



# SCOTTISH EXECUTIVE

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16 December 2004

Dear Consultee

## **BEING OUTSIDE: CONSTRUCTING A RESPONSE TO STREET PROSTITUTION REPORT OF THE EXPERT GROUP ON PROSTITUTION IN SCOTLAND**

The Expert Group on Prostitution was set up by the Scottish Executive in 2003 to review the legal, policing, health and social justice issues surrounding prostitution in Scotland and to consider options for the future. Throughout its first year, the Expert Group has been considering the issues surrounding street prostitution, and its stage 1 report has now been submitted to the Scottish Executive.

The Scottish Executive is seeking views on the proposals set out in this report. The report, and all other Scottish Executive consultation exercises, can be viewed online at <http://www.scotland.gov.uk/consultations>. (You can telephone Freephone 0800 77 1234 to find out where your nearest public access point is.)

The consultation period will last until Friday 18 March, and responses can be submitted in a number of ways:

- using the online response form on the Scottish Executive website at [www.scotland.gov.uk/consultations](http://www.scotland.gov.uk/consultations)
- by emailing your response to [prostitutionconsultation@scotland.gsi.gov.uk](mailto:prostitutionconsultation@scotland.gsi.gov.uk)
- or by sending your response to:

Ronnie Fraser  
Criminal Justice Division  
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St Andrew's House  
Edinburgh EH1 3DG.



We would be grateful if you could clearly indicate in your response which parts of the report you are responding to as this will aid our analysis of the responses received. A response form is available online, and a hard copy is enclosed with this letter.

We also need to know how you wish your response to be handled. Please complete and return the Respondent Information Form which forms part of the consultation response form as this will ensure that we treat your response appropriately.

We will make all responses available to the public in the Scottish Executive library by 19 April and on the Scottish Executive consultation web pages by 26 April unless confidentiality is requested in the Respondent Information Form. All responses not marked confidential will be checked for any potentially defamatory remarks before being lodged in the library or placed on the website. You can make arrangements to view responses by contacting the SE library on 0131 244 4552. Responses can be copied and sent to you, but a charge may be made for this service.

If you have any queries about this consultation, please contact Ronnie Fraser at the above address, or by emailing him on: [ronnie.fraser@scotland.gsi.gov.uk](mailto:ronnie.fraser@scotland.gsi.gov.uk).

We look forward to receiving your response.

Yours faithfully

**KIRSTEN DAVIDSON**

## The Scottish Executive Consultation Process

Consultation is an essential and important aspect of Scottish Executive working methods. Given the wide-ranging areas of work of the Scottish Executive, there are many varied types of consultation. However, in general Scottish Executive consultation exercises aim to provide opportunities for all those who wish to express their opinions on a proposed area of work to do so in ways which will inform and enhance that work.

The Scottish Executive now has an email alert system for Scottish Executive Consultations (SEconsult). This system allows stakeholder individuals and organisations to register and receive a weekly email containing details of all new Scottish Executive consultations (including web links). SEconsult complements, but in no way replaces, Scottish Executive distribution lists, and is designed to allow stakeholders to keep up to date with all Scottish Executive consultation activity, and therefore be alerted at the earliest opportunity to those of most interest. We would encourage you to register.

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body. Consultation exercises may involve seeking views in a number of different ways, such as public meetings, focus groups or questionnaire exercises.

Typically, [Scottish Executive consultations](#) involve a written paper inviting answers to specific questions or more general views about the material presented. Written papers are distributed to organisations and individuals with an interest in the area of consultation, and they are also placed on the Scottish Executive web site enabling a wider audience to access the paper and submit their responses<sup>1</sup>. Copies of all the responses received to consultation exercises (except those where the individual or organisation requested confidentiality) are placed in the Scottish Executive library at Saughton House, Edinburgh (K Spur, Saughton House, Broomhouse Drive, Edinburgh, EH11 3XD, telephone 0131 244 4552).

The views and suggestions detailed in consultation responses are analysed and used as part of the decision making process. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

If you have any comment about how this consultation exercise has been conducted, please send them to Ronnie Fraser at the address given above, or by emailing him on [ronnie.fraser@scotland.gsi.gov.uk](mailto:ronnie.fraser@scotland.gsi.gov.uk).

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<sup>1</sup> <http://www.scotland.gov.uk/consultations>

# Being Outside:

CONSTRUCTING A RESPONSE TO STREET PROSTITUTION

A Report of the Expert Group on Prostitution in Scotland

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A Report of the Expert Group on Prostitution in Scotland

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- those representatives of services tackling prostitution in the four Scottish cities visited, and at HMP Cornton Vale and at other locations, who have met with the Group and provided information and guidance;
- women with an involvement in prostitution who participated in research on behalf of the Group, and who have met with Group members to share their experience and ideas;
- those with knowledge and experience who have contributed to the work of sub-groups established from the main Group to examine aspects such as health service requirements, management and reduction of risks and the role of law;
- colleagues in the Home Office, who shared information from their own review of prostitution in England and Wales, and those who assisted Group members with information gathering in cities outwith Scotland; and
- Paul Silk, for his work in writing this report.

The Group would also wish to thank staff of the Scottish Executive for the considerable support and assistance made available to underpin its work.

### **Members of the Expert Group**

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**Kirsten Davidson**, Justice Department, Secretary to the Group from October 2004

**Allison Wood**, Justice Department, Assistant to Secretary

In 2003, the Minister for Justice constituted the Expert Group with the aim of considering the legal, policing, health and social justice issues surrounding prostitution in Scotland. The Group took an overview of prostitution and decided that its initial priority should be street based prostitution involving women. Therefore, the first part of the Group's work has focused on this. Subsequent stages will examine other important issues including indoor prostitution, trafficking and male prostitution, each of which requires its own focused attention.

The review has taken place against a background of a number of developments at local and national level. Political and social considerations have led to a growing interest in the concept of Tolerance Zones and in legislation to tackle kerb crawling. In addition we have seen the introduction and use of Anti-Social Behaviour Orders in response to perceived adverse effects of street prostitution. Internationally, there have been diverse initiatives tackling street prostitution from radically different policy directions.

The issues associated with street prostitution are emotive and challenging, and appear to be increasing in complexity. There is no simple solution. In analysing the practice of street prostitution, the Group has taken into account the consequences for both the individuals involved and the communities affected, and sought to provide pragmatic, workable proposals which could operate within a Scottish framework. For example, one of the Group's main conclusions has been that the concept of Tolerance Zones should be viewed not in isolation, but in a broader context of strategies aimed at making the problem more manageable.

The fundamental principles underpinning the work of the Group were to provide greater protection and support for women involved in street prostitution - many of whom have experienced poverty, high levels of physical and sexual abuse, and the additional problem of drug addiction - against the need to offer adequate protection to those communities which suffer from the serious and detrimental consequences of street prostitution.

I am personally indebted to members of the Group for giving so freely of their time, valuable expertise and support in developing constructive proposals to address this difficult issue.

Sandra R Hood OBE

Concern is rising regarding the incidence of prostitution in Scotland, the damage which results to those involved, the harm which can result to the communities affected and the possible association with a range of serious criminal activities, such as drug misuse and people trafficking.

The Scottish Parliament has considered this concern in the context of possible introduction of legally sanctioned 'management zones' – but the Expert Group was set up to examine and advise on all issues relevant to prostitution, rather than just this single aspect. The Group's task – spread over a three year period – has been broken into three elements: women involved in street prostitution (to whom this report relates) to be followed by women involved in 'indoor' prostitution, and then men involved in prostitution.

The Group gathered information and research findings relating to the UK, Europe and other countries comparable to Scotland; examined the current position in the four largest Scottish cities, Aberdeen, Dundee, Edinburgh and Glasgow; spoke directly to service providers operationally involved in work relevant to this field, and heard from women themselves involved, through meetings and through research commissioned for the purpose. The Group also shared information and ideas with the Home Office review which has been carrying out a similar examination in England and Wales.

Street prostitution is overwhelmingly an urban phenomenon, concentrated in the four large Scottish cities. The numbers of women involved are difficult to quantify, but informed estimates have been made for each of the four cities, which shows a total, Scotland-wide, of about 1,400 women involved, of whom about 180 are likely to be on the streets of the four cities each night. Each city has its own characteristics and problems with regard to the occurrence of street prostitution, and each has adopted different approaches to tackling the phenomenon.

Key common factors in street prostitution across Scotland were identified.

- Street prostitution is overwhelmingly a survival behaviour for the women involved, who have an accumulation of serious personal difficulties and few resources with which to develop a less damaging way of life.
- Poverty, drug misuse, and to a lesser extent alcohol misuse, are intrinsically linked to most street prostitution in Scotland.
- Redevelopment is affecting the context of street prostitution – and complicating the capacity to respond effectively.
- Service responses which are deployed need to be specific to the task of tackling street prostitution if they are to work.

There are a number of key common challenges:

- to safeguard women involved in prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution;
- to protect residential and commercial communities from the effects of soliciting and prostitution;
- to prevent children and young people who may be vulnerable to becoming involved in prostitution from taking that step;
- to influence the attitudes which lead to the abuse of women sexually and physically through street prostitution.

**Meeting these challenges was identified by the Group as the main objective which policy and service activity in this field should pursue.**

Any response will be multi-faceted because this set of objectives, of necessity, faces in several different directions simultaneously:

- addressing the needs of women involved or at risk of becoming involved,
- addressing the needs of the different communities affected, and
- tackling the attitudes which fuel the persistence of prostitution.

The way forward proposed by the Group is as follows:

1. A **national strategic framework** is necessary, requiring local identification of whether a need exists, action where evidence of street prostitution is identified, and setting out the core content of any local approach and the standards of service and principles of good practice which should be applicable.
2. Where evidence of need is identified a **local implementation plan** should be drawn up, involving the full range of local service interests. The plan should include a strategy for preventing the involvement of vulnerable people in street prostitution; early intervention measures with those beginning to become actively involved; services for reducing harm with those more deeply involved; arrangements for managing risk and nuisance; and services supporting women to exit street prostitution, prevent relapse and sustain non-involvement in prostitution.
3. Tackling street prostitution should be seen as a **corporate and multi-agency responsibility**. The local implementation plan must centre on women involved in street prostitution, but should also look beyond the individual needs of those women involved, or at risk, and should seek to ensure that the impact from redevelopment of areas traditionally used for street prostitution be managed, to reduce adverse effects arising from dispersal and loss of service access.
4. **Implementation** of the plan should be monitored at regular intervals against agreed targets and prescribed standards of performance.
5. Arising from the national strategic framework there should be a range of national and local initiatives, to **influence and educate public opinion** regarding the risks of prostitution-based sexual relationships and the abusive elements they contain.
6. **The law** remains the key means to ensure continued protection from exploitation through prostitution to vulnerable groups, including young people and vulnerable adult women. Effective enforcement of these aspects of the law should be a priority in the local plan.
7. **The law** should be reviewed with regard to soliciting. The changes would seek to ensure that the law should:
  - not criminalise on a moral basis;
  - address the imbalance between men and women arising from the present emphasis on the person soliciting, without reference to the potential purchaser of sexual services;
  - seek to reduce stigma which attaches disproportionately to the person soliciting as against the potential purchaser;
  - minimise the use of imprisonment for women involved in prostitution;
  - ensure continued protection to vulnerable groups, including young people and vulnerable adult men and women, from exploitation;

- provide effective protection to the general public from offensive behaviour or conduct;
- avoid any tendency to increase risk to vulnerable people and to communities through unplanned displacement; and
- provide a constructive legal framework to support the achievement of broader strategic obligations for tackling prostitution in Scotland.

A change is proposed, therefore, to replace criminalisation of soliciting *per se*, and replace this with a legal focus on offensive behaviour or conduct arising from a prostitution related sexual transaction – whether caused by purchaser or seller.

8. This approach would remove a need for specific legislative action regarding ‘kerb crawling’ – which could be policed on a basis of public offence under the new legal approach proposed. It would also amend the case for ‘management zones’ as a possible useful local strategy for focusing service delivery and managing nuisance arising from street prostitution. This would change from a case based on discretionary suspension of the criminal law to one which is within the law and can be considered and used in the right circumstances as part of the agreed local strategy.

### How would these measures meet the objectives defined by the Group above?

**Objective 1:** to safeguard women involved in prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution.

This objective is addressed by the following proposals:

- Introducing a national strategic approach, which requires constructive action to address street prostitution, informed by known best practice and meeting performance standards;
- Planning and implementing co-ordinated multi-agency action, where need is identified;
- Ensuring that local action is comprehensive – covering prevention, early intervention, harm reduction and exiting;
- Establishing corporate ownership at local level of the responsibility to promote personal and community safety in regard to street prostitution;
- Creating a legal context which facilitates constructive engagement with women involved in street prostitution, whilst continuing to provide personal and community protection against exploitation and offensive behaviour and conduct;
- Ensuring that the local plan response is continuous, monitored and effective.

**Objective 2:** to protect residential and commercial communities from the effects of soliciting and prostitution.

This objective is addressed by the following proposals:

- Ensuring that the law in relation to street prostitution focuses on offensive behaviour or conduct which might arise;
- Locating the community interest within the ‘managed process’ approach contained in the local plan, to ensure that it is properly recognised and reflected in the comprehensive approach. Management of risk and public offence arising from street prostitution will be one of the implementation plan requirements;
- Working to reduce levels of incidence of street prostitution and thereby reducing its impact.

**Objective 3:** to prevent children and young women who may be vulnerable to becoming involved in prostitution from taking that step.

This objective is addressed by the following proposals:

- Confirming the suitability of existing legal provision for the protection of children and vulnerable adults, but placing the use of the law in a context of structured prevention and early intervention measures to seek to ensure that the law is used pro-actively and effectively;
- Providing a requirement for effective prevention and early intervention services where the need is identified;
- Using the national strategic framework to identify and promote best practice in the prevention field.

**Objective 4:** to influence the attitudes which lead to the abuse of women sexually and physically through street prostitution.

This objective is addressed by the following proposal:

- Requiring the national strategic framework and the local implementation plan to progress measures for public information and education.

## **Structure of the Report**

### **Section 1**

This section describes the Group's remit and the background to its establishment.

### **Section 2**

This section describes the steps the Group has taken to inform itself of the current situation in the four Scottish cities most affected by street prostitution – Aberdeen, Dundee, Edinburgh and Glasgow – with regard to both prevalence and local responses. It has also familiarised itself with information, research and thinking from other parts of the UK, from Europe and from other parts of the world which are culturally comparable. A strong emphasis has been placed on hearing the experiences and views of women directly involved as well as those providing services to them.

### **Section 3**

Section three defines terms used in the report.

### **Section 4**

Section four demonstrates that street prostitution is overwhelmingly an urban phenomenon, concentrated in the four largest Scottish cities. The numbers of women involved are difficult to quantify, but informed estimates have been made for each of the four cities, which shows a total, Scotland-wide, of about 1,400 women involved, of whom about 180 in total are likely to be on the streets of the four cities each night. Each city has its own characteristics and problems with regard to the occurrence of street prostitution, and each has adopted different approaches to tackling the phenomenon. These are described and discussed in the report.

- Aberdeen has adopted a ‘managed zone’ based approach, which seeks to contain the incidence of street prostitution to a designated area and develop services which can deliver harm reduction and exiting assistance to the locality.
- Dundee has a low apparent incidence – and numbers do not justify a specific targeted response, although the low numbers are difficult to explain in a city where prevalence of drug misuse parallels the overall Scottish urban pattern.
- In Edinburgh there has been a history of trying to geographically contain the incidence with associated provision of relevant health and social care services. Redevelopment and residential pressures have undermined this approach resulting in a situation which is now fragmented and volatile, with limited service access for women involved, and increasing use of ASBOs in response to community safety considerations.
- Glasgow has a high incidence, which it is responding to through an explicit policy approach, development and co-ordination of a range of dedicated services and the harnessing of all relevant services in the city to the common objective of reducing harm and assisting exiting. Glasgow too, however is experiencing pressures arising from redevelopment and increasing evidence of soliciting in parts of the city previously unaffected.

## Section 5

Whilst the experience of the four cities varies in terms of scale and the nature of local approach being adopted, it is very evident, as shown in Section 5, that there are key factors common to each city situation:

- Street prostitution is overwhelmingly a survival behaviour for the women involved, who have an accumulation of personal difficulties and few resources with which to develop a less damaging way of life;
- Poverty, drug misuse, and to a lesser extent alcohol misuse are intrinsically linked to most street prostitution in Scotland;
- Redevelopment is affecting the context of street prostitution – and complicating the capacity to respond effectively;
- Service responses which are deployed need to be gender specific and focused on the task of tackling street prostitution if they are to work.

## Section 6

The Group identifies in Section 6 a need for a comprehensive, co-ordinated approach to address complex objectives:

- to safeguard women involved in street based prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution;
- to protect residential and commercial communities from the effects of prostitution;
- to prevent children and young women who may be vulnerable to becoming involved in prostitution from taking that step; and
- to influence the attitudes which lead to the high levels of sexual and physical abuse through street prostitution.

Any response must be multi-faceted because this set of objectives, of necessity, faces in several different directions simultaneously:

- addressing the needs of women involved or at risk of becoming involved,
- addressing the needs of the different communities affected; and
- tackling the attitudes which fuel the persistence of prostitution.

An approach is outlined based on a national strategy which requires identification of whether there is evidence of street prostitution in the local authority area, followed by local planned action when a need is identified. The national strategy also sets standards of practice to be pursued. The local planned action – which needs to engage all relevant services – should address the following main objectives: prevention of vulnerable people becoming involved, early intervention with those at highest risk, harm reduction for those who are involved and support to help them to exit street prostitution. The plan should also address the protection of communities and the consequences of urban regeneration. It should examine how to influence attitudes towards prostitution.

Linked to these measures to strengthen and co-ordinate policy and practice would be a review of law to complement the overall objectives.

### **Sections 7 to 10**

These sections set out in greater detail the recommended content of the local strategic plan, addressing:

- prevention,
- early intervention,
- harm reduction,
- exiting prostitution, and
- co-ordinating the process.

### **Section 11**

This section considers the legal position and proposes continued legal protection of those vulnerable to involvement in prostitution. It also proposes a review of the law on soliciting. The change proposed would replace criminalisation of soliciting *per se* with a focus on the offensive behaviour or conduct arising from a prostitution related sexual transaction – whether the offensive behaviour or conduct is caused by purchaser or seller.

The implications of this change are discussed both in respect of deterrence of ‘kerb crawling’ and with regard to the role of ‘managed zones’. The approach proposed would obviate the need for specific legislative action regarding ‘kerb crawling’ – which could be policed on a basis of public offence under the changes in law suggested. It would also amend the case for ‘management zones’ as a possible useful local strategy for focusing service delivery and managing nuisance arising from street prostitution. This would change from a case based on discretionary suspension of the criminal law to one which is within the law and can be considered and used in the right circumstances as part of the agreed local strategy.

# Chapter One:

INTRODUCTION

## INTRODUCTION

The Expert Group on Prostitution in Scotland was set up in August 2003 with a remit **to review the legal, policing, health and social justice issues surrounding prostitution in Scotland and to consider options for the future**. Group membership has been drawn from the legal and health professions, from academic institutions, from police and prison services, from local authorities and from voluntary organisations. The emphasis has been on bringing together representatives with operational or research experience in this field in order to ensure that consideration of this complex and challenging issue is well informed and soundly based.

