to the context of the lives of those who become involved in prostitution *prior* to entry. There exists a body of international and national evidence indicating severe poverty, child sexual abuse, early home leaving and homelessness in the early lives of those who enter prostitution. Therefore, the approach recommended by the Committee (as also contained within the Swedish approach) recognises this coercive context prior to entry and the circumscribed circumstances which pertain to the person's 'choice' in entering prostitution, therefore not criminalising the seller.

Secondly, in relation to other offences such as coercion, assault, violence and rape of people in prostitution by buyers or pimps; these are already offences in criminal law and should always be investigated and prosecuted as a serious crime; similarly in terms of pimping and procuring these are already illegal.

**QUESTION/COMMENT:** *"The sharp divergence on this point in evidence given to the Joint Committee is noted."*



**ANSWER:** While divergence existed on the point of view expressed to the Committee as to whether prostitution is voluntary or coerced activity, it has become abundantly clear that the vast majority of people presenting consider prostitution to be coercive and exploitative by its nature. In fact, one witness, herself engaged in prostitution and who argued that she did so voluntarily, suggested that the numerical expression of this divergence was over 80% versus less than 20%, the latter minority engaging in prostitution on a voluntary basis.

**QUESTION/COMMENT:** *".. section 2.5 of the Committee's report records the very different views given in direct evidence by current and former prostitutes and states that the stark difference in their opinions was mirrored in written submissions to the Committee."*

**ANSWER:** The Committee placed a particular value on the evidence provided by those individuals who had exited prostitution and have put some distance between their present life and their experiences in prostitution. They appeared not to have a vested interest in the outcome of the review of the law on prostitution; apart from their concern that others might be exploited through prostitution.

**QUESTION/COMMENT:** *"I further note that academics who gave evidence to the Committee referred to the factual deficit in terms of the quality and extent of information concerning the nature of prostitution in Ireland and the experiences of those involved in it."*

**ANSWER:** The Committee considered all opinions and submissions presented to us, including those from academics who have researched prostitution in Ireland. With all due respect to those academics calling for more research to be carried out, we were satisfied that the overwhelming majority of the submissions made were to the effect that the present level of knowledge on prostitution is sufficient to inform our review of the law in Ireland.

We note that this position reflects the opinions of the professionals who have dedicated time and efforts in recent years to study prostitution through academic and journalistic research methods. See further elaboration on this point at the conclusion of our response, below.

**QUESTION/COMMENT:** *".. prostitutes or sex workers are not a homogenous group and .. the same is true of their clients. Despite the wide spectrum in terms of the nature of prostitution in Ireland ranging from human trafficking .. to the purchase or sale of sexual services between fully consenting adults, the Joint Committee appears to be recommending a broadly applicable and indiscriminate offence."*

**ANSWER:** The Committee is aware that the individuals engaged in selling sex in Ireland are not a homogenous group. At the same time, many common features defining their profile have been established beyond any doubt: such as the fact that the

vast majority of them are migrant females and come from a disadvantaged background. As to buyers, we are satisfied that their profile has proven to indicate average to high levels of earnings, a good level of education and participation in a relationship of marital or other nature. Buyers represent a small minority of men in Ireland (Layte et al suggest around 6% have purchased sex), and we have come across no evidence suggesting that their act of purchasing sex is caused by any medical need. Given these distinctions in their social characteristics, and the evidence on the young age of entry into prostitution and the extent of coercion involved, we are satisfied that the legal approach we have recommended is justified and should not be characterised as indiscriminate.

Furthermore, the reduction of the demand for services of trafficked persons has been identified as a successful prevention strategy in international law. Conditional measures to reduce demand have yielded no results in Ireland, and the Finnish evaluation of a similar law shows that we cannot expect any success with time. At the same time, there is clear evidence that countries with regulated (legalised) and thus expanded prostitution tend to exhibit more frequent instances of human trafficking\*, and vice versa that reduced markets for prostitution indicate less incidence of trafficking, which naturally leads to the conclusion that the Swedish approach is helpful in tackling trafficking in humans.