In launching the Group, the Deputy Minister for Justice, Hugh Henry, said: 'Our ultimate goal is providing more effective support for helping women out of prostitution. I hope the Group will take this opportunity to explore all the issues that impact on us achieving that goal.' It was envisaged that the Group would have a life span of three years, and that its work would be divided into stages with regular reports to Ministers on progress. This report comprises the Group's first report to Ministers at the completion of the first year's work.

# Chapter Two:

THE GROUP'S APPROACH

## THE GROUP'S APPROACH

- 2.1 Prostitution, and the consequences which arise from it, raise complex and challenging issues. They also have significant moral and ethical dimensions. These affect several aspects of social policy and the criminal law. Perhaps most importantly, given the scale and persistence of prostitution as a social phenomenon, they challenge us to analyse our own attitudes and aspirations as a society, and examine practical, workable answers to dilemmas which have persisted over centuries and which, if anything, appear to be growing in extent and complexity. Because of this, the Group determined to use its projected three-year life span by dividing the task into parts.
- 2.2 In the first year of work the focus has been on women involved in street-based prostitution. This prioritisation derives from a sense that this aspect of prostitution is probably the one which is most visible, which may challenge the well-being and safety of communities most seriously, and which raises the most severe questions with regard to the safety and welfare of those people who engage in prostitution. In year two of the Group's work it is intended to focus on issues relating to prostitution which takes place indoors, such as sauna based activities or those who engage in prostitution and work from flats or brothels. Here the issues may be different from street prostitution, but there are clear concerns to be examined regarding exploitation of women and connections to organised criminal interests. Finally, the Group intends to address any remaining issues such as trafficking and issues relating to men who sell sex. Clearly this document is the first report of continuing work in progress – in that it constitutes one part only of the Group's full remit. Initial proposals are made to address more appropriately and effectively the phenomenon of street-based prostitution. These can be considered in their own right, but may also be subject to amplification and possible further refinement as the work of the Group progresses.
- 2.3 The methodology in year one has included the following main activities:
  - Visits to the four largest Scottish cities, Aberdeen, Dundee, Edinburgh and Glasgow, where the prevalence of street prostitution is most evident. During these visits, meetings were held with representatives of local authorities, police, health authorities, voluntary agencies and local communities who have experience and interest in addressing issues relating to prostitution. Where possible, group members met with women currently or previously involved in prostitution, to assist understanding of their perspective on how this came about, what their own experience of prostitution has been and how effective steps could be taken to move on from prostitution. In addition 'on site' observation took place of the ways in which street based prostitution is conducted in the cities, and visits were made to those services which are actively involved in tackling prostitution and its consequences.
  - Field visits were made to major comparable cities in the UK to examine experience and ideas relevant to the work of the Group.
  - The Group visited HM Prison and YOI Cornton Vale, and met with staff and with prisoners with experience of prostitution. This helped considerably in the analysis of the origins and persistence of prostitution and what strategies might be adopted to

tackle its effects, with particular attention to sentencing and the consequences of involvement in the criminal justice system

- An extensive search of relevant research and policy literature was made; Group members attended a number of conferences relating to policy and practice in working with prostitution; and meetings were held with academics and researchers with an interest and experience in this field.
- Sub-division of the Group took place to facilitate investigation of particular aspects relevant to street based prostitution including health needs and services, housing and accommodation needs and the role of drug misuse and how this might be tackled.
- Meetings were held and visits took place to examine other European approaches – particularly those in Sweden and The Netherlands.
- Research was commissioned from the University of Glasgow to analyse the women's own experience and perspective on how their involvement in prostitution developed and what might help them to progress out of prostitution.
- The work of the Group paralleled in time and topic a review being conducted by the Home Office of prostitution in England and Wales. While it has been important to keep clarity about the differences north and south of the border, the sharing of information and ideas between the two reviews has been helpful.
- In addition there is reflected in the composition of the Expert Group considerable knowledge and experience within this field from a range of professional perspectives, and this formed a firm foundation for the work.

# Chapter Three:

DEFINITIONS

## DEFINITIONS

- 3.1 Street prostitution is virtually self-defining. As the law stands it covers the act of soliciting in a public place for purposes of initiating a sexual transaction for reward (financial or 'in kind').

At various points in the report, reference is made to the vulnerability of those involved in prostitution. This should be taken as a broad definition of the types of factors which makes a woman vulnerable whilst involved in prostitution, rather than following any statutory definition of a vulnerable person. The types of vulnerability factors referred to are:

- young age,
- experience of family breakdown and being in local authority care,
- experience of sexual and physical abuse,
- suffering from mental illness or learning disability,
- having thought and judgement impaired through intoxication from drug or alcohol use.

To this should be added the desperation arising from poverty, homelessness and lack of feelings of self worth. For these reasons the Group considers street prostitution as predominantly a survival behaviour.

Children are defined as those under the age of 16 as is the current position in Scots law, although it should be noted that the law in England and Wales has recently extended the age at which a young person can be abused through prostitution from 15 to 17, in pursuance of international treaty obligations. In Scotland young persons aged 16 or 17 may also be subject to legal duties of protection or supervision if they were subject to a statutory supervision order at the time of their sixteenth birthday.

# Chapter Four:

THE CONTEXT OF STREET PROSTITUTION

*'How long will I keep working? I've stopped thinking about it... I just started living each day as it comes... I am 23 on Thursday..'*

Aberdeen Woman

(Quotations are derived from fieldwork undertaken on behalf of the Group in the four cities by Professor Neil McKeganey, University of Glasgow.)

- 4.1 Street prostitution is overwhelmingly an urban phenomenon concentrated in the four large Scottish cities. This is for a number of reasons. Cities are where the custom for bought sex is most likely to be found. Cities may be said to have some tradition of prostitution, perhaps reflected in one or more customary 'red light' areas. Within the busyness and anonymity of the city environment soliciting may be carried out in a way which, relatively, has less impact or effect on others round and about.
- 4.2 Equally, the 'precursors' which can contribute to a woman becoming involved in street prostitution – such as drug use, mental ill health, family breakdown and homelessness – are factors which tend to concentrate in urban areas. This means that the market, the working environment and the people vulnerable to risk of becoming involved, all tend to concentrate in cities. The extent of this is such that women not normally resident within a city will travel to the city to become involved in prostitution rather than do so locally.

*'I was in and out of foster homes. I practically brought my sisters up, till I got taken into a home. Once I was taken into a home they got taken into foster care as well and that's why I ended up blaming myself. I've been sexually abused by about eight different people. When I was growing up my uncle sexually abused me for eight years from the age of 2 to 10, and the thing is my parents know about it but because they were alcoholics they just ignored it.'*

Dundee Woman

#### 4.3 **Estimating the Numbers Involved in Street Prostitution**

The numbers of women involved in street prostitution in each of the four cities is extremely difficult to quantify. In part this is because the necessary research has not been comprehensively carried out. However, it must also be said that the evident fluctuations in numbers, which sustained observation by operational services in contact with street prostitution reveals, shows a major challenge to any research in this field. The numbers are perpetually changing – and any thorough counting of numbers may quickly fall out of date. Nevertheless more robust estimates than those presently available would greatly assist a strategic and operational response. The moving nature of the total numbers is partly because of the connection with drug misuse, and the movement (latterly, normally upwards) in the quantification of drug users in urban Scotland. It also relates to the fact that a woman's involvement in street prostitution may not be steady and sustained, but may be intermittent and variable in intensity. Numbers involved may also vary according to external factors such as police enforcement and availability of soliciting sites – with numbers involved rising or falling according to the availability of opportunity. Finally, it must be remembered that the total number of women who may from time to time be involved in street prostitution in a city will be very different from those who will be likely to be working the streets on any given night. It may be practical

therefore to think in terms of two numbers for each city – those likely to be out on a particular night, and those who are regularly actively involved in street prostitution from whom that number is drawn.

4.4 Despite these numerical problems, estimates can be drawn from each city. The numbers used are those provided by each of the cities themselves. These usually base on the operational experience of services such as the police and designated health and social services which have regular contact with women involved in street prostitution. Some conclusions may also be drawn from data on criminal convictions and criminal justice services, but these require to be interpreted with caution because of variations in policing, prosecution and sentencing practice. Reference may also be made to other data sources, such as caseloads of social work and addiction services locally. Where numerical estimates are made of numbers in each city these are the usual sources of information.

#### 4.5 **Aberdeen**

*'Aye you put yourself down for doing it.. it's just not the right thing to be doing. Everybody else gets a job and we're doing this.'*

*'If I didn't have a (drug) habit there's no way I would be doing this.'*

Aberdeen Women

In Aberdeen there are estimated to be 150 women regularly involved in street prostitution of whom 30 – 40 might be expected to be on the streets on an average night. Traditionally, the dock area has been the location where soliciting most frequently has happened, and the role of the city as a sea port, and latterly as the centre for the offshore oil industry, has provided a ready availability of male purchasers. The rapid growth of drug misuse in the North East of Scotland since 1995 has fuelled the numbers of women involved in prostitution. Despite there being evidence of significant cocaine use in the Aberdeen area, women involved in street prostitution predominantly misuse heroin as their main problem drug, in some cases combined with benzodiazepine and/or cocaine. Unusually in the Scottish context, there is evidence of women travelling from other parts of the UK to engage in prostitution in Aberdeen, although this appears to lean towards 'indoor' work in flats rather than street based work. This number includes some women known to travel from Edinburgh, displaced to a more stable environment by the events in the capital (see below). The apparent driver of this process, however, is also a sense of the available wealth of those involved in the oil industry, but interestingly, a frequent place of origin of women coming to the area is the North West and West Midlands of England, which are also associated with the drug supply routes to Aberdeen and its area. This may point to a link between drug supply and pimping, at least with some of the women – a conclusion which reflects the close connections described in Home Office guidance: 'Solutions and Strategies; drug problems and street sex markets' 2004.

4.6 A 'Sex Industry Forum' has been established in Aberdeen, operating within the framework of the city's Community Safety Partnership and including the local authority, Police, health authority and voluntary sector interests. Aberdeen has also developed a 'management area' for street prostitution in the city. This is seen as a pragmatic

contribution to community safety – with objectives of containing and reducing the level of incidence of street prostitution, reducing the harm to those involved and helping them to find a way out, while at the same time circumscribing the incidence of soliciting in order to limit the impact on communities more generally. Operationally therefore, the ‘management area’ is intended to:

- increase the personal safety of the women involved in street prostitution;
- safeguard the safety and well being of other women in the city centre by containing soliciting behaviour within a defined area;
- provide scope for targeting harm reduction and ‘exiting’ support services on women involved in drug use and prostitution and thereby breaking the cycles of repeated involvement in criminal justice processes.

All agencies involved in the development and operation of the area based approach emphasise that it does not indicate ‘toleration’ or legitimisation of street prostitution, but constitutes a pragmatic means of pursuing the three objectives. The consensus amongst agencies in the city is that there is an increasing firmness in the non-acceptance of prostitution, with a growing emphasis on finding ‘ways out’. Whilst the city council has not adopted a formal position on prostitution generally it seeks to link the street prostitution programme to the city’s developing zero tolerance initiatives with regard to male violence.

- 4.7 The ‘management area’ is predominantly commercial, adjoining the docks, with few residents, although it does incorporate access roads to adjacent residential areas. Within the area, police discretion is used to not routinely enforce legislation against soliciting. Women who become known to the police as involved in soliciting are invited to participate in a voluntary photographic identity scheme (to assist future identification) and are issued with a card indicating the legal and geographical parameters applicable to the area. The locality operates as a management area for soliciting purposes only and does not include toleration of public sexual behaviour nor of other forms of offending, which are strictly policed. The law regarding soliciting behaviour outwith the ‘management area’ is strictly enforced. Aberdeen Drugs Action, a voluntary agency which receives health and local authority funding, has operated for a number of years providing outreach work to the women in the area, providing harm reduction services such as condoms and needle exchange, and has now been funded to set up a drop-in facility adjacent to the area. The centre is intended to act both as a locus for the harm reduction services already provided and also a gateway for ‘exiting’ support through engagement with women and encouragement towards rehabilitative involvement.
- 4.8 A police liaison officer is dedicated on a part time basis to establish links with women using the area, to ensure its safe and appropriate use. This officer also liaises with the drop-in centre to ensure good operational links with the other services working in the area.
- 4.9 Within Aberdeen, perspectives on the area initiative to date might be summarised as follows.
- The area is working to provide a safer environment for women involved in street prostitution, and the liaison relationship with the police and other relevant services is developing positively.

- The area also ensures that enforcement against unwanted consequences of soliciting in other parts of the city centre can be better focused.
- The development of the area has also contributed to the evolution of clearer and firmer policies and practice towards reducing the prevalence of prostitution, based on non-acceptance of the phenomenon.
- Public consultations which have taken place on community safety strategies in the city have generally produced a measured and constructive response to the area based approach.

Less positively, the following factors have been identified:

- Resource constraints on all agencies involved have reduced the effectiveness of the area below its potential. Levels of police time for liaison work and patrolling in the interests of safeguarding of women and enforcement against other criminality are less than they would wish. Safety enhancement features such as improved lighting and C.C.T.V. coverage have not been introduced as wished. The location of the drop-in centre, outwith the 'management area', and relatively infrequent opening hours, are making it difficult to establish the required level of engagement with all women using the area, and there is a shortage of health and social service interventions which can assist with addiction rehabilitation – resulting in unhelpful waiting periods.
- Pressures are building on the viability of the current area location, partly because of resistance from some businesses within its boundaries, as a result of the impact on their employees, and from neighbouring residents who require to pass through the area. In addition there are regeneration proposals which are likely to increase the prevalence of residential developments within the area itself. For these reasons it is anticipated that the future of the area will be subject to continuing pressures for review.

#### 4.10 Dundee

In Dundee there are estimated to be 10 to 15 women sometimes involved in street prostitution of whom only 3 to 4 might be expected to be on the streets on an average night. Traditionally, the dock area has been the location where soliciting most frequently happened. The prevalence level of drug misuse in Dundee might lead to an expectation that numbers of women involved in prostitution might be higher than this. However, information from Tayside Police has indicated that numbers of women involved in street prostitution has steeply declined over a 20-year period to the current low numbers. Previous attempts by women from England to establish prostitution activity from flats, perhaps connected to drug distribution, as in Aberdeen, were disrupted by police activity and have not recurred. The limited amount of street based soliciting which does now occur has been confined to a small area of the city centre and appeared to involve a very small number of women. This area has been firmly policed in response to complaints as they occur, usually leading to referral for prosecution. The apparent small numbers mean that there has been felt to be no need to develop specific policy or operational responses to street prostitution in Dundee.

- 4.11 This situation in Dundee raises, for the Group, some tantalising questions. The situation in Dundee with regard to level of drug misuse, especially injected opiate use, is no less concerning than in the other large Scottish cities, and yet it seems to be the case that

women drug users in that city turn less to street based prostitution for income to support their habit (and the drug habit of partners) than do women in a similar position in the other three cities. A number of possible explanations are available for this difference:

- Prompt police intervention to disrupt the possible establishment of a pattern of street based soliciting including regular patrolling and use of C.C.T.V;
- Use of bail conditions in the event of arrest to prevent early recurrence of the offending, and arrest referral and court sentences as a means to try to tackle concurrent addiction problems in the event of conviction are also seen as necessary to the strategy. (Parallel strategies to tackle retail crime are in place to close down this alternative source of illegal funding for drug misuse.);
- Off-street prostitution may be more characteristic of the current position in Dundee;
- Anecdotally there has been some experience of women travelling from Dundee to both Aberdeen and Edinburgh to work in prostitution – and also men going from Dundee to the other cities to purchase sex. This, if accurate, may be indicative of some displacement as a result of effectiveness in police activity making Dundee an unattractive location for prostitution activity.

4.12 Interestingly, in July 2004, following the gathering of the above perceptions of the situation in Dundee a number of incidents occurred with increased levels of complaints to police at the quantity and the overt nature of soliciting and sexual behaviour occurring in an area of Dundee where street prostitution was previously less apparent and did not attract high levels of complaints. This appeared to have happened because of road re-alignment making the previously favoured location less accessible. The police have applied a strict enforcement approach to deal with this rise in complaints, in line with the strategy outlined above. This occurrence is interesting both because of its illustration of the effect of redevelopment on patterns of soliciting but also because it indicates the high level of community reaction which can be prompted by the relocation of even what is, by all accounts, a very low level of street prostitution activity.

#### 4.13 **Edinburgh**

*'Really I just feel dead. I go home and black it out.'* Edinburgh Woman

In Edinburgh there are estimated to be around 100 women sometimes involved in street prostitution of whom some 40 to 60 might be expected to be on the streets on an average night. In recent years the main locus of street based prostitution has been the Leith area. This being the dock area and, historically, an area of relative economic deprivation probably contributed to this. The significant transformations to Leith in recent years – changing from commercial to residential as industries declined, and ex-industrial areas converted to residential, and as the economic character changed to relatively affluent – placed pressures on the established pattern. In response to these pressures the police sought to 'shepherd' street prostitution into what has been termed a 'zone of discretionary prosecution'. Within this zone women involved in soliciting for prostitution would normally not be referred to the Procurator Fiscal in respect of alleged soliciting behaviour, although enforcement of other potential offences would be as normal. The area identified was one with less residential density and with a history of use by women for soliciting. This arrangement lasted for some 15 years until 2001. Within this area

SCOT-PEP, a voluntary organisation, received funding, predominantly from health service sources as part of HIV prevention strategies, to develop a drop-in facility. From this facility were provided harm reduction services, such as provision of condoms and needle exchange, and also a genito-urinary medicine clinic. From here also, engagement with women could be developed with a view to offering support towards disengagement from street prostitution. Outreach harm reduction services were also offered to women working outwith the discretionary zone.

Continuing redevelopment of the Leith area with a consequential increase in the level of complaints to police, regarding the conduct of women soliciting and their potential clients, compelled the police to review the existing arrangements. In 2001 steps were taken to relocate the 'zone of discretionary prosecution' to an area which was wholly commercial and industrial in character. This was done by introducing enforcement within the previously defined discretionary area and encouraging women to 'relocate' to the newly defined area. There was little consultation, either with women or with the commercial and community interests in the newly designated area, and opposition to the change from within the new area quickly developed, to the extent that before the end of 2001 the policy of discretionary non-prosecution was abandoned. This had the effect of dispersing soliciting women to wherever they felt they could appropriately and safely solicit. This quickly brought tension with local residential interests and resident organisations, who made clear the unacceptability of the harassment and other aspects of community impact which arose from the dispersal process. These tensions have been severe, with community vigilantes patrolling localities and provocation of incidents towards and by women involved in street prostitution.

- 4.14 In these volatile and fragmented circumstances it has become increasingly difficult to engage constructively with women involved in street prostitution. The drop-in facility is no longer located in the area frequented by women involved in street prostitution, and harm reduction and contact work has had to be carried out solely through outreach. Circumstances are making it difficult for staff to locate and engage with women, whose personal safety is significantly jeopardised by the isolation and lack of contact generated by the fragmentation. The increased tension and threats of violence have added to the risk to professional staff engaged in outreach work. This has resulted in erosion of the capability to provide constructive service to the women and consequential undermining of the funding base for SCOT-PEP, whose future is, at the time of writing, under serious threat as it is no longer in a position to deliver the full services for which funding was granted.
- 4.15 In order to try to contain the most serious community effects of the dispersal the City Council is now using Anti-social Behaviour Orders (ASBOs), in an attempt to prevent the alarm and distress caused to communities by soliciting, drug-taking and associated behaviours including threats of violence and drug dealing. However, the Council is also conscious that use of ASBOs may further fuel dispersal, and places women involved in prostitution at further risk of more and more serious involvement in criminal justice measures. At the time of writing this report ASBOs have been obtained, the future of harm reduction and exiting services is precarious, tensions between the conflicting interests continue and the future direction of street based prostitution in Edinburgh –

whether in relation to promoting community safety, protection of vulnerable women or support to exit prostitution – appears extremely uncertain. It is clear that agencies in Edinburgh are seeking leadership and guidance as to how the current complex predicament in the city might be resolved.

#### 4.16 Glasgow

*'I have to work. I don't want to come and stand out here. I need the money for my drugs.'*

*'It's not just the prostitution, it's the heroin as well that also de-sensitises you. You have to be a different person to come down here, do you know what I mean? You put on a bold front.. you have to be a totally different person just to cope with all this.'*

Glasgow Women

In Glasgow there are estimated to be 1000 to 1200 women sometimes involved in street prostitution of whom 80 to 120 might be expected to be on the streets on an average day or night. Despite there being evidence of growing cocaine use in the Glasgow area, women involved in street prostitution predominantly have heroin misuse as their main drug problem, in some cases combined with benzodiazepine and/or cocaine. Soliciting at night time has historically taken place within the area to the west of Central Station towards Anderston and this continues to be the main city centre location. Within the past 5 years there has been a significant increase in the volume of soliciting taking place within the Glasgow Green area in the east of the city (another traditional area for soliciting), and this has spread throughout the inner east end of the city in a number of core locations. Perhaps uniquely in Scottish cities, it is apparent that some soliciting takes place throughout the day as well as evening and night time, especially in the east end locations. The high number of women involved in street prostitution is partly explicable in that Glasgow is Scotland's largest city, but must also be attributable to the high levels of dependent drug use in the city. In addition, Glasgow is placed within a hinterland in West Central Scotland which incorporates Lanarkshire, Renfrewshire and Inverclyde, and Ayrshire – all areas with localised serious drug problems, but where there is a gravitation towards Glasgow, both to obtain drugs and to obtain the means to acquire drugs. Therefore, women involved in soliciting in Glasgow may well originate outwith the city but be drawn to it because of the opportunity to solicit in relative anonymity and with an availability of customers (who of course may themselves originate from outwith the city.)

- 4.17 Services in Glasgow for women involved in street prostitution had their origins in HIV prevention initiatives, including provision of condoms and needle exchange – initially provided through detached outreach work, but provided from an early stage (1989) from drop-in facilities located within the city centre area where soliciting most commonly occurred. Over the years four different locations have been used for this purpose, developing towards the current purpose designed facility near to Argyle Street called Base 75. Throughout this period, inter-agency co-operation has been strong, with the drop-in service from the start being a joint health and social work initiative working within a framework of close police co-operation. The police in Glasgow have never adopted a non-enforcement approach to soliciting but have policed in a way which responds to

complaints regarding prostitution-related concerns. It also recognises the public health benefits of not disrupting the contact between women involved in prostitution and public health and rehabilitative services, and not contributing to dispersal, which not only makes more difficult the management of the public health dimension of unsafe sexual behaviour and drug misuse, but also disperses the offending behaviours which accompany prostitution and drug misuse. Accordingly, without specific designation of a managed zone, dispersal had been limited and access to harm reduction services facilitated.

- 4.18 This stability continued until approximately 3 to 4 years ago when a rapidly growing emergence of street soliciting appeared in the east end of the city, initially in the vicinity of Glasgow Green, but quickly spreading to other parts of the inner east end. The main impulsion for this development came from a number of sources:
- high numbers of women working the city centre area – potentially reaching saturation levels;
  - emergence of a ‘new generation’ of women drug users, younger and more ‘driven’ to solicit at any time and nearer to their home area in order to finance a pattern of heavy and chaotic drug use;
  - this in turn has tapped into a pattern of purchasing where men will buy sex after night shifts and during breaks in their working day.

This emerging phenomenon, significant in scale, presents serious problems for services to establish access and engage rehabilitatively, given the geographical dispersal and the extended work-time patterns. Some outreach work has been undertaken to examine the nature and extent of need and how it may best be addressed, but at the present time this growth in numbers and areas affected is challenging services to find an effective response.

- 4.19 Glasgow has a number of service features unique to Scotland’s cities:
- The City Council has adopted a policy in respect of prostitution which defines prostitution as abusive of women and commits the City to work towards the elimination of prostitution, to promote joint working between relevant services to achieve this objective and to work collaboratively to reduce the harm occasioned by prostitution whilst this objective is being pursued.
  - The City Council has a working party with multi-agency composition with the remit of progressing these policy objectives.
  - The City Council was instrumental in setting up a thematic Social Inclusion Partnership (Routes Out of Prostitution) as a vehicle to progress the co-ordination of work and the development of new services which would contribute to the achievement of these policy objectives.
  - A service network has been developed, which addresses different aspects of this agenda and is increasingly co-ordinated towards the shared policy objectives. Some of these services have a broader remit than just the prostitution-related one, but contribute specifically to the strategy objectives. Others work solely to the prostitution remit. The service contributions fall into three main characteristics:

- i) preventive work, which includes the Social Work Service's Young Women's Project, and a focused education programme in schools, addressing the risks of drug use and prostitution;
- ii) harm reduction work, especially that at Base 75, which has joint health and social work participation and includes a comprehensive medical service, provision of condoms, needle exchange, structured methadone programmes, supported accommodation and engagement programmes intended to lead towards finding routes out of prostitution;
- iii) rehabilitative 'routes out' work intended to help women to stop their involvement in prostitution and sustain a lifestyle away from prostitution.

In addition, other related services, such as the city's addiction services and criminal justice services, including the dedicated services for women offenders (such as the 218 'Time Out' project provided through a multi-agency partnership, managed through Turning Point Scotland, and funded by the Scottish Executive through its criminal justice allocation to Glasgow City Council) contribute to the strategic prostitution objectives.

4.20 As with the other three cities, pressures are growing in Glasgow, in relation to the traditional 'red light' area, because of redevelopment work intended to regenerate the city centre. This is creating both high profile commercial developments and prestige residential facilities in what have been traditionally the areas where soliciting has taken place, with lower personal risk because of intensive policing and CCTV coverage. The redevelopments lead to increased levels of complaints and pressures to move women on, through intensive law enforcement. At present these pressures do not appear to have reached the levels experienced in Edinburgh, and dispersal has not taken place – other than the separate growth of soliciting in the east end. However it is not difficult to foresee growing intensity to these pressures, as the character of the city centre area changes.

#### 4.21 Summary

It will be seen from this that each of the four cities faces serious current and future issues regarding the incidence of street based prostitution within their boundaries. In particular the dilemmas to which policy and practice must respond are:

- how to safeguard women involved in prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution,
- how to protect residential and commercial communities from the effects of soliciting and prostitution;
- how to prevent children and young women who may be vulnerable to becoming involved in prostitution from taking that step; and
- how to influence the attitudes which lead to the abuse of women sexually and physically through street prostitution.

4.22 Each of the cities has followed somewhat different paths in tackling these challenges, and has experienced different degrees of success and failure in delivering outcomes on this agenda. Each has also prioritised differently on the level of resource which has been seen as feasible to commit to this work. To some extent these differences will be reflective of the different nature of the cities and different characteristics of the prostitution 'problem'. Nevertheless, despite differences of approach between the cities it seems unlikely that any of the four cities would disagree fundamentally with the four policy and practice dilemmas expressed above. Where differences might arise is in the tactics, the prioritisation of resources, the partnerships necessary and the timescales against which work will be carried out. However, to a considerable degree such differences are natural and reflect local conditions and local politics. The fundamental common ground in objectives is what the Group has identified and proposes should be built upon, to establish consensus on best practice through shared experience and ideas.

# Chapter Five:

KEY FACTORS IDENTIFIED IN STREET PROSTITUTION

## 5.1 Street Prostitution is a Survival Behaviour.

*'I used to have a plan that I'll do this and then I'll get better but it never worked out and now I don't have a plan anymore...it's like you are in a big black hole and there's no way out for you unless someone came to you with heaps of money and said you can get into rehabilitation.'*

Glasgow woman

Information gathered through literature review, research reports and city visits, as well as the direct operational experience of Group members has led to a number of conclusions as to the factors which cause women to become involved in street prostitution, which contribute to their continued involvement and which make it difficult for them to move on in their lives. For the great majority of women involved in street prostitution, their involvement is a search for survival. The main identified factors are:

- Misuse of drugs, and sometimes alcohol;
- Debt and low income;
- History of family breakdown, commonly associated with sexual and/or physical abuse and consequently being looked after through local authority social work services;
- Continuing physical and sexual abuse into adulthood;
- Poor educational achievement, poor employment history and lack of skills useful to employment;
- Mental illness or learning disability;
- Homelessness or lack of secure accommodation;

Whilst, of course, not all women will have experienced all these adverse factors, and it is possible that some will have experienced none – although this seems to be so rare as to be discountable – the reality is that the overwhelming majority of women involved in street prostitution have experienced clusters of multiple numbers of these factors.

For these reasons the Group is strongly of the view that street prostitution must be seen not simply as a lifestyle of choice, nor essentially as a sexual behaviour, but rather as a *means of survival* by people with accumulated personal difficulties and few resources with which to develop a less damaging way of life.

**This conclusion, more than any other consideration, is why the Group advocates later in this report a review of the criminal law.**

- 5.2 This analysis is also one strong reason why the Group believes that street prostitution should be seen as exploitative. It consists overwhelmingly of exposing vulnerable people to high risks. They are reinforced in seriously damaging behaviours such as drug misuse, and are at great risk of being drawn into deeper criminality and harm. Any response which, in the words of the Home Office consultation paper (Paying the Price, 2004) *'normalises the concept of street prostitution and pre-supposes its continuing existence'* requires to be questioned.

5.3 However these very same factors place an obligation to act in a considered, constructive and effective way. This is the thinking which has already led responsible agencies away from strategies based heavily on legal prohibition and towards strategies which base on reduction of harm, engagement with the person, rehabilitation and support to exit a damaging way of life. The Group favours this as a way to approach to street prostitution, albeit with clear legal involvement to prevent exploitation and to prevent nuisance and public offence.

#### 5.4 **Drug and Alcohol Misuse are Intrinsicly Linked to Most Street Prostitution**

*'No I can't see me stopping in the foreseeable future, not as long as I'm taking drugs anyway.'*

*'I'd say around 99% of the women down here are working to fund a drug habit'*

Glasgow Women

*'Every single girl in this street has a drug habit and if they tell you otherwise they're lying.'*

Aberdeen Woman

In the past 15 years in the UK the contribution of drug use in particular has grown to the extent that it is now unusual to find a woman involved in street prostitution who does not have a problem of serious drug misuse, sometimes allied to alcohol misuse. Drug use is predominantly injected use of heroin in all four cities, with an increasing pattern of polydrug use, certainly involving cannabis and benzodiazepines, but now also a small but growing tendency towards combined use of cocaine including its derivative, crack.

Funding a demanding and expensive drug habit, not infrequently combined with funding the drug use of a partner or friends, is the reason that a significant number of women turn to street prostitution. As well as being a contributory cause, drug use is frequently the means by which they give themselves a means of coping with, or masking the fear of, engaging in prostitution. This increases risk partly because it increases the frequency of drug misuse but also because it removes caution and self-protective behaviour as women work while intoxicated. The drug dependency also, of course, reduces the capacity to relate effectively to services and supports which could be of assistance in finding a route away from prostitution. **Impacting on drug misuse would therefore be an essential part of reducing the likelihood of becoming involved in prostitution, reducing the risk of harm once involved and facilitating an exit route away from prostitution.**

*'I was the first one in my family to take drugs, and now I've come down here. It's the drugs that done all the lassies down here.'*

Glasgow Woman

5.5 Alcohol misuse alone, traditionally a dominant factor in involvement in prostitution, now occurs more frequently in association with drug use, but should not be overlooked. It is part of the pattern of polydrug use which increases risk and adds to the complex of identifiable problems.

- 5.6 If coping with the demands of addiction is a core cause for involvement in prostitution, it is the association with experience of sexual abuse or physical abuse, or with low personal esteem, mental illness, learning disability or childhood disadvantage which makes the progression into prostitution a conceivable step for the woman. **Tackling the effects of these life experiences helps to protect against risk of involvement, and crucially is necessary to the rehabilitative process if continuing vulnerability to relapse is to be avoided.** Furthermore, the children of those who have drug problems and may be involved in prostitution are likely themselves to be experiencing childhood disadvantage which may heighten the risk of them also becoming involved as they grow up. In the longer term context of preventing further generations becoming involved, breaking the cycle by rehabilitative work with the parent is an essential contribution to lasting change.
- 5.7 Meeting practical needs is also essential both to prevention, reduction of harm and to rehabilitation. **Settled, secure accommodation; remediation of educational and training deficits; support towards employment; and achievement of personal aspirations must all be part of any strategy to break links between survival behaviour and involvement in prostitution.**
- 5.8 Understanding and addressing the personal needs of those women involved in prostitution is, however, only part of the picture. This is a complex and deep-seated problem, requiring solutions which deal with that complexity and do not evade the difficult issues. Amongst these other considerations are:
- attitudes which feed the continuation of involvement in prostitution, and behaviour which abuses and exploits vulnerable women;
  - women's poverty and lack of economic opportunities;
  - social attitudes and communities' responses which historically have failed to take the constructive and effective way referred to above. They have evaded responsibility and failed to deal with the structural factors. This has led to an increase in victimisation of the women involved.

The other key factors to an effective response to street prostitution must therefore be a purposeful strategy to influence attitudes to prostitution and sexual behaviour generally, and a socially inclusive approach, which tackles the problem without avoiding the issues or exacerbating the vulnerability.

#### 5.9 **Redevelopment of Cities is Affecting the Context of Street Prostitution**

Redevelopment and regeneration of cities is destabilising the equilibrium within which street based prostitution has existed as part of the activities in Scottish cities for many years. Redevelopment and regeneration are clearly desirable and important to the vigour and economic health of our cities, but its full impact needs to be recognised and managed. Without defending street based prostitution as a legitimate activity, it must be acknowledged that it has a long history as a 'survival' response to pressing personal problems, whether they be, as once was the case, poverty, debt and alcohol dependency or as is now overwhelmingly the cause, drug misuse associated with historical and current abuse. Each of the four cities has traditionally had areas identified over a long

period of time as 'red light' areas, often associated with dockland or non-residential city centre localities. Women turning to this 'survival' response would turn to these areas knowing firstly, that that was where clients would be found and secondly that, although they faced prosecution, there would be a historical precedent for where they were and what they were doing.

5.10 This relatively stable position is eroding for several reasons. Attitudes are changing and there is increasing recognition and concern that women are being forced into street prostitution as a problem solving recourse. A second reason is that locations protected by tradition are no longer available as city dynamics change. Attitude change and service interventions cannot impact quickly enough to replace dysfunctional problem solving approaches. Therefore, changes in community dynamics displace and disperse women, putting them out of service reach and increasingly at risk. This in turn frequently exacerbates the problems which some women seek to deal with through the damaging response of involvement in prostitution. The message of this has to be that any resolution of the problems of street based prostitution cannot be seen solely in terms of meeting individual women's problems or tackling the incidence of male clients' abusive behaviour. It must be given a context of addressing urban regeneration, and planning our cities, in a way which recognises the needs and the rights of *all* city users, and shapes the urban environment to help them in their use of the city – not to persist in harmful behaviour but to find their way out of that behaviour in their own time and in their own way.

#### 5.11 **Service Responses Should be Gender Specific**

Services to help women find their way out of drug misuse, offending and street prostitution will need to be different in key respects from those which may work for men. In devising service responses for women involved in prostitution service planners and commissioners should be aware of the growing acknowledgement that most current interventions in the addiction and criminal justice fields are designed for men – who historically have been the main service users in these fields. Experience presented to the Group by staff working with women in prison, and staff working with women in the community in projects such as '218 Time Out' in Glasgow, draws attention to potential factors of difference between men and women. These include:

- The pathway into drug use and offending is often different, with women more likely to be influenced by one or more personal relationships/partnerships.
- The influence of factors such as physical and sexual abuse is likely to be particularly prevalent with women.
- The criminal justice response is more likely with women to have to be orientated towards meeting personal needs than towards managing risk to others.
- Interventions for change with women which are based upon establishing personal relationships and using the relational content are more likely to be effective – rather than interventions based predominantly on learning.
- The complexity of women's problem inter-relationships needs to be understood and worked with in its entirety.

# Chapter Six:

MANAGING THE PROCESS OF RESPONDING  
TO STREET PROSTITUTION

- 6.1 The Group would define the strategic objectives to be pursued in relation to street based prostitution in the following terms:
- to safeguard women involved in street based prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution;
  - to protect residential and commercial communities from the effects of prostitution;
  - to prevent children and young women who may be vulnerable to becoming involved in prostitution from taking that step; and
  - to influence the attitudes which lead to the abuse of women sexually and physically through street prostitution.
- 6.2 Any strategic response will be multi-faceted because this set of objectives, of necessity, faces in several different directions simultaneously:
- addressing the needs of women involved or at risk of becoming involved;
  - addressing the needs of the different communities affected; and
  - tackling the attitudes which fuel the persistence of prostitution.

Equally, because the factors which lead women towards street prostitution and the behaviours such as drug misuse which underlie it are themselves complex and often relate to deep and intractable consequences of experiences such as abuse or family breakdown, the strategic response requires to be sufficient to cope with this complexity and intensity of personal need.

The task of influencing deep rooted social attitudes, such as an assumption of the legitimacy of sexual relationships based on power and abuse – while by no means impossible – demands careful thought, planning and sufficient intensity of implementation.

For these reasons, it is impossible to avoid the conclusion that single or quick solutions are not available – although there are measures which of themselves will contribute significantly to the objectives, such as the review of law proposed below. Unavoidably, complex problems are likely to require complex solutions. Furthermore, the responses need to interact purposefully one with another, rather than be in tension, and this requires a co-ordinated and a comprehensive approach. Whatever way forward is seen as appropriate, it needs to have a local relevance, because as the Group's experience has shown, while the four Scottish cities visited have much common ground, they also have significant variables, which will require local resolution. **These considerations lead the Group to conclude that a strategy to address street based prostitution needs to be based on a process which brings together a range of initiatives and activities in a co-ordinated whole and places the women clearly at the centre of that process.**

- 6.3 The first step must be for the Scottish Executive to set out a national strategic framework for tackling street prostitution which would bring the process into being. The framework will define the national objectives; provide guidance on how needs analysis will be carried out; set out what should comprise the core content of the locality plans which will be required of those local authorities where evidence of street prostitution is identified; and will set out principles of good practice which should underpin the plan

and its implementation. The Scottish Executive should also specify through the national framework – where need is identified – the core range of services which is acceptable for the purpose and the operational standards to which services in this field should comply. The framework would require each local authority to:

- carry out analysis (in accordance with guidance in the framework) to establish whether or not there is evidence of street prostitution within its area; and
- where evidence is identified, draw up an implementation plan for intervention to tackle the problem. This, in effect, would create for the local authority, where there is evidence of street prostitution within its area, a responsibility to produce, jointly with relevant local partners such as the police and health authorities, and also appropriate voluntary and community organisations, a plan (reflecting the national strategic framework) to pursue the objectives defined at 8.1 above. In commissioning local implementation plans the Scottish Executive should ensure that all areas for which there is a need, produce a plan. The responsibility should be on the local authority to justify that there is no requirement for a local implementation plan because of evidence of lack of need.