\*Cho, Dreher, and Newmayer, <http://www.lse.ac.uk/geographyAndEnvironmentwhosWho/profiles/newmayer/pdf/Article-for-World-Development-prostitution-anonymouos-REVISED.pdf>

**QUESTION/COMMENT:** *“My concern is that, as legislators, we have to be careful not to over reach in terms of criminalising human conduct.”*

**ANSWER:** Many of the manifestations of the ‘human conduct’ of prostitution are already criminalised in Ireland. Laws have long existed prohibiting visible acts of loitering solicitation for the purposes of prostitution, alongside laws prohibiting the existence of brothels, living off the earnings of prostitution and the advertising of prostitution.

On this basis, we are confident that the committee recommendations do not represent significant change in objectives with regard to the overall phenomenon and the ‘conduct’ it involves. Rather the recommendations address the present failure of the existing legislation to deliver on the overall objective to reduce or prevent the incidence of prostitution.

The two main objectives of the 1993 legislation were to protect the public from the visible manifestation of prostitution, and to protect the vulnerable parties involved. The Committee’s recommendations in our Report would deliver on both objectives, and add a new far more important normative value and a message to future generations concerning the exploitative nature of prostitution.



Indeed, it should be noted that current Irish law and policy on prostitution tends to be based on a 'supply reduction' model; that is, the focus of law enforcement authorities is on enforcing the law against those selling sex, particularly those visibly engaged in the public sale of sex through street-based prostitution. The approach the Committee recommends, based on that adopted in Swedish law, would have the merit of tackling instead the demand for prostitution, through focusing law enforcement strategies on those seeking to purchase sex rather than those seeking to sell it. This approach has been shown in Sweden to have an effect on reducing demand for prostitution, and thereby the incidence of prostitution itself – in line with existing stated policy objectives for Irish prostitution law.

**QUESTION/COMMENT:** *"In establishing criminal offences, legislators must be mindful of the legal and Constitutional rights of both victims and offenders."*

**ANSWER:** The Committee has met with legal specialists, and in concluding its recommendations has been assisted by opinion papers produced by legal practitioners concerning the constitutionality of the offence recommended for introduction by the Committee.

The Committee is satisfied that its proposals do not offend the legal and Constitutional rights of victims and offenders. Further elaboration on this point is provided below.

**QUESTION/COMMENT:** *"...whether the Committee considered the legal and Constitutional implications of an absolute ban on the purchase without, under any circumstances, a ban on the sale of sexual services. For example... the apparent blanket ban on the purchase of sexual services proposed by the Committee raises issues about proportionality. Would a total ban on the purchase of sexual services, tied to immunity from prosecution for the seller of such services, regardless of the conduct of the latter, meet a legitimate policy objective and critically, only go so far as is necessary to meet that objective?"*

**ANSWER:** The Committee considered the legal and Constitutional implications of the recommended legislation very carefully. On hearing and reviewing expert evidence in the matter, the Committee concluded that there is sound legal and constitutional support for the proposition that to differentiate between the consumer of paid sexual services and the provider of such sexual services would be proportionate and would not amount to a breach of the Constitution or the European Convention on Human Rights.

In particular, introducing legislation which prohibits the purchase but not the sale of sexual services would not abrogate the rights to equality or to due process or a fair trial, provided the social purpose behind the legislation is made clear and can be substantiated sufficiently.



Article 40.1 of the Constitution provides for the right to equality. Arguments that the proposed legislation might offend this Article could not be based on direct gender discrimination as the legislation would be gender-neutral on its face; ie any purchaser, whether male or female, would be committing an offence by purchasing sexual services from any person, male or female. A claim of indirect gender discrimination may not seem to have much merit as it is objectively the case that more men than women purchase sexual services, and that the rationale is not to discriminate but to protect the vulnerable.

It might also be argued that there is a breach of the right to equality when one party to a transaction is seen as criminal, while the other is not. However, that argument does not take into account the fact that one party is seen as a victim of the other party's criminal act.

The role of the law in nominating one party as a perpetrator and the other as a victim has been recognised for some time. Prior to the judgment in *CC v Ireland* [2006] 4 IR 1, only a male could be prosecuted for the offence of unlawful carnal knowledge with an underage girl – this section was declared not to have been carried over in the 1937 Constitution by the Supreme Court on the basis that it did not provide for a defence of honest mistake as to age, and the question of constitutionality due to gender discrimination was not considered.

The offence was re-enacted essentially in the Criminal Law (Sexual Offences) Act 2006, in which it is an offence for any person to engage in a sexual act with a child under 17. However section 5 of the Act provides that a female child shall not be guilty of an offence by reason only of her engaging in an act of sexual intercourse.

This was challenged as unconstitutional discrimination by a boy who was charged, inter alia, with an offence of engaging in sexual intercourse with a girl under 17 in *MD (a Minor) v. Ireland*. Judge Dunne rejected his claim in the High Court (26<sup>th</sup> March 2010), stating that it was not unconstitutional for the legislation to distinguish between boys and girls. Dunne J. noted that the adverse consequences which flow from underage sexual activity fall to a greater extent on girls than boys. According to Dunne J., “*society is entitled to deter such activity and to place the burden of criminal sanction on those who bear the least adverse consequence of such activity.*” The appeal against this judgment was rejected by the Supreme Court (23<sup>rd</sup> February 2012). In upholding the constitutionality of section 5 of the Act, despite its apparently discriminatory effect, the Supreme Court held that:

*“54. In considering s. 5 of the Act of 2006, the State justified the legislation by a social policy of protecting young girls from pregnancy, by creating a law governing anti-social behaviour, i.e. under age sexual intercourse. This was a*

*choice of the Oireachtas. Even in a time of social change, it is a policy within the power of the legislature. The issue of under age sexual activities by young persons involves complex social issues which are appropriately determined by the Oireachtas, which makes the determination as to how to maintain social order. The Oireachtas could have applied a different social policy. But s. 5, the policy which they did adopt, was within the discretion of the Oireachtas, and it was on an objective basis, and was not arbitrary.*

*55. The Act, as set out earlier, makes both sexes liable for breaches of the offences created. However, s. 5 excludes the girl from criminal liability when the offence is sexual intercourse, but not for other sexual acts.*

*56. The Oireachtas made a choice, and such a legislative decision reflects a social policy on the issue. While the legislature could have enacted another social policy, it was an approach the legislature was entitled to take, it was an issue in society to which the legislature had to respond. The danger of pregnancy for the teenage girl was an objective which the Oireachtas was entitled to regard as relating to "differences of capacity, physical and moral and of social function", as provided for in Article 40.1 of the Constitution. The Court would dismiss the appeal and reject the claim that s. 5 of the Act of 2006 is invalid having regard to the Constitution."*

The Supreme Court held further that the provision did not offend the European Convention on Human Rights.

The *MD* judgment supports the Committee's response to the questions asked by Minister Shatter, namely that it is perfectly valid under the Constitution to enact a law that criminalises only the purchase but not the sale of sexual services. The Supreme Court in *MD* clearly took the view that the Oireachtas is entitled to deter activity it sees as harmful to society or to individuals, and to do so in a way which makes the criminal burden fall on one party – regardless of whether the legislation is being impugned on the basis of gender discrimination or indeed of the differential treatment of two individuals party to the same apparently consensual transaction.

The view that prostitution is inherently harmful and exploitative to those who are prostituted is a highly articulated one, with much research to back up this view. Having heard evidence from a wide range of viewpoints on the topic of prostitution and the different legal approaches which may be adopted, the Committee accepted this view. The evidence is particularly strong that most of those who enter prostitution do so with some kind of vulnerability (see eg the *SAVI Report*, Magee et al, Liffey Press, 2009); and that many are being pimped by a third party.

In short, the Supreme Court in *MD* made very clear that in certain social policy issues the courts will defer to the Oireachtas. The issue of prostitution is one such social policy issue.



**QUESTION/COMMENT:** *“This proposed immunity for the seller would preclude the prosecution of, for example, a prostitute or sex worker who clearly initiated the transaction or is significantly older than a young adult who purchased sexual services and perhaps, for the first time.”*

**ANSWER:** A woman engaged in prostitution who is older than the male client may still be regarded as vulnerable; and as a victim. This is a similar question to the question whether the immunity from prosecution under the Criminal Law (Sexual Offences) Act should only apply to those girls capable of becoming pregnant at the time of the consensual sexual intercourse. There is no requirement that all of the persons regarded as victims in law in fact come within the class of persons that the Oireachtas, in line with objectively justified social policy considerations, seeks to protect.

Furthermore, in the prostitution situation the decision to exempt the person who sells in fact has no impact on the person who buys. The person who buys is not a victim at all; whereas the 16 year old boy would be a victim of defilement if his sexual partner was 17 years or older. The distinction in the prostitution cases represents a cleaner divide than in the defilement cases.