The main content of the implementation plan should include:

- a strategy for preventing the involvement of vulnerable people in street prostitution;
- early intervention measures with those beginning to become actively involved;
- services for reducing harm with those more deeply involved;
- managing risk and nuisance; and
- supporting women to exit street prostitution, prevent relapse and sustain non-involvement in prostitution.

The local plan should also look beyond the individual needs of those involved in street prostitution, or at risk, and should seek to ensure that the impact from redevelopment of areas traditionally used for street prostitution be managed to reduce adverse effects arising from dispersal and loss of access to services by women involved in street prostitution. Section 6.5 below covers the content of the plan in greater detail.

Development of the plan should follow the principles and practice of Community Planning to ensure proper connection between national and local priorities, and full engagement of relevant local community interests.

Implementation of the plan should be monitored at regular intervals against agreed targets and nationally prescribed standards of performance. The Group sees benefit in the establishment of a **national forum** to oversee the process of defining the strategy and monitoring its implementation.

- 6.4 The local implementation plan will require to satisfy Scottish Ministers that it has been drawn up in accordance with the national framework and is sufficient and appropriate to the task. It would be reviewable at intervals of three years. It should include implementation arrangements – which may be specific for this purpose or may be linked to the responsibilities of an existing appropriate implementation body such as a Drug Action Team. While there are likely to be resource implications arising from the plan – and these should be defined and costed as part of the plan itself – it should also maximise the contribution of existing services – such as those targeted towards drug

misusers, and services for women offenders – by harnessing them to the strategic action to impact on street prostitution. Similarly, the plan should ensure that other related strategic planning obligations – such as those relating to children’s services, addiction (community care) services and criminal justice services – each address the need to impact on street prostitution.

6.5 The local plan might be expected to cover the following main aspects:

- identification of young people at potential risk of becoming involved, and development of **preventive** engagement and intervention. Because there is a tendency for city areas to draw in vulnerable young people from the surrounding area this should require the lead authority to secure collaborative preventive commitments from neighbouring authorities who would have a duty to respond positively.
- ensuring **early intervention** with those young women who are being drawn towards involvement in street prostitution, whether because of drug misuse, the influence of associates, family breakdown, homelessness or whatever reason. Early intervention requires its own set of service responses (which may not be specific to prostitution and may include interventions to address other unwanted consequences of the causal factors described). The preferable way forward is likely to be one which works in a broad way with the young person’s growth and development needs, rather than specifically focuses on the single risk of street prostitution.
- engagement with women already involved in street prostitution in order to provide access to **harm reduction** services, including free provision of condoms, needle exchange, methadone substitution for opiate users and suitable accommodation for those without stable housing provision. Accessible health services (including mental health) are essential in view of the characteristic problems of poor health and lack of access to health and dental services which come with drug misuse and prostitution.
- engagement which has as its main target the progression towards **longer term intervention** to help a woman to move on from prostitution – which will include counselling, addiction relapse prevention and components such as accommodation, with support as necessary; building constructive social networks; and training and employment which act protectively against risk of relapse.
- **responding to the incidence of street based soliciting in a way which makes and sustains service engagement but does not lead to unacceptable levels of nuisance and risk to the wider community.** This *may* include provision such as ‘managed areas’ to assist risk reduction (through for example enhanced policing, use of additional lighting and C.C.T.V.), dedicated service access and moderation of community impact. If the proposals for review of the law in section 11 are followed such a measure would be for the reasons of nuisance management, risk reduction and service contact and **there would be no need for suspension of the criminal law in the area.** Similarly, nuisance arising from the behaviour of potential clients (e.g. kerb crawling) would be capable of being tackled through response to offensive behaviour and conduct rather than penalisation of the fact of seeking to purchase sex.
- development of a **corporate responsibility** within local authorities and between relevant agencies to tackle all the factors relating to street prostitution and not just the individual needs of those involved. This may, for example, include ensuring that local plans incorporate the explicit protection (or suitable replacement) of areas traditionally

used for soliciting until such time as no continuing soliciting behaviour can be evidenced. This should be seen as an essential component of the corporate process of responding to street prostitution and avoidance of dispersal.

- setting out **local proposals**, in conjunction with national initiatives, to influence and educate public opinion regarding the risks of prostitution-based sexual relationships and the abusive elements they contain.
- establishing an **implementation model** which integrates the participation of all relevant services as well as community interests.

The plan would set out timescales for achievement of objectives and these would be monitored through annual reporting and three yearly review.

6.6 To sum up then, the approach that is advocated by the Group may be characterised as follows:

- The Scottish Executive would draw up a national framework requiring local authorities to analyse the prevalence of street prostitution in their area, and where a problem is detected, to prepare a local implementation plan to respond to the range of issues arising, in conjunction with other relevant local agencies.
- The national framework will offer guidance as to the core content of the plan and advice as to principles of best practice to be followed in the plan.
- The local authority would convene a group of partners, including police and health interests, and probably also voluntary sector and local community representatives – including where possible representation of the women involved in street prostitution. This partner group would prepare the plan, identify resources for the implementation of the plan from partner agencies (as appropriate) and other suitable sources, and oversee the implementation of the plan.
- Scottish Ministers would endorse the suitability of the plan and implementation of the plan by the local authority would follow. The local authority would produce annual reports on the implementation and there would be an audit of progress and review of the plan every three years.

The four sections which follow identify the core components of a complete and well-structured programme of health and social care which could be seen as essential to a proper strategy for responding to street-based prostitution.

It should be noted that, to complement the introduction of this national framework and local implementation plan approach, the Group also sees a need for review of the law relating to street prostitution. **The objective will be to ensure that social policy, operational service delivery and the criminal law work harmoniously in pursuit of the goals** set out in section 6.1 above. The proposals with regard to the law are described in Chapter 11.

# Chapter Seven:

PREVENTING INVOLVEMENT IN PROSTITUTION

7.1 It is self evident that, if an effective, lasting impact is to be made on reducing the numbers of women involved in street prostitution in Scotland, not only must those currently involved be successfully helped to move away from prostitution – and stay away – but ways must also be found to stop progress of that nature being undermined by more women becoming involved. The preventive activity necessary to disrupt recruitment into street prostitution should be informed by what is known about the factors which influence the likelihood of a woman turning to prostitution. Overwhelmingly, this is dominated by drug misuse, but a combination of that and some or all of the following frequently influence women’s entry into street prostitution: untreated mental illness, family breakdown and experience of being looked after outwith the family; experience of sexual and physical abuse; under-achievement at school and lack of employment skills; exposure to unemployment; criminality as a cultural norm, insecure housing and low income. The characteristics which define the concepts of ‘social exclusion’ are very evident as associated with why women take this step. Preventive work needs to operate both at a general level and a specific individual level if these routes into prostitution are to be disrupted. The local plan (see 6.5 above) should therefore indicate the strategies in place to tackle aspects of social exclusion within the community generally (which will benefit those within this group who may be susceptible to turn to street prostitution) and the services which will target children and young women made vulnerable by risk factors such as those listed above. It is essential that preventive work relating to the risk of involvement in prostitution fits firmly within the context of existing national and local social inclusion strategies.

## 7.2 **Generic Community Interventions**

Continuing attention to strategies in the following areas – informed by evidence of ‘what works’ in terms of effective outcomes – will contribute to a comprehensive strategy of reducing risk of involvement in prostitution:

- support for vulnerable families to prevent breakdown, safeguard against intra-familial and external abuse and ensure a supportive developmental framework for children growing up. Key services include – pre-school care, home support for families in difficulty, parenting skills enhancement, robust protection against abuse, income maximisation (for families and young adults) and secure housing.
- positive experience of substitute care in the event of family breakdown, which, whether on the basis of possible family rehabilitation or more permanent substitute care is decisive, well planned and consistently reliable in its execution, and which continues into early adulthood, to ensure that developmental progression is sustained and well supported.
- education which is retentive and persistent in overcoming school resistance and school difficulties, which may be connected with the young person’s social or home circumstances.
- ‘education’ in a broad sense which offers social learning to young people in ways which enhance healthy development, addressing themes such as – sexual behaviour and sexual health, self confidence and self esteem, personal relationships, respect for others, gender equality, drug and alcohol misuse.
- increased access to further education, training and employment – including focused assistance for those most difficult to employ.

- inclusive and imaginative responses to young people who are ‘challenging’ – whether in the context of school, home, local community or the justice system.

### 7.3 Targeted Preventive Interventions

It should be noted that an emphasis in service design on being accessible and appropriate to the needs of young women (in the context of counteracting involvement in street prostitution) and which is retentive and persistent in the face of resistant or challenging behaviour will increase their effectiveness. Specific services which will contribute preventively include the following:

- drug and alcohol services able to work educationally to prevent misuse; or with experimental users; or with young people who use dependently;
- specific supportive services for children of drug and alcohol misusing parents (in a context of service provision also for the parent whose parenting abilities are compromised);
- confidential counselling and support services for young victims of abuse;
- child and adolescent mental health screening and response services;
- effective future needs assessment for young women with learning disabilities, connecting to services of additional support as required;
- continuing full-time education provision for children excluded from school or failing to progress in education;
- robust support for young people leaving care and other young people estranged from their family, including safe housing, training and employment support, personal support and mentoring and preparation for independent living;
- housing with support for young people living independently.

The capacity of services to deal promptly and constructively with crises (including out of normal working hours), to access short-term respite arrangements and to flexibly vary the degree of service engagement according to the needs of circumstances, will be integral to their effectiveness.

Many of these are, to greater or lesser degrees, likely to be priorities under existing children’s services strategies. Their specific capability to contribute to the objectives of preventing involvement in prostitution is therefore only one component in the case for effective services of this nature. However, a comprehensive provision of effective services with these objectives, which connect together and are properly case managed, would contribute fundamentally to the objectives of preventing gravitation towards involvement in prostitution.

# Chapter Eight:

EARLY INTERVENTION

- 8.1 Typically, a child or young woman for whom the risk of becoming involved in prostitution is becoming substantial or actual, will be demonstrating behaviour which will cause concern and bring her to the attention of health, social care or justice services, for more than just the reason of incipient involvement in prostitution. This may include:
- resistance to or exclusion from existing educational, health or care services;
  - known or suspected drug or alcohol misuse;
  - concerns about mental health;
  - offending or other high-risk behaviour;
  - withdrawal or exclusion from family contacts.

In addition, of course, services which are active in areas where street prostitution takes place will identify 'newcomers'. Indeed women themselves who are established in their involvement in street prostitution will often identify and seek to deter younger women – and certainly those under the age of 16 – who are attempting to become involved.

- 8.2 This point of early, experimental involvement in prostitution is one which should precipitate renewed work by all forms of services, both generic and specialised, to strengthen appropriate support, deter this course of action and substitute more constructive life alternatives. The significance of this point lies in the facts that it:
- signals a failure of previous preventive activity, if any has taken place, requiring a systematic review and amendment/strengthening of approaches as appropriate;
  - indicates a transition to a lifestyle with new and higher levels of risk of harm;
  - emphasises the potential process for further deterioration in circumstances if early action is not successfully taken; but
  - may constitute an opportunity to intervene effectively before more harmful consequences multiply. The close connection, for example, between drug misuse and prostitution means that intensification of one problem behaviour is likely to exacerbate the other, unless intervention can break the link or prevent the problem intensifying.

It is important that services which engage at this stage not only have the characteristics to engage and retain referred to in section 9.2, but also that they are physically separate and distinct from 'later' services which are working more specifically with women continuously involved in prostitution. This locates early intervention within the parameters of prevention and avoids the potentially stigmatising association with established prostitution.

- 8.3 In many respects, where the young person is already involved with existing preventive services, such as those dealing with addiction, health, education or transitional support when leaving care, then the preferred response to evidence of early involvement in prostitution may be to review and strengthen existing service involvements, perhaps, with additional services to strengthen the impact. This builds on existing working relationships without creating the tensions of establishing new relationships at a time when events may be tending to distance the young person from any involvement with helping services. On the other hand, it must also be recognised that a young person can 'outgrow' a particular service, in which case progression to different service engagements may be natural and appropriate. This judgement needs to be made in the

circumstances of the individual case and with knowledge of the available service options. All the services listed in section 7.3 above will be relevant in this context – with the addition of greater frequency of contact and more intensive interventions as required.

- 8.4 Central to the impact of an early intervention approach will be the capacity of services to work collaboratively. This will ensure that evidence of involvement in prostitution noted in one area of service – such as the police, courts or criminal justice services – informs and potentially strengthens the work being carried out in other services – such as addiction, housing or ‘leaving care’. This highlights the necessity of appropriate service networking.

# Chapter Nine:

REDUCING THE HARM

## 9. Reducing the Harm

*'How long will I work for? Till I can get a doctor who will take me on or until I die. I don't think I'll live past say...I'm 23 now...I don't think I'll live till I'm 25 if I keep going the way I'm going'*

Aberdeen Woman

- 9.1 The harmful consequences which often escalate as regular involvement in street prostitution develops have been alluded to frequently in this report. They may include:
- an increasingly chaotic lifestyle,
  - intensification of drug misuse and its associated problems and increased reliance on a criminal culture to finance and obtain supplies,
  - increased criminal justice involvement, including imprisonment, with consequential stigmatisation and adverse effects (e.g. a criminal record) on potential for rehabilitation,
  - loss of child and family contacts and responsibilities,
  - loss of secure accommodation,
  - alienation from family and community support,
  - physical health impairment,
  - mental health problems,
  - exposure to abuse and violence.

The objective of harm reduction services targeted on women involved in prostitution will generally be to address these consequences, which may be extremely serious and invariably complex.

- 9.2 At this stage the service model is likely to need to be increasingly specific to prostitution in order to facilitate access and appropriate service design. This may be achieved, at least in part, by better targeting and flexible use of existing service resources. Drug use problems and dependency, and the personal and social instability which are characteristic of increased involvement in prostitution, mean that services which seek to engage with women have to adjust their approach, location and operational hours, if engagement is to be made. Three other aspects of work with women at this stage need to be considered.

### **i) Ease of service access ('low threshold services')**

Firstly, the way in which a service is conducted should not be an obstacle to a woman's use of the service. Factors such as appointments and waiting times, travel to attend, daytime opening (when women may mostly work at nights), and identification and record keeping when women *may* prefer to use services in circumstances of anonymity, can all be deterrent factors to the use of the service. Of necessity, forms of identification and recording are often unavoidable and necessary to good practice, but as a general rule the terms on which the relationship between the woman and the service takes place needs careful consideration – and should be based on dialogue with the potential service users.

**ii) A key-worker relationship**

Secondly, whilst at first sight it may appear contradictory to a 'low threshold' approach, the development, where possible, of a working relationship between the woman using dedicated services and a nominated caseworker from within those services contributes to the establishment of a structure and programme to the work with the woman. Having a key worker helps to improve practice in a number of ways. It provides:

- a simple, uncomplicated point of contact for the woman should she wish to obtain information or raise issues;
- a single point of relationship to co-ordinate and connect what may be diverse and complex service networks;
- a single 'gateway' to mainstream services through advocacy and support,
- continuity of case management in circumstances where service engagement can be interrupted by episodes of imprisonment, hospitalisation or residential rehabilitative programmes;
- monitoring of service effectiveness, and adjustment of programmes from a single, objective case management perspective;
- emphasis on the important perspective that harm reduction is not an end in itself but should be seen as a step towards ultimate exiting from prostitution, rather than facilitating continued involvement in prostitution, albeit in a safer way;
- advocacy support through systems that can appear complex and hard to understand and navigate; and
- a stable relationship foundation to the work with someone the woman sees as reliable and trustworthy. Evidence of what works best for women in casework and rehabilitation contexts suggests that they respond well to a relationship-based approach (which is reliable and trustworthy).

**iii) Working with involuntary clients**

Finally, services need to adapt to a pattern of working with women from a client-centred perspective, if the difficult task of making and sustaining a constructive relationship is to be achieved. Some women will find it difficult to engage – even on this basis. In particular, if they are within a criminal justice context such as prison or a community sentence they may see themselves as involuntarily involved with services. Nevertheless, this relationship has to be seen as an opportunity to begin to tackle an agenda of meeting immediate problem-solving and harm reduction needs and paving the way for longer-term rehabilitative engagement.

### 9.3 Services which should be available as part of the dedicated harm reduction arrangements include:

- reduction in drug related harm through substitute prescribing (normally methadone as an alternative to opiate use and drug counselling) and needle and syringe exchange for those continuing to inject;
- provision of condoms;
- personal safety measures through provision of alarms, advice as to best practice and mutual self help between women on the streets (exchanging information and advice on people and situations which may constitute a risk);

- relief from the dangers and stresses of being on the streets, with availability of food and refreshment, as this is not only socially inclusive and a step towards engagement with services, it encourages communication and can counteract nutritional deficits arising from a drug centred way of life;
- advice, information and brief counselling (acknowledging that women's retention and comprehension may be impaired by intoxication while they are involved in street prostitution). Follow up arrangements for daytime can help this process. Typically advice may cover legal matters, child care issues, housing, relationships and preparing to exit prostitution;
- a range of housing and support opportunities to tackle homelessness, including housing advice, emergency direct access to supported accommodation and longer term supported tenancies;
- cross service connection and communication in the context of rigorous core planning,
- referral and advocacy to other helping services;
- health services (see 9.4 below);
- advocacy.

#### 9.4 Dedicated Health Services in Relation to Street Based Prostitution

9.4.1 A number of studies have examined the health care needs of women involved in street prostitution, and this knowledge has been reinforced by the operational experience of services such as Base 75 in Glasgow, which is a joint health and social welfare initiative targeted at women involved in prostitution and located within the main city centre location of street prostitution. The service has been operating in this way since 1990. Similar experience has been gained from the genito-urinary services provided through SCOT-PEP in Edinburgh – a service unfortunately suspended because of the problems besetting service delivery in Edinburgh at the present time.

9.4.2 This operational experience has raised significant concerns regarding women's general health, and their lack of access to mainstream health care services. Women seen through these services frequently have multiple health needs, which include:

- problems arising from drug/alcohol use;
- injury and infection related to drug injection;
- untreated mental health problems (which tend to have high prevalence in this group),
- sexual health needs;
- gynaecological conditions and genitourinary infections;
- physical injury from incidents of violence;
- dermatological conditions;
- dental neglect;
- other conditions arising from self-neglect, lack of treatment and lack of access to GP and primary health care resources.

Firstly, the case is strong, on human rights grounds, to target services towards a group of people, with high needs, but who otherwise find it difficult to access mainstream services which others take for granted. Secondly, services tailored to the needs of women involved in prostitution can be justified on grounds of cost effectiveness when they reduce

the need for further, more expensive, interventions later on, or when they limit infection spread in the wider community. Thirdly, there is a significant public health dimension to the provision of health care to women involved in street prostitution. Prostitution can provide an important potential environment for the transmission of serious infections – a risk which can be reduced by effective treatment and preventive measures.