Evidentially, it is nearly always the seller who initiates the transaction by advertising and proactively offering what is called a ‘sexual service’. For the Committee, it has been a conscious decision to recommend distinctly different approach to sellers and to buyers. The Committee has taken into consideration the background and the limited choice the sellers often have, and has proposed measures that are proportionate to their vulnerability. Our considerations have also been informed by recent successful An Garda Síochána operations in policing both on street and off street prostitution, where a clear commitment to protect those selling sex in view of their potential vulnerability has been adopted.

**QUESTION/COMMENT:** *“Does the Committee intend that immunity from prosecution should apply to an intermediary or pimp who sets up such transactions? If not, does the Committee see any difficulty with it being a criminal offence to act as such intermediary whilst exempting from criminal prosecution a prostitute who provides sexual service (sic) voluntarily as opposed to an individual acting under coercion?”*

**ANSWER:** The concept of prosecuting a pimp or intermediary could be addressed within the legislation. It is clearly part of a policy justification so to do. Indeed, the Committee does not recommend changes to the current prohibitions on the acts of procuring and pimping. Should such act be committed by a person who is also selling sex, such a person should be liable as currently provided. The immunity applies only

with regard to the act of selling sex. The Committee sees no difficulty with making this distinction and would emphasise again that the Supreme Court has ruled that the Oireachtas is entitled to regard one class of persons as necessitating protection, as with the sexual defilement law. The *MD* judgment supports the proposal that it is perfectly valid under the Constitution to enact a law that criminalises only the purchase but not the sale of sexual services. The Supreme Court in *MD* clearly took the view that the Oireachtas is entitled to deter activity it sees as harmful to society or to individuals, and to do so in a way which makes the criminal burden fall on one party – regardless of the differential treatment of two individuals party to the same apparently consensual transaction.

**QUESTION/COMMENT:** *“A Swedish style offence .. would represent a fundamental departure from the principles of equality underpinning the existing offence of solicitation.. This is a gender neutral offence and criminalises all parties to the transaction ... In addition, the penalty structure distinguishes between first and subsequent offences.”*

**ANSWER:** The Committee disputes that the proposed legislation would cause any breach of a defendant’s right to equality, for reasons already outlined. The perceived ‘inequality’ stems from the nature of the act of prostitution, where it is usually a vulnerable and impoverished woman who sells; and usually a better-off man who buys. The power imbalance in the relationship in each individual transaction is generally clear. In addition, the Committee heard from the vast majority of contributors to our hearings a consensus that the sellers of sex are in need of assistance to exit from prostitution, which was referred to as ‘harm reduction’. No harm reduction with respect to the buyers of sex was called for in the course of the consultations, which is another manifestation of the intrinsic inequality of participation that exists in prostitution. The recommendations of the Committee are gender neutral in nature and the summary offence we are recommending is gender neutral in nature. It would apply equally to a woman who purchased sex from a man; or indeed a man who purchased sex from another man. Finally, the penalty structure in the proposed legislation should distinguish between first and subsequent offences, as at present.

**QUESTION/COMMENT:** *“Would legislation with the social objective of reducing demand for prostitution, if it were to have the effect of abrogating a defendant’s fundamental rights, including the right to equality before the law and a fair trial, be viewed by the courts as “wholly utilitarian”, to use language from the Supreme Court judgment in the CC case?”*

**ANSWER:** First, for the reasons given above, the Committee rejects the argument that the proposed legislation would abrogate or breach a defendant’s constitutional rights to equality or a fair trial. However, in any event the ‘utilitarian’ argument may be distinguished in this case, because in *CC* the injustice was the criminalisation of a



'mentally innocent' defendant for the greater good of the protection of girls. In the case of a purchaser of sexual services, there is no question of being 'mentally innocent', as all persons are taken to know the law, ie that the purchase of sexual services is illegal. So in the case of a prosecution under the proposed prostitution legislation, the defendant would be fully mentally aware of what he/she was doing, would no doubt have a range of diversionary schemes available before court, have a real prospect of a DPOA and indeed at most face a fine as a first penalty. Therefore the utilitarian approach derided in CC would not be applicable here.