9.4.3 As has been noted elsewhere in this report, a dominant factor in women's health condition is misuse of drugs – in particular heroin (which in a high number of cases is injected), but also cocaine and illegally acquired benzodiazepines. In connection with this drug misuse the main health service requirements are:

- substitute prescribing – normally use of methadone to replace heroin – linked to good quality drug counselling;
- needle and syringe exchange;
- treatment for skin problems (abscesses, burns, venous thromboses) connected to injecting, and infections and injuries arising from injecting into muscle tissue,
- hepatitis C diagnosis and treatment;
- a recognition that stabilisation of drug use can reveal previously unsuspected mental health problems for which drug use and its associated lifestyle can be construed as a process of psychological self-easement.

9.4.4 Among the other health care needs which can be identified are the following.

Monitoring, diagnosis and treatment availability are important to promote general health and maintain the situation that among women involved in street prostitution in Scotland there is a high reported rate of condom use with paying clients and rates of Sexually Transmitted Infections (STI) are not any higher than average Genitourinary Medicine (GUM) clinic attenders. Likewise, the rate of HIV infection is very low. However there are factors which threaten this picture. There is risk of STI infection from non-paying partners, with whom condom use is less consistent. Increased use of 'crack' cocaine impairs the capacity to negotiate for safer sex practice with paying clients. These heighten the risk of increases in infections as seen elsewhere in the UK, hence the importance of monitoring, screening and diagnosis to maintain the current low prevalence.

In addition to STI and HIV screening, gynaecological presentations include cervical screening with colposcopy referral for more detailed cervical examination; contraception and pregnancy testing, with possible termination referral in some circumstances; and treatment for genitourinary infections. Without normal GP access, involvement with mainstream healthcare providers is erratic.

Treatment is often required for untreated wounds and injuries, skin infections, and infestations such as scabies, which arise from self-neglect.

Sensitive diagnosis and treatment is also required for undiagnosed and untreated mental illness which increases risk of destructive behaviours, self-harm and suicide, as well as contributing to difficulties in motivation to progress their situation. There is a disproportionately high level of psychiatric illness in this group.

Dental treatment is required because of neglect resulting in pain, nutritional difficulties and low self-esteem.

- 9.5 An effective dedicated health service has to be able to deal with this range of needs, with a single door approach, located within the area which women frequent and open at the hours they are there. A number of barriers have been identified, through experience and research, which prevent women using services in an orthodox way:
- Involvement in street prostitution typically means soliciting at night and sleeping or obtaining drugs during the day, leaving little opportunity to access orthodox services.
  - A commonly observed background of low educational attainment, addiction problems, experience of sexual and physical abuse and poor family relationships result in low self esteem and social isolation. Fear of statutory services such as social work, health services and police, places most of the women among a group whose use of available services tends to be low anyway – without the added dimension of prostitution.
  - Homelessness makes it difficult to register with a GP and access mainstream services.
  - Drug use leads to fear of rejection by services, a perception of difficulty in gaining access to a GP and concerns about the role of statutory organisations.
  - A chaotic way of life and frequent intoxication leads to inability to organise for appointments, intolerance of waiting times, fear of stigma and discrimination when using services.
  - Lack of money makes it difficult to travel to treatment or pay for medication.
  - Fear of disclosure of involvement in prostitution, addiction and health problems may affect child care responsibilities or child access contact.

To overcome these barriers, services which are specific to women involved in prostitution, with staff experienced in their service needs and able to work within this challenging service environment, are necessary. A number of measures can be seen to work:

- a non-judgemental and inclusive attitude in service providers with predominantly female staffing;
- effective substitute drug prescribing (including continuity if hospitalised) with associated counselling;
- access hours and location which are suitable to the service users, with a single door approach and comprehensive health care availability. This could be through a permanently sited facility or mobile unit according to local circumstances;
- a key worker who can support the process of co-ordinating person-centred care and act as advocate as required;
- a gateway to other mainstream health service (with advocacy and support);
- crisis response capability;
- attention to mental health needs.

- 9.6 To summarise, the main health service components should include:
- primary care (GP) provision for those who do not have or do not access a GP;
  - STI/HIV screening;
  - contraception advice and provision;
  - hepatitis B vaccination and Hepatitis C screening;
  - substitute drug prescribing, with counselling, and needle and syringe exchange;
  - cervical cytology screening;
  - minor injury management;
  - mental health screening and rapid access to appropriate interventions;
  - dentistry;
  - health promotion advice and information (including diet);
  - screening and (fast track) referral with support to secondary healthcare, including: colposcopy, gynaecology, pregnancy care, mental health treatments, paediatrics.

Where possible the provision of necessary healthy services should take place within a framework of an individualised, systematic programme of care.

#### 9.7 **Harm Reduction Services Complementary to Health Care**

In addition to these health care services, there are a number of other services which should be available to complement the harm reduction approach – preferably provided from the same location, within the area where street prostitution takes place, and at similar times. These are:

- access to housing with support, including 24 hour detoxification support and emergency direct access accommodation;
- drug counselling which complements, and is intrinsic to, substitute prescribing programmes;
- access to legal advice;
- access to social work advice and childcare support;
- general advice, information and advocacy;
- support towards structured drug and alcohol rehabilitation and programmatic steps to exit prostitution;
- opportunities to develop personal skills (such as problem solving, dealing with anxiety, stress and anger) and social and practical skills.

# Chapter Ten:

EXITING

10.1 There are a number of key components in the process of exiting street prostitution. The combination of tasks being undertaken at any time, the order in which the various tasks are prioritised, and indeed whether or not the full range of tasks is applicable in all cases will depend entirely on the circumstances and needs of the particular woman. It is more than likely, however, that a woman with a history of prolonged or intensive involvement in street prostitution will have a complex range of needs, which require multiple service responses, with sustained support and advocacy. Above all there needs to be a clear 'care plan' worked out with, and centred on, the woman, indicating what needs to be tackled, in what order and with what service assistance. The complexity of cases can be such that the normally accepted sequence of care interventions may not be appropriate or useful. Flexibility of care-sequencing is therefore key to successful outcomes. Continued involvement of a key worker or 'care manager' will normally be necessary to ensure that the full range of required services is in place, that the care plan evolves as the woman responds, and that problems such as relapse or loss of service contact are dealt with promptly and appropriately. The key objectives must be to sustain an appropriate level of service until the goal of independent living is achieved, and not allow problems or lapse to lead to service disengagement. If lapse occurs it should simply lead to a change of service focus or intensity rather than disengagement.

Prominent among the tasks to be undertaken will be the following:

- Where there is a concurrent drug problem it needs to be controlled either by prescribed substitution or by becoming drug free.
- Stable, long term housing needs to be made available, with help and support as required to live independently and manage a home.
- Development of personal skills is important, including the development of an understanding as to how the past came about, and how it is being progressed from, undertaking the development of responsibility for oneself, managing money, taking responsibility for children or using access to children to best effect, structuring time appropriately and making purposeful use of free time.
- Developing constructive personal relationships is also essential, breaking negative associations and finding positive personal support networks.
- Having access to relapse prevention help is a prerequisite to good practice. Given that drug use may often have arisen as a way of helping women to deal with difficult intra- and inter-personal issues, it will be no surprise that both internal and external pressures to use drugs will at times be high. It is essential that the woman has the capacity to recognise these risks and has the support and help she needs when such an occurrence of relapse threatens.
- An alternative way of life needs to be developed, including, as necessary, remedying educational deficits.
- Training should be provided in employable skills, and assistance provided in finding and sustaining employment.

10.2 Service inputs which can help these processes may include counselling, support, advocacy, education and training along with mutual support and self-help activity among women with similar background or experience.

### 10.3 A Coherent Process

The four elements in the total process of tackling the needs of the individual caught up in prostitution (prevention, early intervention, harm reduction and exiting) are distinct activities, which should be self-standing (although prevention and early intervention can link closely together). The reason for this is that it avoids mixing women at different stages of the process – mixing continuing chaotic drug users, for example, with those who are trying hard to move on. If it is sensible to locate harm reduction services within the main areas of need, then to base exiting services there also would continuously draw women who are seeking to move on, back to the locality associated with drug use and prostitution.

Nevertheless, it is important that services work together in a co-operative and co-ordinated way and that the person designated as keyworker (for previously discussed reasons) remains so during the transition through all these phases. This will maximise their effectiveness and ensure relevant information is shared, access can be progressed in the best way and, in the event of relapse, the woman does not fall out of service contact but reverts to a previous form of service involvement.

For this to work effectively there needs to be not only the key worker case management approach described above, there also needs to be a clear and agreed strategic basis underpinning the work of the various service components, so that they complement and support one another. The strategy will also ensure that those other participants in the comprehensive local planned approach – such as police, planners, prisons and criminal justice services, work with statutory and voluntary sector health, social care and housing providers in a co-ordinated approach.

# Chapter Eleven:

JUSTICE ISSUES

### 11.1 Introduction

This section examines the application of the criminal law to street based prostitution in Scotland and compares this with the legal approach in other jurisdictions. It seeks to consider the effectiveness and the equity of the law in its approach to prostitution. The section also recognises that a number of recent proposals have been made to contribute to effectiveness and equity in the law in this field – including the penalisation of ‘kerb crawling’ and the controlled introduction of ‘managed’ zones where street based soliciting for prostitution could take place without criminal enforcement, and assesses the potential role for such measures. The section makes recommendations for changes in law based on the conclusions of these considerations.

### 11.2 Background

The approach, in law, to prostitution, and street-based prostitution specifically, varies significantly between the legal systems in European and Commonwealth countries with which Scotland might appropriately be compared. Whilst such comparison can be helpful by indicating how other countries respond to the phenomenon of prostitution, and whether the approach is effective in achieving its objectives, the Group is convinced of the need for caution in interpreting the relevance of such comparisons to the Scottish situation. The legal and social approach to prostitution in a country is likely to mirror the approach of that country in law and social policy to other aspects of social or sexual behaviour. Whatever approach is adopted for Scotland needs to be appropriate to the culture, traditions and social attitudes of this country and be the outcome of the country’s political processes. Transplantation of culturally inappropriate approaches will be unhelpful to the achievement of objectives defined as desirable and acceptable for Scotland. It must also be borne in mind that, whatever is the stated legal position in a country, the degree to which the law is applied and enforced may be subject to significant variations in time and place within the country according to local circumstances and perceived local prioritisation of law enforcement. This is not dissimilar to the position which has been observed in current practice within Scotland.

11.3 The international criminal law approaches are located on a broad spectrum, ranging from criminalisation of the offer to purchase or the purchase of, sexual services, as in Sweden, which effectively prohibits the purchasing activity (though not criminalising the sale of sex), to absence of legal controls on non-coerced prostitution activity (albeit with legal prohibition of coercion and exploitation of vulnerable people) as in Germany. Within this spectrum there tends to be common ground with regard to:

- i) prohibition of coercion and duress to become involved in prostitution,
- ii) prohibition of pimping or promotion of prostitution; and
- iii) protection of those deemed to be vulnerable on grounds of youth or incapacity.

However, there is a range of attitudes and approaches with regard to the extent to which prostitution is regulated. This ranges from toleration without active intervention to active ‘regulation’ including requirements to register (e.g. Switzerland, Austria), to work in specified locations (e.g. The Netherlands) or avoid working in certain designated areas (e.g. Germany), to undergo health monitoring (e.g. Greece) and to pay taxes on income and comply with normal employment legislative requirements (e.g. New Zealand). The

picture therefore is variable, but a majority of jurisdictions adopt a pragmatic approach, penalising prostitution and related activities where they impinge on public order or where exploitation may be involved, and protecting minors and vulnerable adults from involvement, but otherwise taking an approach of regulated harm reduction or no action.

#### 11.4 Broadly speaking four types of approach can be identified: **Criminalisation, Decriminalisation, Legalisation, Regulation.**

##### **Criminalisation**

This expressly creates prohibitions on prostitution and related activities in the criminal law. The Scottish approach has not been to criminalise prostitution as such. The approach is to criminalise various activities associated with prostitution such as loitering, soliciting and importuning, but not to criminalise either the seller of sex or the purchaser. The criminal offences that are in place apply to soliciting activities that might be regarded as preliminary to, but not a part of the sexual transaction itself. There is also a range of offences to strike at those who profit from prostitution and at the exploitation of young or vulnerable women. By contrast Sweden has an approach which is to state clearly in the law that purchase of (but not sale of) sex is illegal, from which it follows that prostitution cannot be legal.

##### **Decriminalisation**

This describes either entire or selective non-application of the criminal law to activities involved in prostitution (without removing the law itself). The law is either tacitly, or expressly not applied in certain circumstances. In practice some examples of tacit decriminalisation can be found in Scotland, through the non-prosecution of those soliciting at certain times and in certain places. The setting up of 'managed zones' in which the normal criminal law on soliciting is not enforced would be a more systematic example of this approach.

##### **Legalisation**

This involves removing all aspects of the criminal law that apply expressly to prostitution, and leaving the situation to be regulated by the general law. For example, offensive behaviour or conduct whether by a seller or purchaser would be subject to the same legal restrictions as offensive behaviour or conduct in other circumstances. The fact that money was changing hands for sex would not change the general position. Prostitution therefore takes the form of self-employment or employment like any other and employment laws would apply and the income would be treated in the same way as other income for tax purposes. Several jurisdictions, including a number within the E.U. have features of this approach, including France, Spain and Portugal

##### **Regulation**

This involves recognising prostitution as not only being within the law but also as having a special status and subjecting it actively to a special regulatory regime, such as licensing, compulsory health checks, conditions on where and when it could be carried out (e.g. not near a school). This broadly defines the approach in The Netherlands, Germany, Switzerland and New Zealand.

## 11.5 UK Approach

Historically, the UK has not made prostitution itself an offence. The approach has been a pragmatic one, and is one of partial criminalisation, which penalises soliciting and living off the earnings of prostitution. It also penalises involving children in prostitution, and trafficking in human beings for the purposes of prostitution. Prostitution is not a recognised form of work and there are no regulatory mechanisms applying to the sale of sex. The UK approach is restrictive by comparison with other jurisdictions, without penalising the buying and selling of sex as such (except for the buying of sex from a 16 or 17 year old in England and Wales). There is stronger statutory regulation in England and Wales than in Scotland. For example the law in England & Wales, as well as prohibiting purchasing sex from a young person under 18, expressly prohibits 'carding' (advertising prostitutes through cards left in public places) and kerb crawling.

Considering the existing range of offences under Scots law, one specific offence mainly applies to street prostitution. (Other offences affect procuring and brothel keeping and the Group has elected not to examine these offences in detail at the present time but to reserve this for a later stage of the work.)

### ***Civic Government (Scotland) Act 1982***

#### ***Section 46 Soliciting and importuning by prostitutes***

(1) A **prostitute** (whether male or female) who for the purposes of **prostitution**:

- (a) loiters in a public place;
- (b) solicits in a public place or in any other place so as to be seen from a public place; or
- (c) importunes any person who is in a public place, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 2 on the standard scale (maximum £500).

(2) In subsection (1) above, 'public place' has the same meaning as in section 133 of this Act but includes:

- (a) any place to which at the material time the public are permitted to have access, whether on payment or otherwise; and
- (b) any public conveyance other than a taxi or hire car within the meaning of section 23 of this Act.

Section 12 of the Sexual Offences Act 1976 also creates an offence where a man solicits a woman for purposes of prostitution, but it has not been possible to find evidence of enforcement of this section – perhaps because of anticipated difficulties in establishing proof of the man's motivation.

## 11.6 Method Adopted by the Group

The Expert Group decided, before looking at the specifics of the criminal law, to define aims and objectives for what the law should seek to achieve specifically in relation to street prostitution. Having determined these aims and objectives, the Group then applied them as criteria for evaluating the role of the criminal law currently. Having drawn conclusions on this, the Group assessed proposals regarding changes to law to ascertain whether these would bring the law into line with these key aims and objectives. The Group was

also careful to assess the impact of any such changes to law in respect of street prostitution in the wider context of community safety and quality of community life, to arrive at a view which balanced the needs of those involved in prostitution and the needs of the wider community. Aspects such as kerb crawling and managed zones could then be evaluated within this wider context before reaching recommendations on these specific proposals.

### 11.7 Aims and Objectives of the Criminal Law Affecting Street Prostitution

The Group concluded that any changes in the law should:

- not criminalise on a moral basis;
- address the imbalance between men and women arising from the present emphasis on the person soliciting, with little comparable legal impact on the potential purchaser of sexual services;
- seek to reduce stigma which attaches disproportionately to the person soliciting as against the potential purchaser;
- minimise the use of imprisonment for women involved in prostitution;
- ensure continued protection to vulnerable groups, including young people and vulnerable adult men and women, from exploitation;
- provide effective protection to the general public from offensive behaviour or conduct;
- avoid any tendency to increase risk to vulnerable people and to communities through unplanned displacement; and
- provide a constructive legal framework to support the achievement of broader strategic obligations for tackling prostitution in Scotland, as set out in section 6.

The Group concluded that it was difficult to see consistency in the present state of the criminal law on prostitution. Section 46 of the 1982 Act is a part of consolidation legislation which has its origins in much older laws and a different social climate. It has, therefore, evolved over time and is not necessarily reflective of present day social attitudes – although sensitivity to rights of children and other vulnerable people, and to decency issues, remain powerful considerations. Growing, but sometimes competing considerations, such as public sensitivity to rights of equality and personal freedom, and to quality of life issues and the impact on residential communities, are sometimes difficult to reconcile satisfactorily.

### 11.8 Against these principles the present Scots law can be criticised for the following reasons:

1. Despite apparent gender neutrality the fact that the person selling sex is criminalised for soliciting or importuning, but the person buying sex is not generally criminalised, leads to an unduly penal impact on women compared with men.
2. A moral undertone is inferred about what is acceptable behaviour for women, stigmatising her, whilst taking a minimal position on the role of the male purchaser. Law based simply on moral condemnation may undermine civil rights, and does not deal with the vulnerability and protection needs of the person condemned. Indeed the stigmatisation which results may deter engagement with such assistance and protection which may be available.

3. Adopting a punitive approach to prostitution tends to exacerbate the woman's circumstances rather than provide a platform for amelioration and constructive work to find a route out of prostitution.
4. A structure of penalties on conviction encourages use of fines solely – thereby discouraging access to potentially rehabilitative sentences such as probation or Drug Treatment and Testing Orders (DTTO), and at the same time increasing the potential for custody for fine default, or increased frequency of re-offending through soliciting in order to pay outstanding fines. Whilst there needs to be caution regarding the use of more intensive sentences such as probation or DTTO in respect of what is seen as a relatively low tariff offence, there is a case for using 'rehabilitative' sentences instead of custody for persistent and intractable offenders, when the sentence is proportionate to the scale and frequency of offending. The Report of the Ministerial Working Group on Women's Offending ('A Better Way') which was published in 2002, noted that this reliance on fines could result in custodial sentences for women who defaulted on their fines. Short-term custodial sentences provide very little in the way of rehabilitation, and can have adverse effects such as homelessness. In its conclusions, that report recognises as a key objective that other options for dealing with fine defaulters should be exhausted before women are sent to custody. The Group endorses that view.

The use of Supervised Attendance Orders (SAO) as an alternative to custody for fine default; the introduction of SAO, on a pilot basis, as a mandatory alternative to custody for non-payment of fines; and the pilot introduction of SAO as a sentence of first instance for those deemed unable to pay a fine, are all of relevance to the objective of reducing un-necessary imprisonment for low tariff offending.

5. There appears to be insufficient capacity to protect even those defined as vulnerable in statute, such as women suffering mental illness or with learning disability, who regularly continue to engage in prostitution without protective legal measures being activated. This is, perhaps, less a deficit in the protective laws themselves as in the application of the law, but if the law is not applied protectively in the necessary circumstances, this is clearly a reflection of its lack of usefulness.

While there is a discernable tendency in the law to aim to protect the public from offensive behaviour and nuisance, and to protect under-age and other vulnerable people from exploitation (and the Group clearly sees this is an appropriate purpose for the law) it is far from clear that there is effective and equitable reconciliation of the full range of public interest requirements in the current law. These deficits, when they occur may not necessarily be best remedied through changes or additions to the law. Sometimes this may be the best way forward. The strength of current law should be retained where it protects children and vulnerable adults from exploitation and introduction to prostitution. Similarly legal proscription of offensive behaviour and conduct arising from prostitution transactions, whether caused by potential seller or potential purchaser, appears a reasonable public expectation. In other respects the necessary protection and support may come from access to service supports and a more active social policy approach. The criminal law alone cannot deal with the complex

issues which relate to street prostitution – many of which require effective remedial services and a co-ordinated approach amongst a range of public service providers.

### 11.9 Prohibition

To assist evaluation of the options for criminal law in Scotland the Group considered whether they would see benefit in aligning with an approach such as the Swedish policy in adopting a ban on purchase of sex. The rationale to the Swedish approach places the protection of the woman and the meeting of her needs at the centre of the legal and policy objectives. It has parallel commitments to influence public opinion against sexual exploitation and the translation of sexual relationships into commodities. It also sets a clear objective for policy of working towards the elimination of prostitution. However the Group concluded that these positive factors would be best pursued through social policy means rather than through the use of criminal law and, based partly on the considerations set out above, concluded that the law is not 'gender neutral' in its effect, because it replaces the criminalisation of the (female) seller of sex, with the criminalisation of the (male) purchaser. Furthermore there is, at present, little clear evidence about the effectiveness of the Swedish legal provisions, and a number of examples of possible concerns:

- The social policy context in Sweden differs from this country and there may not, therefore, be ready transferability of experience.
- The street prostitution population in Sweden is smaller than Scotland's (half the size at the time Sweden's new laws were introduced – approximately 750 compared to 1,400) and may therefore be more manageable.
- There is some evidence of displacement as a result of the legislation – with women moving to operate from less visible environments to avoid arrest of their clients.
- In recent years a prominent reason for women's involvement in street prostitution in Sweden has been illegal immigration to the country, mainly from Eastern Europe. While there is a drug using population the numbers are smaller. This does not equate to Scotland.

For these reasons, the Group, whilst attracted to aspects of the Swedish approach (e.g. the programme of public education) sees insufficient evidence to support the totality of the approach and would not chose the Swedish way forward for this country at this time.

### 11.10 Legalisation/Regulation

The Group also considered options such as the Dutch approach with regards to prostitution. Often described as pragmatic tolerance, The Netherlands follows a social policy tradition that prefers using regulation to criminalisation (with its negative consequences) to deal with social problems. The Dutch approach therefore should be seen as a more deliberate and pro-active approach than simply laissez-faire which it has often portrayed as being. In fact the repeal of the 'Brothel Ban' in 1999 was the result of nearly two decades of political consideration as to how best to approach these complex issues. This process, for the first time, included representations by prostitutes' rights groups and a number of feminist organisations and resulted in a distinction being drawn

between forced and voluntary prostitution with the state's role seen to be to eliminate forced prostitution and to control exploitation through regulating the conditions of 'voluntary' involvement in prostitution.

In terms of street prostitution, the Dutch, even with the licensing of indoor premises, still have to deal with a population who for various reasons do not or cannot register. One of the strategies that was looked at in this regard was their attempt to regulate street-based prostitution through zoning.

A managed zone is a zone within whose borders prostitutes are not arrested for certain offences associated with prostitution, typically soliciting. This may be by a formal measure suspending the normal operation of the criminal law as it relates to prostitution or it may be by an informal agreement with the enforcement authorities. The arrangement has advantages of discouraging prostitution in other less suitable locations, of facilitating access to health and social services, and of promoting protection by allowing security measures to be in place. Enforcement of other laws – such as those connected to drug misuse, would normally continue without being affected by the zone.

The history of zones in The Netherlands has been far from wholly positive in their effect. The problems that some zones have faced show that there is no easy solution which can be transferred from another jurisdiction. The Group sought to learn from the Dutch experience and meetings in The Netherlands revealed that some of the problems had stemmed from a lack of consultation, the placing of zones too far from the city-centre and from services, and in some cases from insufficient policing and poor maintenance of zones. Infiltration by organised criminal interests has also been a problem.

- 11.11 In both Sweden and The Netherlands, establishment of their current position with regard to law, policy and practice was preceded by extensive political and public debate not paralleled currently in Scotland. It would be helpful to promote a discussion of this nature in order to explore the issues in a Scottish context. Despite the extensive debate in both Sweden and The Netherlands, however, the Group recognises that there are still ambiguous and, in some respects, under-researched outcomes in the contrasting approaches of the two countries. This leads to limited reliability of these 'precedents'. Similar comment can be made about the experience of other countries such as Australia and New Zealand where innovative approaches in policy and law are being pursued, but where it is too early to see definitive outcomes in this complex field. Nevertheless, valuable lessons have been drawn from both of these ends of the spectrum which could inform policy and law in Scotland.

### 11.12 Current Law (Section 46) – Analysis Of Issues

The Group considered that the soliciting offence did not pass the tests set out in paragraph 11.7.

1. It is not clear on what basis the offence criminalises loitering, soliciting or importuning other than moral condemnation, with associated negative connotations. It is the mere fact of carrying out these activities in public or where they are visible to the public that creates the offence, even if no offensive behaviour or conduct takes place. Therefore it appears to criminalise on a moral basis.
2. The Group noted that section 46 is gender neutral in language but applies predominantly to women, as street prostitutes are mainly female and are much more likely than men to be involved in loitering, soliciting or importuning. Therefore it does not meet the requirements of equal treatment in law, since men involved in the sexual transaction are not routinely criminalised in this manner. The language of this section contributes to the stigma which women experience and which attaches disproportionately to women.
3. The criminalisation of soliciting, of itself, does not contribute to protecting vulnerable people or address community concerns. Its effect in fact is, through criminalisation and the consequences of involvement in the criminal law system, to increase the vulnerability of the large proportion of women drawn to prostitution by factors such as addiction, mental disorder and poverty. The dimension of community needs has resulted in separate legislation in England and Wales such as that relating to kerb crawling because criminalisation of soliciting does not contribute to the community safety objectives. In Scotland there is no legislation specifically to address the needs of communities affected by street prostitution. There are a number of other statutory provisions relating to child protection and protection of vulnerable adults that are relevant to the needs of vulnerable people, although not specifically in relation to street prostitution.
4. The offence, by criminalising the behaviour, can lead to displacement, as women will seek to avoid apprehension by using covert means to make contact, keeping their transactions on the street brief, by getting into cars, and carrying out transactions away from likely surveillance, thus avoiding being caught, but also heightening risk by missing out on the protection that might be offered by police patrols or C.C.T.V. Criminalisation and displacement also work against the potential for service engagements with women involved in prostitution. Such services can safeguard, prevent escalation of involvement in prostitution and can engage with women in ways which will open up routes out of prostitution.

The current law therefore appears unsuitable – both in terms of fairness and equity, and in terms of its capacity to contribute helpfully to the operational objectives of tackling prostitution.

### 11.13 Enforcement and Prosecution Issues – Section 46

Adding to the concern about the law is the apparent variation in the application of the law across the country. Evidence from the four cities suggests that patterns of enforcement and reporting vary significantly, with implications for the sustainability of prosecutions. This appears to go beyond what might be seen as a legitimate reflection of local circumstances, and amounts to inconsistency and uncertainty of purpose. This is also perhaps indicative of a law which is unable to meet the specific circumstances experienced within the four cities. The Group sees a solution to this in two ways: clarification of the law (see below) and placing the policing of street prostitution in a clearly defined local operational process, within a national strategic framework (see above). This defines, on a multi-agency and community-orientated basis, how prostitution, where it exists, is to be tackled, both to manage its impact and effects in the short term and to reduce its incidence in the longer term.

### 11.14 Legislation: An Alternative Approach

It is the Group's view that the role of the criminal law is best confined to protection of the vulnerable, tackling coercion, promotion of community safety and prevention of public alarm and offence. That apart, the focus should be on reducing the harm which can arise for those involved in prostitution and helping those who wish to move on from that involvement, through appropriate social welfare policy interventions. Nor should the law exacerbate the harm which those involved in prostitution already experience, by, for example, additional stigmatisation, disruption of stability and unnecessary imprisonment for low tariff offending.

As indicated above, the Group has identified as desirable a number of criteria to underpin the legitimate intervention of criminal law in this area, against which it has measured existing offence provisions, notably Section 46. There is a gender imbalance to the operation of Section 46 which the Group would wish to remove and the Group would wish to see criminal law offence provisions which are explicit that the mischief they target is public alarm and offence, rather than criminalising the sale or purchase of sex *per se* (with the moral assumptions this implies). For these reasons the Group is not persuaded that there is a case for retaining Section 46. The Group has considered whether an alternative crime or offence provision exists – or should be created – to tackle the public concerns which may result from street prostitution.

#### The Common Law

The Group examined the existing common law, and in particular the crime of breach of the peace and the scope it provides to tackle conduct which encroaches upon members of the public, causing alarm. Conduct of a sexual nature could be prosecuted as breach of the peace **if it causes alarm, distress, embarrassment or offence to others or is calculated to, or capable of causing alarm, distress, embarrassment or offence to others**. There have been a number of examples of cases involving what might be termed sexual offensiveness being prosecuted as breach of the peace. It is also possible (see the 5 Judge decision in Webster v Dominick, 2003 SLT975) that the common law offence

of public indecency would be relevant to prostitution-related activities that involved explicitly sexual public presentation or offensive sexual conduct in a public place. However, that might not apply to the preliminary activities of soliciting and importuning which are currently covered by a separate statutory offence (Section 46). If that offence were to disappear, breach of the peace would cover such activities where they cause alarm etc.

- 11.15 The Group accepts that there may be drawbacks in relying on breach of the peace where circumstances have been untested before the courts: there may be a lack of confidence on the part of the police in tackling the behaviour and lack of certainty about the outcome of any prosecution. The Appeal Court reviewed the law around breach of the peace in a 5-bench decision in May 2004 (Jones v Carnegie, 2004 SLT 609). That judgement turned on an E.C.H.R. (European Convention on Human Rights) challenge on a number of fronts, including, broadly, whether an objective test of what was genuinely alarming or disturbing was compatible with Convention rights. The court upheld the convictions of 4 of the 5 appellants for breaches of the peace, committed in a variety of circumstances. The court endorsed the objective test administered by the lower courts in deciding whether the conduct complained of was genuinely alarming and disturbing; and re-stated an earlier opinion (Smith v Donnelly, 2001 SLT 1007) to the effect that the question whether certain conduct was genuinely alarming and disturbing to any reasonable person depended on the context in which it had taken place, and consequently depended on the place, time and circumstances in which it occurred. It thus follows that conduct involving street prostitution could take place in circumstances in which the crime of breach of the peace would not be committed. The test would be whether offence or alarm had been caused by, or was capable of being caused by, the behaviour in question.

The court also observed that it would be an unfortunate and unjustifiable narrowing of the common law if the crime of breach of the peace were to be limited to cases in which there was evidence of actual alarm or annoyance, whether given by the persons who were alarmed or annoyed or by others, and the safeguard against any undue expansion of the law was provided by the need, emphasised in *Smith*, above, for the conduct to be genuinely alarming and disturbing to any reasonable person. Of interest too, in this context, was the observation by the court that the protection of a neighbourhood against breach of the peace should not be inhibited merely because a bystander displayed an over-stoical reaction to the conduct in question.

Finally, concealed conduct can also amount to a breach of the peace if it leads someone to be suspicious of the circumstances and investigate and then, reasonably, be alarmed or disgusted (MacDougall v Dochree, 1992 SLT624).

- 11.16 It appears to the Group that a situation where a street prostitute was openly operating – soliciting – in an area to which the public had access could clearly constitute a breach of the peace in certain circumstances. In addition, conduct which amounted to ‘kerb crawling’ whereby a male was approaching members of the (female) population to inquire about the purchase of sex could, equally, be capable of constituting a breach of

the peace. It may also fall within the terms of Section 12 of the 1976 Sexual Offences Act – which makes it an offence for a man to solicit a woman for purposes of prostitution – although this section appears little used, perhaps through difficulty in establishing proof. The question which the Group then asked itself was, if section 46 were to be repealed and reliance placed on the common law – in essence breach of the peace – to meet the offensive behaviour aspects of street prostitution, would this suffice? The advantages and disadvantages of that approach can be summarised thus:

- There will be those narrow cases where the available evidence does not support a charge of breach of the peace, albeit the community discerns that offence has been caused. That position, however, could equally be encountered with a statutory offence. Each case will turn on its own facts and circumstances.
- It is commonly understood that the inherent flexibility of the common law is an advantage to the police and prosecutors in responding to the various guises of criminal conduct. However, there may also be future circumstances where the Appeal Court convenes to reconsider the scope of and test for breach of the peace, ruling out conduct which may currently be thought to be captured.
- Police and public confidence is critical and, for the above reasons, use of breach of the peace may have a rather ambivalent reception. By contrast, the enactment of a statutory offence may be felt to have a deterrent effect against offending, and have the advantage of clarity.

#### 11.17 The Need for (New) Legislation?

In the Civic Government (Scotland) Act 1982 Section 46, a statutory offence of soliciting was preserved, consolidated from previous older legislation. Rather than relying upon common law crimes such as breach of the peace, one of the motivations behind this offence may have been to criminalise the behaviour *per se* but also presumably to strengthen the response to the impact on communities and the public. That being so, the Group considers that an offence which focuses on the public offence aspect of street prostitution, permitting intervention where it impacts upon the wider community, could tackle offensiveness and alarm, clarify police powers and reduce or remove the current difference in treatment of sellers of sex (predominantly female) and buyers of sex (predominantly male). **The Group has given consideration to an alternative approach – and has concluded that there is merit in exploring a new statutory offence which targets the offensiveness and alarm aspect of street prostitution, specifically soliciting, but which could also be used to address corollary behaviours such as those which have come to be termed kerb crawling provided this can be shown to be causing offence or alarm.**

- 11.18 The police may favour a specific statutory offence if it could bring clarity to their dual tasks of responding to community concerns in respect of street prostitution and protecting the public. Creation of a statutory offence could have a deterrent effect and would bring the opportunity to consider what constructive disposals might be made available to the Courts, perhaps aiding exit from prostitution or tackling offensive purchasing of sex. That said, the Group is conscious of the concerns expressed in 'A Safer Way' that female offenders can be fast-tracked to custodial sentences because

Courts often favour sentences involving probation for women offenders earlier in their offending 'career' than for men. This is seen as a way of addressing their often complex needs. The circumstances faced by women offenders may lead to breach of the probation order, and the consequent up-tariffing of the initial offence if the breach then leads to imprisonment.

- 11.19 Appropriately drafted, the Group sees such an offence provision, in place of Section 46, as requiring to have the following characteristics:
- establishing the unlawful conduct as the creation of alarm or offence to another person or persons, rather than the act of soliciting *per se*;
  - providing the flexibility to address the range of conduct to be safeguarded against – such as unwanted importuning of passing men, or unwanted attempts to purchase by men approaching women from cars or on foot;
  - being applicable to male or female persons, whether as the person seeking to supply or obtain services.<sup>1</sup>

The precise terms of new legislation of this nature would be for consultation, and for parliamentary draughtsmen. It would, of course, sit alongside the common law, and in certain circumstances a charge of breach of the peace may better meet the circumstances of the offence. For more explicitly sexual conduct arising from prostitution, public indecency charges would be available.

In arriving at this proposal the Group is conscious that the objectives of the law outlined could create a response which is essentially complaint led and does not contain the kind of objective test surrounding breach of the peace as to what genuinely causes or is capable of causing alarm, distress or embarrassment. While it is appreciated that this would have enforcement consequences there is the advantage that it criminalises where there is a proven rather than hypothetical offensive behaviour or conduct. This is a matter which could be considered in the course of any subsequent consultation.

The Group is of the view that, as with the current law on soliciting, imprisonment should not be an available penalty for this offence.

It is the Group's view that it would be important not to define buying or selling sex as a sexual offence but rather as offensive behaviour or conduct. The purpose of the offence is to penalise offensive behaviour or conduct arising from prostitution if it occurs, rather than the sexual behaviour itself. To regard it as a sexual offence runs the risk of increasing stigma – to the detriment of potential rehabilitation – and increasing the seriousness of the offence unduly.

- 11.20 There is a third option, which draws on the work of the Scottish Law Commission in preparing a draft Criminal Code for Scotland. The draft – in its approach to Section 46 of the 1982 Civic Government (Scotland) Act – proposed the following codification (it should be remembered that the codification was based on existing law and was not remitted to propose changes in law):

<sup>1</sup> This is because the issue is public offence. The more specific issues surrounding men seeking to supply will be dealt with in a later report.

### **Section 105 Draft Criminal Code**

*A person who, for the purposes of prostitution or of obtaining the services of a prostitute –*

- a) loiters in a public place;*
- b) solicits in a public place or in any other place so as to be seen from a public place; or*
- c) importunes any person who is in a public place,*
- d) in such circumstances as to be likely to cause fear, alarm or offence to others is guilty of the offence of soliciting.*

In the draft codification this appears as a crime of ‘offensive conduct’ rather than as a sexual offence, because, as the authors of the draft code state, the essence of the crime is the fear, alarm and offence caused by the conduct to the individuals importuned and to members of the public, rather than the fact of soliciting itself. The remit of the codification was not to change but to codify the criminal law, and so the soliciting offence is retained, albeit with the supplementary requirement that it is only an offence if it is likely to cause fear, alarm or offence, which is not a prerequisite of the 1982 Act. The fact of soliciting itself is deemed to be offensive in that Act.

- 11.21 The Group therefore considers that, if it is accepted that the emphasis of law should be dealing with the behaviour termed ‘soliciting’ and its associated features as a criminal offence only if alarm or offence can be shown to have been caused by it, then three options are worthy of consideration. All rely on a repeal of Section 46 which simply criminalises the act of ‘soliciting’.

**Option 1** would repeal Section 46 and rely on Breach of the Peace, with its objective test of whether the behaviour would cause alarm, offence or embarrassment to a reasonable person.

**Option 2** would create a new offence based on selling or purchasing sexual engagement in a way which causes alarm, offence or embarrassment to the wider public. This would require to be initiated through a complaint that a member or members of the public have been offended. The court may then introduce an objective consideration of whether, objectively, it was reasonable in the circumstances, for them to have been offended.