Any proposed legislation to criminalise the purchase of sexual services would focus on making a distinction between parties to a transaction that is rationally justified and proportionate to its objectives, namely the prevention of exploitation of vulnerable persons.

**QUESTION/COMMENT:** *"It is not clear from the Committee's recommendations, the Committee's views of the health issues and concerns raised before the Committee relating to the introduction of the proposed Swedish model. I would greatly value your Committee clarifying its conclusions on this important aspect of the matter.."*

**ANSWER:** The Committee heard evidence about health issues and concerns on prostitution from a range of speakers, and considered a range of different documents on this topic also. Having considered all the evidence, the Committee concluded that introducing legislation based on the Swedish approach would not pose any additional significant risks to health of those engaged in prostitution, or to their clients. Clearly, prostitution itself involves significant health risks to those involved, both the providers and consumers of sexual services.

An approach such as the Swedish law which has been shown to bring about a reduction in the incidence of prostitution could only benefit the health of all those involved, and be of benefit for public health generally.

The Committee further asserts that adopting a prostitution law based on the Swedish approach, which criminalises the purchase of sex while decriminalising those prostituted, would be compatible with an effective and appropriate response to the prevention and treatment of HIV/AIDS in Ireland. The Department of Justice drew specific attention in its Discussion Document to the Report of the UNAIDS Advisory Group on HIV and Sex Work (Dec 2011) – and the Committee's attention was also drawn to this Report by those who sought to suggest that health issues and concerns might arise in Ireland from any adoption of the Swedish legal approach. However, the Committee notes that the UNAIDS Advisory Group Report carries a disclaimer pointing out that the Report does not reflect official UNAIDS or UN policy on HIV or AIDS and prostitution.

Indeed, the Committee has been told that the UNAIDS Advisory Group members have had a clear record of taking a pro-prostitution position (that is, a position which favours the legitimising, regulating and legalising of the sex trade). This bias is evident in the report itself, which refers to pimps as 'managers' and which appears to assume that prostitution in and of itself is not harmful. The recommendations made in the Advisory Group's report should therefore be read in that context. Indeed, their recommendations largely draw on those made for all categories of vulnerable groups, including intravenous drug users and men who have sex with men. Further, the Report tends to focus on countries with higher prevalence of poverty, and of HIV/AIDS; and lower levels of healthcare services for vulnerable populations. In Ireland, there are extensive schemes and health services available to those engaged in drug misuse; to men who have sex with men; and to those engaged in prostitution, for whom sexual health screening, including for HIV, is available on a free and confidential basis through the HSE Women's Health Service, which has been in place for over 20 years. The prevalence of HIV among those engaged in prostitution in Ireland is far lower than in many of the countries upon which the UNAIDS Advisory Group Report is focused.

Finally, the Irish experience shows that criminalisation of prostitution does not necessarily form a barrier to the provision of accessible health services for both sellers and buyers of sex.

Currently, sexual health screening in Ireland is free, confidential and non-judgemental, and can easily be accessed by anyone involved in prostitution, whether selling or buying sex. This is the case, despite the fact that solicitation in street-based prostitution and brothel keeping are currently criminalised in Ireland – there is no suggestion that this criminalisation has acted as a barrier to those involved in prostitution having access to health services. Similarly, if a Swedish approach were to be adopted here – namely the partial decriminalisation of prostitution (by decriminalising the sale of sex) – there is no evidence to suggest that this would pose any barrier to accessing health services for those engaged in prostitution.

Therefore, as Ruhama has noted, the contentions, for example that criminalising the purchase of sex may involve risks to health, as put forward in the Advisory Group's Report, do not have a significant bearing when considering both the services available to at-risk groups and the discriminatory practices that impact negatively on their ability to access sexual health services in an Irish context.

**QUESTION/COMMENT:** *"Another recommendation of the Committee is that an offence of recklessly permitting a premises to be used for the purposes of prostitution should be introduced... I would appreciate if the Committee would elaborate its views concerning the circumstances in which such an offence would be used..."*



**ANSWER:** This offence would be drafted in accordance with current criminal law definitions of recklessness. A subjective test would be required, so that the owner, landlord or lessor of the premises in question would not be liable if they had not consciously adverted to the risk that the premises was being used for prostitution.