**Option 3** would follow the Scottish Law Commission codification route, which retains the penalisation of soliciting and adds the penalisation of the purchaser, but only if, by objective tests, fear, alarm or offence can be demonstrated.

It must be emphasised that, whichever route is pursued, refocusing the criminal law in this way does not imply lack of concern at the risks associated with prostitution. The Group regards street prostitution as a survival behaviour that should be tackled vigorously and women given as much assistance as necessary with a view to minimising the risks to their health, safety and welfare, and facilitating their progression away from prostitution. The Group is strongly of the opinion that these objectives are better sought through support and encouragement, with access to appropriate services, than by stigmatisation and criminalisation.

11.22 To sum up, the Group agreed that there was a need to remove the status basis of the offence and to be more explicit that the legislative objective was to tackle public offence, rather than criminalise sexual transactions *per se*. The differential treatment of sellers of sex (predominantly female) and buyers (predominantly male) should be addressed by targeting buyers as well as sellers explicitly in any new statutory formulation. The Group wanted to modernise the legislation rather than adjust the existing framework and avoid using the law to make a moral statement. Which of the three options may feasibly deliver these outcomes should perhaps be considered through consultation which allows the respective merits of each to be examined. Other criminal offences related to prostitution, which seek to protect the vulnerable, are not discussed in the report but the Group considers that the repeal of Section 46 would itself assist the protection of vulnerable women involved in street prostitution by not criminalising them unnecessarily.

### 11.23 Possible Offence of Kerb Crawling or Persistent Soliciting

Since this new offence could address the public offence aspect of kerb crawling there would be no additional requirement to create a specific offence of kerb crawling (as has been done in England and Wales).

#### **A way of dealing with nuisance behaviour**

The desire to criminalise kerb crawling springs mainly from the nuisance caused by kerb crawling when it is concentrated in a residential area, which is viewed as a form of antisocial behaviour. If there are kerb crawlers, it follows that there are prostitutes in the area, but there are also other members of the public and kerb crawlers may not be discriminating as to whom they approach. Tolerance of kerb crawling also may encourage street prostitution as it provides a steady supply of 'clients' and vehicles may be used for sexual encounters or to drive to places where such encounters may take place. The kerb crawling legislation, therefore, also came to be seen as a way of tackling the male behaviour of seeking to purchase sex.

It may be concluded that the primary motivation for criminalising kerb crawling is because it is antisocial behaviour, which exacerbates the nuisance of street prostitution and is a source of affront and annoyance to the public. Clearly however, new legislation which penalises the offensive behaviour or conduct involved in the sexual transaction – whether on the part of the seller or purchaser – would give sufficient powers to the Police to tackle drivers whose conduct creates a nuisance and annoyance to others whilst in pursuit of a sexual transaction.

In England and Wales, where a separate offence exists relating to kerb crawling, a power of arrest was introduced in 2001, since when, the number of prosecutions has increased (see Home Office review of prostitution). Some forces, e.g. Cleveland Constabulary, welcomed the power of arrest on the grounds that it could allow the police to take the alleged offender to a police station whereas previously he could only be spoken to at the kerbside and would then be free to drive away.

11.24 As part of its remit the Group examined the case for introducing a criminal offence of kerb crawling. We have considered the definition of kerb crawling, the possible model of the existing offence provision in England and Wales, and the effect of introducing such an offence into Scots law including enforcement issues and how the courts might deal with offenders. It is the conclusion of the group that:

- the evidence of effectiveness in the use of this law in England and Wales and internationally is unconvincing;
- the nuisance which can arise for communities through this phenomenon can be tackled without further legislation beyond that already proposed above, especially if that legislation is connected to social policy initiatives to impact on street prostitution prevalence;
- enforcement of kerb crawling legislation is difficult to apply in key locations such as City Centre areas where differentiation of kerb crawlers from other slow moving traffic would be difficult to draw to the satisfaction of a Court;
- unwanted consequences such as displacement, or stigmatisation could arise.

#### 11.25 **The Use Of Antisocial Behaviour Orders (ASBOs)**

ASBOs were introduced by section 19 of Crime and Disorder Act 1998 and came into effect in April 1999. They are preventative orders designed to protect individuals from further anti-social behaviour that causes or is likely to cause alarm or distress. Breach of an order is a criminal offence punishable by a fine or imprisonment (up to 5 years on indictment). Local authorities and registered social landlords, in consultation with the police, can apply for ASBOs.

The 1998 Act was amended by changes in the Criminal Justice (Scotland) Act 2003. The 2003 Act introduced interim ASBOs and extended the power to apply to Registered Social Landlords (These provisions commenced on 27 June 2003). The interim order provides more immediate protection to individuals and families from anti-social behaviour. Security of tenure is not affected by an interim ASBO.

It is for the courts to decide whether the conditions for granting an ASBO are satisfied. There is nothing to prevent authorities making an application for an ASBO in relation to circumstances connected with prostitution if they are satisfied the conditions for granting an ASBO would be satisfied and that they have sufficient evidence to justify the case. An ASBO could be sought in respect of the behaviour of the woman or the man in the transaction.

ASBOs have to be seen as very new instruments for dealing with anti-social behaviour, and the ways in which they might be used to best effect have yet to be fully explored. However, the Group were concerned about the effectiveness of the use of ASBOs in cases involving women involved in street prostitution (especially if it is not connected to a package of suitable services and supports) and are convinced that this needs to be seen as a strategy of last resort where other approaches fail. Amongst the dangers are:

- Use of an ASBO may precipitate loss of service contact and increase risk.
- If a woman breaches an ASBO and is imprisoned she faces losing her accommodation and further deterioration in her circumstances.

- Displacement may result as women seek to solicit in areas where the ASBO is not applicable, with dispersal of street prostitution over a greater area in cities.
- The use of an instrument such as this in circumstances where the woman has addiction and/or mental health problems – and may therefore be impaired in her capacity to comply – makes impossible demands and is likely to rapidly increase the seriousness of her predicament.

On the other hand, well-considered use of an ASBO in the context of a total strategy to address street prostitution cannot be ruled out. Circumstances can be envisaged where an ASBO, with an attendant package of services and supports for the woman subject to the ASBO, could be seen to constructively strengthen the framework, combining regulation and support through which a woman might be assisted to move on from prostitution.

## 11.26 Managed Zones

### **i) International position**

The most often quoted example of a managed zone abroad is in Utrecht, in the Netherlands. A zone in Amsterdam, the Toppelzone, was closed down in 2003 because it had become a haven for traffickers and drug dealers, and had become compromised due to the involvement of organised criminal interests. These factors are also understood to be affecting other Dutch zones. Concerns have grown that the benefits of adopting a managed approach are now being undermined by recent developments, in particular lack of community consultations when establishing a zone; inadequate maintenance and cleaning of zones; and insufficient policing to sever the potential connection to serious crime.

### **ii) England and Wales position**

The Home Office has also been lobbied by members of Liverpool City Council (despite adverse outcomes to local consultations) and Doncaster Council who are keen on the introduction of a formal managed zone. The Home Office has published a consultation paper on prostitution which indicates that the Government will take strong persuasion that managed zones should be introduced but nonetheless invites views. The UK Government will not make decisions on managed zones until after that debate has taken place.

### **iii) Scotland: Tolerance Zones Bill**

Margo Macdonald MSP has twice introduced a Bill to the Scottish Parliament to enable local authorities to designate areas within their borders as 'prostitution tolerance zones'. It proposes to give local authorities the power to designate 'tolerance zones' within which soliciting, loitering or importuning by prostitutes for the purposes of prostitution would not be an offence under the Civic Government (Scotland) Act 1982. It provides for consultation by the local authority with various public bodies, voluntary bodies, local residents and business, prior to establishing a zone.

The Local Government and Transport Committee is currently considering Stage 1 of the revised Bill. Its conclusion on Stage 1 of the original Bill was not to support the principles of the Bill. The Committee heard a considerable amount of evidence for and against the legislation. They reached the conclusion that:

*'whilst accepting that designated zones may be one way to assist prostitutes to access health, support and 'routes out' services, [the Committee] believes that the Bill in principle is an explicit acceptance of soliciting, albeit within a specified geographical area. The Committee is concerned that implicit in the Bill is an acceptance that local authorities should manage services in a way that would support prostitution within a designated zone. The Committee considers that while this is not the intention, it is an outcome that has to be addressed and as such the Committee cannot agree with the general principles of the Bill.'*

It has heard evidence from the Deputy Justice Minister, Margo Macdonald MSP and Sandra Hood amongst others. It is likely that the Committee will await the Group's recommendations before deciding how to deal with Stage 1, since it was a recommendation in their report on Stage 1 of the first Bill that the Executive must conduct a full examination of prostitution in Scotland and the setting up of the Expert Group was a response to that.

#### 11.27 A Locality-Based Approach – the Future Direction

The Group's intention is that by adopting the policy, strategy, service and legislative adjustments outlined in this report, consideration can move forward from narrow debate on the merits and demerits of an approach based on managed 'zones'. Placing the consideration of whether introduction of a managed location for street prostitution will be locally helpful or not within the need to draw up a local plan for a coherent response to street prostitution will result in comprehensive examination of the relevant issues. It will also result in collaborative engagement of the relevant interests including women involved in prostitution, service providers and communities likely to be directly affected.

The management of street prostitution in the locality where it is occurring offers a number of advantages which are evidenced from Scottish and international experience. It:

- confines the public nuisance of street prostitution to a specified area;
- allows the enforcement authorities to set up rules for operating in the location, particularly for those involved in prostitution, e.g. only to operate within specified hours;
- facilitates the exchange of intelligence between those involved in prostitution and the police e.g. through reports of incidents with clients involving violence or risk of harm;
- concentrates those involved in prostitution in a particular area where they can look out for each other, e.g. by noting descriptions of clients and their car numbers;
- discourages under-age girls from operating in an area, since they will be readily visible and will be discouraged or reported upon by adults involved in prostitution;
- assists with the safety of women involved in prostitution by means of reducing the areas in which unobserved violence might take place;
- facilitates the provision of surveillance by C.C.T.V. and police patrols;

- protects the women involved in prostitution from a repeated cycle of arrest, prosecution, unpaid penalties, short sentences of imprisonment and re-offending;
- facilitates the provision of outreach services, such as needle exchange, condoms, health checks, drug services and advice, including assistance to exit prostitution, subject to resources;
- facilitates the provision of a safe space such as a drop-in to allow women involved in prostitution some respite time, with the opportunity to exchange safety information and provide mutual support;
- recognises the services are most effectively provided in the place and at the time that women involved in prostitution frequent an area, as they may not travel to make use of services at other times;
- discourages clients from searching for women involved in prostitution elsewhere than in the defined locality.

There are also, of course, disadvantages to designation of managed localities for street prostitution.

- Such an approach may be deemed to give a sense of normality to the concept of street prostitution, and implies that its existence will continue. These are assumptions which require to be continuously challenged.
- Locating an area tends to be difficult.
- Maintaining standards, and sustaining levels of services to the designated area have proved difficult in places such as The Netherlands, although this may primarily be an issue of resource availability and prioritisation.
- Preventing overcrowding and overspill in areas of high prevalence is difficult.
- Attracting women involved in prostitution from other localities which do not provide a managed arrangement, may increase numbers and tensions.
- Avoiding infiltration by organised criminal interests attempting to use the areas where prostitution is managed as a location for pimping, drug sales and deploying trafficked women, can be problematic.

Avoiding these negative outcomes is likely to be resource intensive and also has implications for the thoroughness of the process for identification of suitable localities, and of course for the effectiveness of the services dedicated to prevention and exiting. If a co-ordinated approach, covering the four stages of prevention, early intervention, reduction of harm and exiting, is successful, then the designation of a particular area for management of street prostitution will act as a step towards significant reduction of levels of harm, and perhaps total numbers involved in prostitution, and thereby a diminution of need for such localities in the long term.

- 11.28 If the Group's proposal for a new approach to the criminal law is accepted (see above) the case for a 'managed area' significantly changes in its nature. It does not necessarily remove the case for a locality approach. The setting up of an area could be seen as unnecessary if the act of soliciting is not itself against the law because it is not necessary to create an area of immunity from prosecution for soliciting. However, in terms of the process of having a strategy to tackle prostitution, facilitate routes out, and reduce nuisance to others, it may well be in the best interests of a local authority to

focus the conduct of street based prostitution into specific locations. This would comprise part of the strategy of reducing nuisance, whilst at the same time facilitating the benefits listed above. All these benefits would remain relevant, even though the act of soliciting was no longer illegal *per se*, because illegality would continue to attach to offensive behaviour or conduct. Crucially however, there would be no element of selective non-application of the law. All other aspects of law would be entirely applicable to the locality.

11.29 In conclusion, therefore, it is proposed that the responsibility for impacting beneficially on prostitution and those communities affected by it should become the responsibility of social policy as much as criminal law. Policy should lead the development of appropriate local strategies, with clearly defined multi-agency responsibilities and a requirement on services to tackle this phenomenon together, backed by the criminal law to prevent abuse of the vulnerable and to restrict public nuisance or offence.

# Chapter Twelve:

SUMMARY & CONCLUSIONS

- 12.1 The Expert group was set up in August 2003, with the remit of carrying out a comprehensive review, on behalf of the Scottish Executive, of the wide-ranging issues surrounding prostitution in Scotland. The Group adopted a phased approach to this complex task, and this report reflects the findings of the Group with regard to the first phase of work – which has addressed women involved in street-based prostitution. The next two phases are planned to address issues relating to women involved in indoor prostitution, followed by consideration of men involved in prostitution.
- 12.2 The Group's approach sought to gather existing information and research findings relating to the UK, Europe and other countries comparable to Scotland; to examine the current position in the four largest Scottish cities; to speak directly to service providers directly involved in work relevant to this field, and to hear from women themselves involved, through meetings and through research commissioned for the purposes of the Group. The Group also benefited from sharing information and ideas with the Home Office review which has been carrying out a similar examination in England and Wales. Finally, the experience and professional expertise of the Group itself provided a firm foundation for the work.
- 12.3 Street prostitution is overwhelmingly an urban phenomenon, concentrated in the four large Scottish cities. The numbers of women involved are difficult to quantify, but informed estimates have been made for each of the four cities, which shows a total, Scotland-wide, of about 1,400 women involved, of whom about 180 are likely to be on the streets of the four cities each night. Each city has its own characteristics and problems with regard to the occurrence of street prostitution, and each has adopted different approaches to tackling the phenomenon. These are described in the report. There are however a number of key common challenges. We regard these as defining the strategic objectives which any strategy to respond to the problem must fulfil:
- to safeguard women involved in prostitution, reduce the harm they experience, tackle the concurrent behaviours such as drug misuse and help them towards exiting prostitution;
  - to protect residential and commercial communities from the effects of soliciting and prostitution;
  - to prevent children and young women who may be vulnerable to becoming involved in prostitution from taking that step; and
  - to influence the attitudes which lead to the abuse of women sexually and physically through street prostitution.

These objectives contain dilemmas to which policy and practice must respond and these questions have dominated the considerations of the Group.

Any response will be multi-faceted because this set of objectives, of necessity, faces in several different directions simultaneously:

- addressing the needs of women involved or at risk of becoming involved,
- addressing the needs of the different communities affected; and
- tackling the attitudes which fuel the persistence of prostitution.

- 12.4 Key Factors applicable to street prostitution across Scotland have been identified.
- Street prostitution is overwhelmingly a survival behaviour for the women involved, who have an accumulation of serious personal difficulties and few resources with which to develop a less damaging way of life.
  - Poverty, drug misuse, and to a lesser extent alcohol misuse, are intrinsically linked to most street prostitution in Scotland.
  - Redevelopment is affecting the context of street prostitution – and complicating the capacity to respond effectively.
  - Service responses which are deployed need to be specific to the task of tackling street prostitution if they are to work.
- 12.5 The way forward proposed by the Group is as follows:
1. A **national strategic framework** is necessary, requiring local identification of whether a need exists, action where evidence of street prostitution is identified, and setting out the core content of any local approach and the standards of service and principles of good practice which should be applicable to the local response.
  2. In those localities where evidence of need is identified a **local implementation plan** should be drawn up, involving the full range of local service interests. The plan should include a strategy for preventing the involvement of vulnerable people in street prostitution; early intervention measures with those beginning to become actively involved; services for reducing harm with those more deeply involved; arrangements for managing risk and public offence; and services supporting women to exit street prostitution, prevent relapse and sustain non-involvement in prostitution.
  3. Responding to street prostitution should be seen as a **corporate and multi-agency responsibility**. The local plan must centre on women involved in street prostitution, but should also look beyond the individual needs of those women involved, or at risk, and should seek to ensure that the impact from redevelopment of areas traditionally used for street prostitution be managed, to reduce adverse effects arising from dispersal and loss of service access. Development of the plan should follow the principles and practice of Community Planning.
  4. **Implementation** of the plan should be monitored at regular intervals against agreed targets and prescribed standards of performance.
  5. Arising from the national strategic framework there should be a range of national and local initiatives, to **influence and educate public opinion** regarding the risks of prostitution-based sexual relationships and the abusive elements they contain.
  6. **The law** remains the key means to ensure continued protection from exploitation through prostitution to vulnerable groups, including young people and vulnerable adult women. Effective enforcement of these aspects of the law should be a priority in the local plan.
  7. The law should be reviewed with regard to soliciting. The changes would seek to ensure that the law should:
    - not criminalise on a moral basis;
    - address the imbalance between men and women arising from the present emphasis on the person soliciting, without reference to the potential purchaser of sexual services;

- seek to reduce stigma which attaches disproportionately to the person soliciting as against the potential purchaser;
- minimise the use of imprisonment for women involved in prostitution;
- ensure continued protection to vulnerable groups, including young people and vulnerable adult men and women, from exploitation;
- provide effective protection to the general public from offensive behaviour;
- avoid any tendency to increase risk to vulnerable people and to communities through unplanned displacement; and
- provide a constructive legal framework to support the achievement of broader strategic obligations for tackling prostitution in Scotland.

The Group concluded that the law should be changed to repeal the criminalisation of soliciting *per se*, and replace this with an offence targeting offensive behaviour or conduct arising from a prostitution related sexual transaction – whether caused by purchaser or seller. The Group considered 3 options for taking this forward.

8. On any of the 3 options, this approach would obviate the need for specific legislative action regarding ‘kerb crawling’ – which could be policed on a basis of public offence. It would also amend the case for ‘managed zones’ as a possible useful local strategy for focusing service delivery and managing nuisance arising from street prostitution. This would change from a case based on discretionary suspension of the criminal law to one which is within the law and can be considered and used in the right circumstances as part of the agreed local strategy.

### 13. Conclusion

These conclusions with regard to street prostitution are submitted by the Group for consideration by the Scottish Executive. It is suggested that Scottish Ministers might make public the terms of the report, to encourage discussion and expression of views on the important issues of social and legal concern which are addressed.