**QUESTION/COMMENT:** *“factual deficit”*

Finally, the Committee is concerned at a particular theme in the Minister’s letter that appears to be a prime concern of his, namely whether a factual deficit exists in our knowledge and information about the nature of prostitution in Ireland and the experiences of those involved in it. In particular, the Committee is concerned that the Minister may have accepted a view of some of the academics that the Committee has not accepted.

In particular, the Minister stated early in his letter: *“I further note that academics who gave evidence to the Committee referred to the factual deficit in terms of the quality and extent of information concerning the nature of prostitution in Ireland . . .”* Further on in the letter, he states further: *‘For example, against the background of the knowledge deficit referred to above, the apparent blanket ban on the purchase of sexual services proposed by the Committee raises issues about proportionality.’* This statement appears to indicate that the Minister has accepted the views of some academics and not the views/evidence of other academics.

The Committee would emphasise the need to distinguish between academic opinion and evidence-based research. Those academics who refer to a ‘factual deficit’ may be unaware of a host of other evidence presented to the Committee – particularly the increasing international evidence that indicates a direct corollary between the level of trafficking in a destination country and the size of the sex industry in that country.

Furthermore, those academics may not be aware of the evaluations of the German and Dutch models (outlined to the Committee) which clearly demonstrate that attempts to regulate/legalise prostitution have failed to deliver the desired improvements in the wellbeing of those involved in prostitution. These pieces of factual evidence influenced the Committee’s decision to recommend a *‘fundamental departure’* from current Irish law.

In relation to Ireland and the lack of research, there is always a need for further research. However, the Committee noted a host of evidence—from various types of research—that led it to making the recommendations that it did. The Kelleher et al research has multiple sets of data on the Irish sex industry and trafficking: case file analysis on victims of trafficking over an eighteen month period; health case files in the WHS; interviews with women and service providers; internet analysis; and all of these methods of data collection and research analysis were overseen by an advisory

board constituting the Department of Justice, the GNIB, key statutory agencies and NGO's.

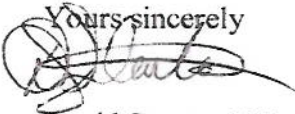
This research was further validated and complemented by evidence presented to the Committee by the Gardai, the Prime Time Investigation team and the AHTU figures on trafficking.

In light of the above, the Committee cannot accept the suggestion offered by the Minister that there exists a 'factual deficit' in terms of the quality and extent of information concerning the nature of prostitution in Ireland.

Coupled with the international evidence referred to above, and from our extensive review of the materials and evidence submitted to us, the Committee has discerned that now is an appropriate and necessary time to act in revising Ireland's laws with regard to prostitution, and to adopt the approach recommended, to criminalise the purchase of sex, but not its sale.

The Committee would welcome the opportunity to engage with you on these matters before the end of this year.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'David Stanton', written over a circular stamp or seal.

David Stanton TD  
Chairman

6<sup>th</sup> November 2013





2013/468

OIFIG AN AIRE DLÍ AGUS CIRT AGUS ATHCHÓIRITHE DLÍ  
OFFICE OF THE MINISTER FOR JUSTICE AND LAW REFORM

Mr. David Stanton T.D.  
Chairman  
Joint Committee on Justice Defence and Equality  
Leinster House  
Dublin 2

15<sup>th</sup> December, 2013

**Report of Joint Committee on Justice, Defence and Equality on Hearings and Submissions on the Review of Prostitution Legislation**

Dear David,

I am writing to thank the Joint Committee for its reply of 6 November to my correspondence concerning the above report. The committee's detailed and considered responses to the questions raised are of considerable assistance.

I have already requested the advices of the Attorney General and the views of the Minister for Health on the report. These are awaited and I am forwarding the Committee's letter to both to further assist with their deliberations.

I am happy to meet with the Committee to discuss this matter but I believe that meeting would be best left until after the Attorney General and the Minister for Health revert to me. Policy decisions by the Government must await their examination of the issues and each must have the opportunity to prepare considered views and advices.

In the meantime, given the level of public interest in this issue, I think it important that there is full transparency with regard to our correspondence. Accordingly, I would be interested in hearing your views on the possibility of the Committee lodging our correspondence, including this letter, in the Oireachtas library, or otherwise publishing the correspondence.

I look forward to hearing from you.

Yours sincerely,

Alan Shatter T.D.  
Minister for Justice and Equality



*Cuirfear fáilte roimh chomhfhreagras i nGaeilge*

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