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**BEING OUTSIDE: CONSTRUCTING A RESPONSE TO STREET PROSTITUTION  
REPORT OF THE EXPERT GROUP ON PROSTITUTION IN SCOTLAND**

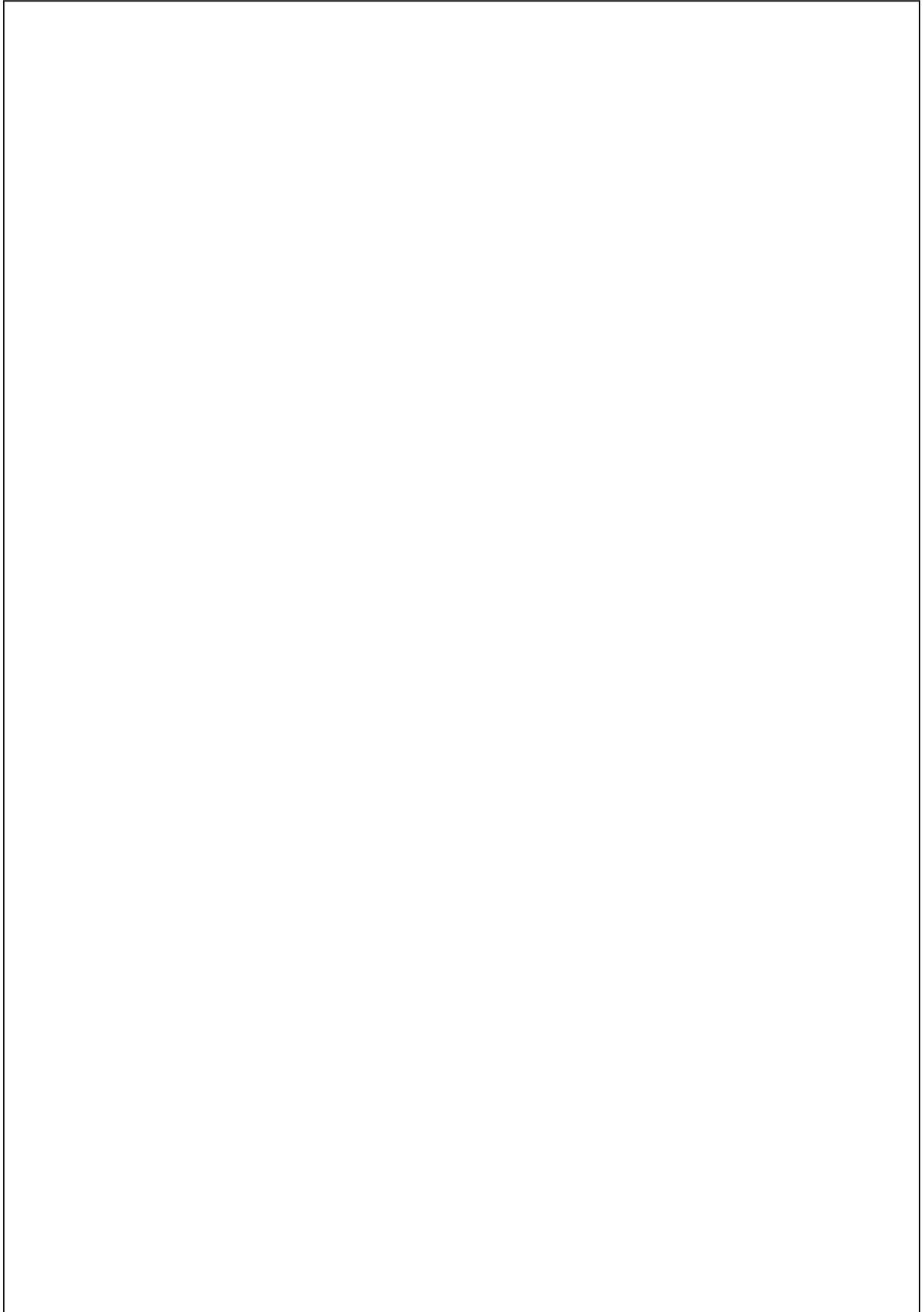
**RESPONSE FORM**

The Expert Group on Prostitution’s report sets out a number of proposals for consideration.

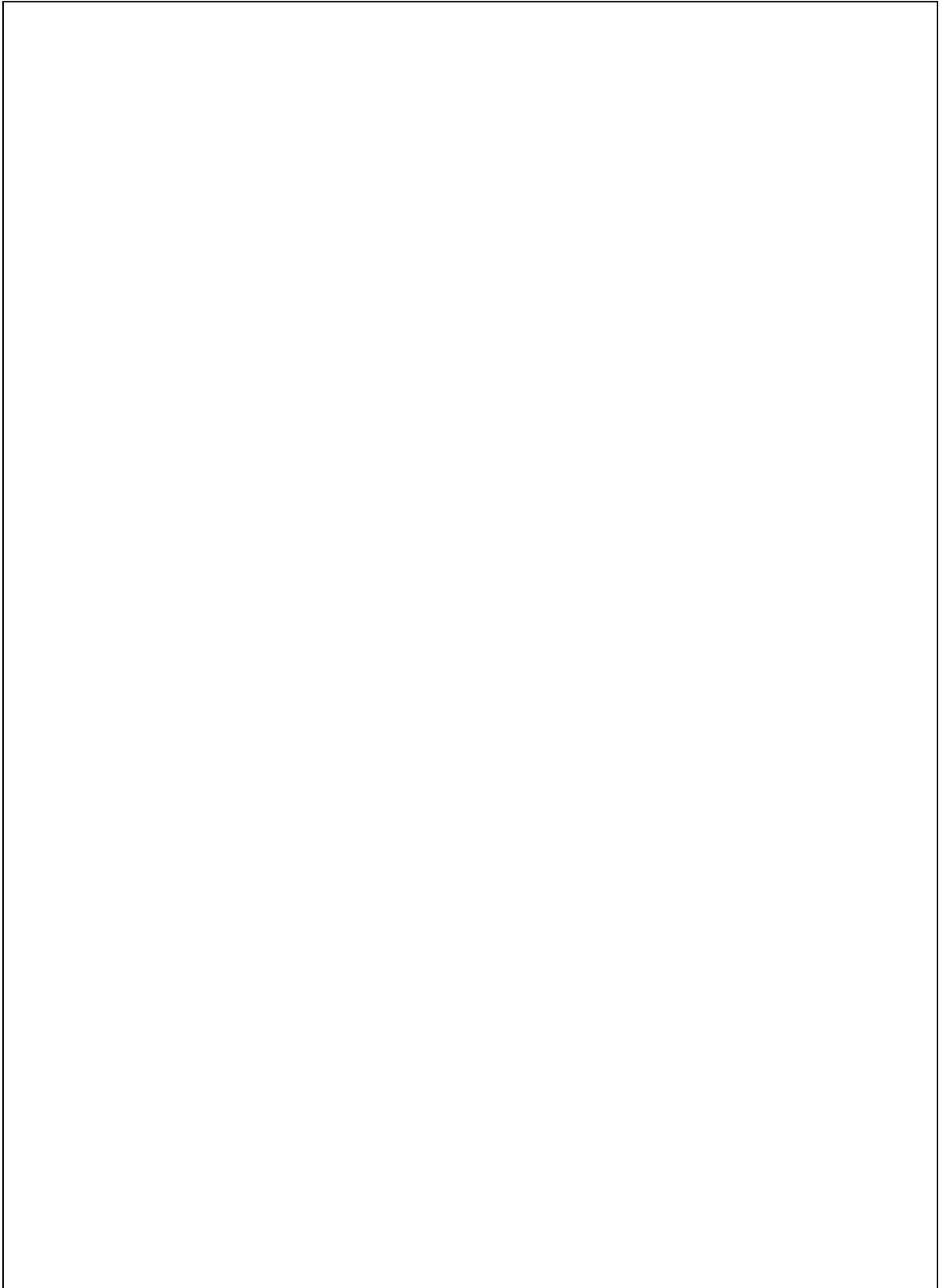
**Managing the Process of Responding to Street Prostitution (Chapter 6)**

The report identifies a need for a comprehensive, co-ordinated approach to address complex objectives. An approach is outlined based on a national strategy which requires identification of whether there is evidence of street prostitution in the local authority area, followed by local planned action where a need is identified. The national strategy would also set standards of practice to be pursued. It is proposed that the local action plan should address the objectives listed in the headings below, and a chapter is devoted to each. Your views are invited on each of these proposals.

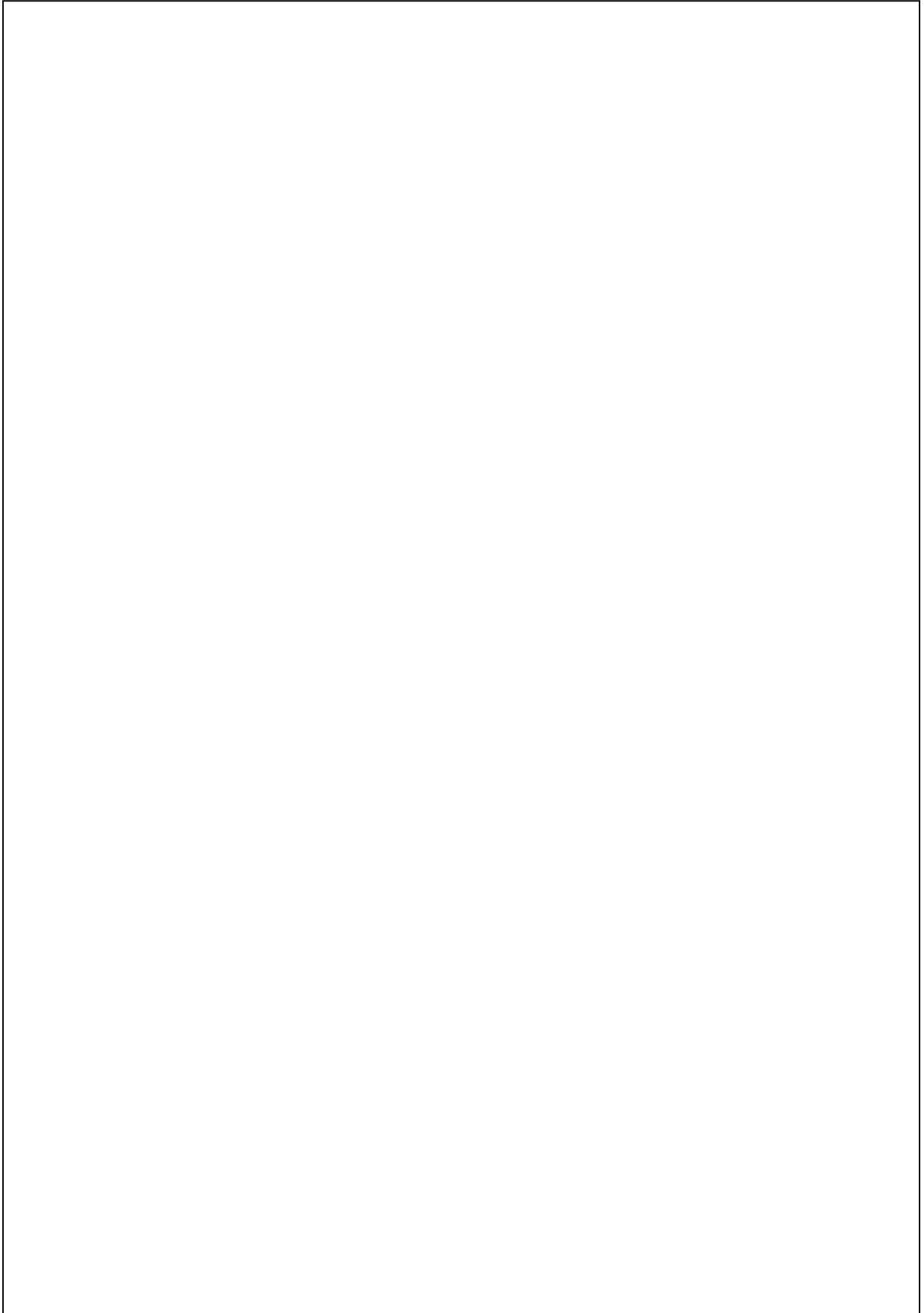
## **Preventing Involvement in Prostitution (Chapter 7)**



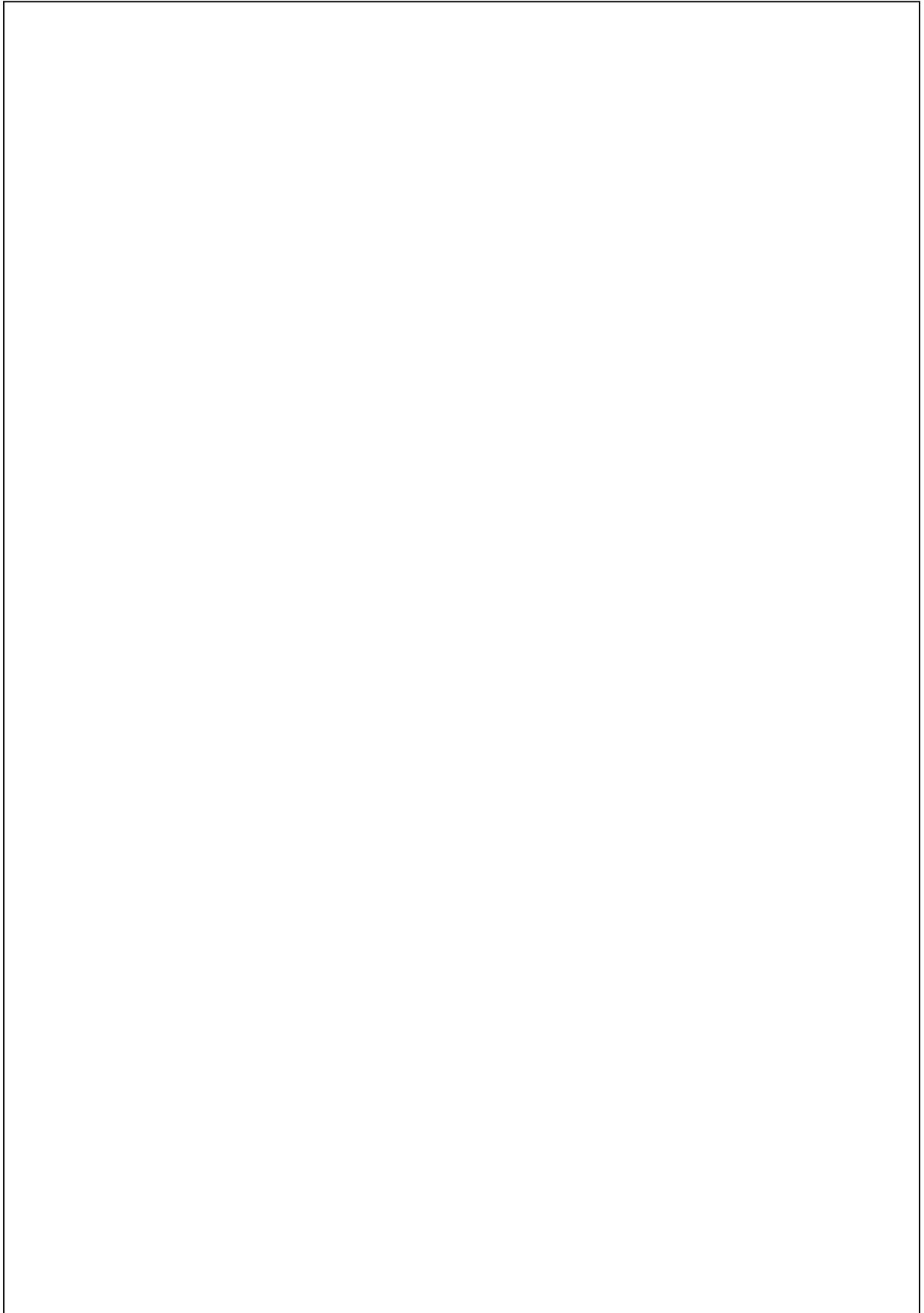
## Early Intervention (Chapter 8)



## Reducing the Harm (Chapter 9)

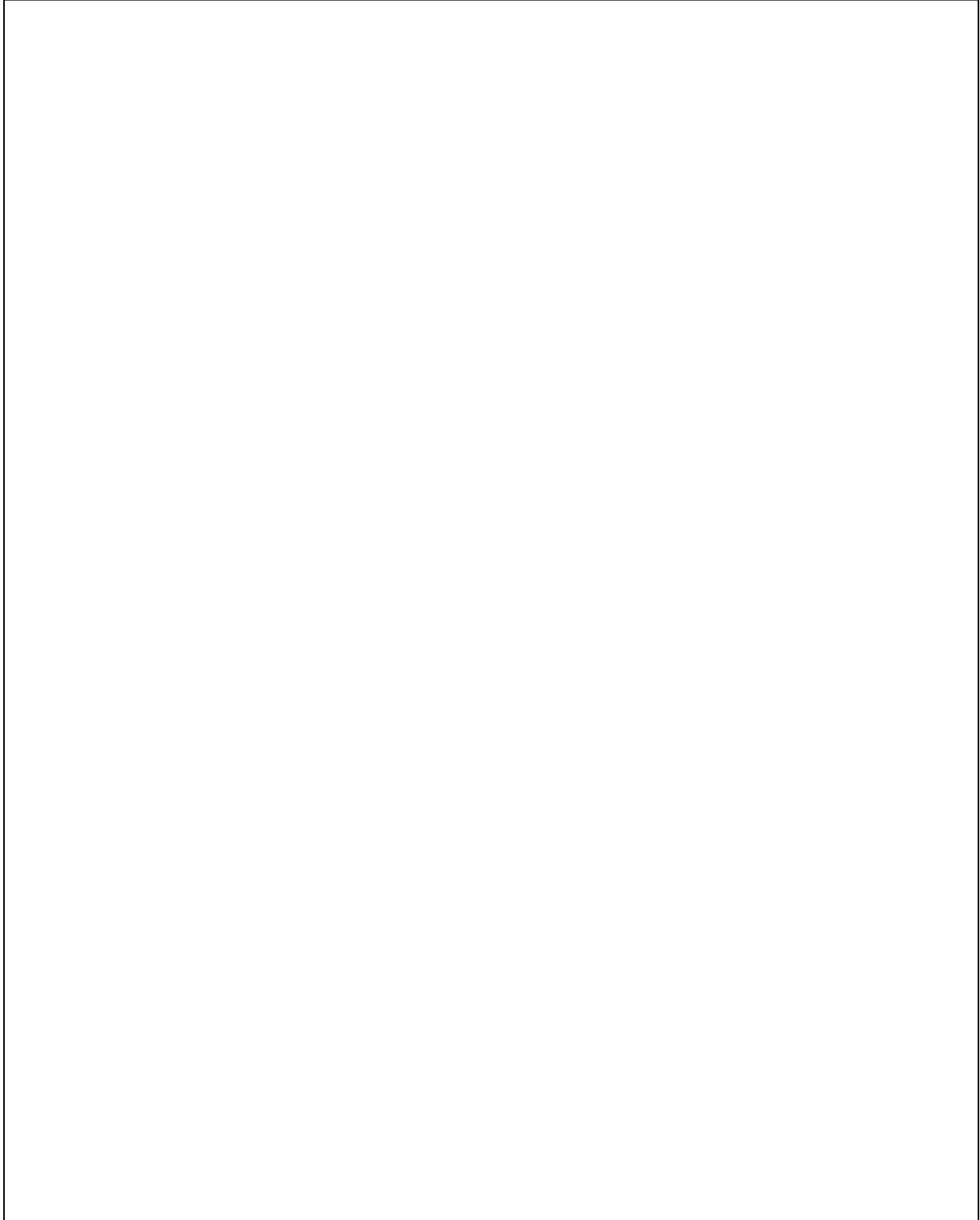


## Exiting Prostitution (Chapter 10)

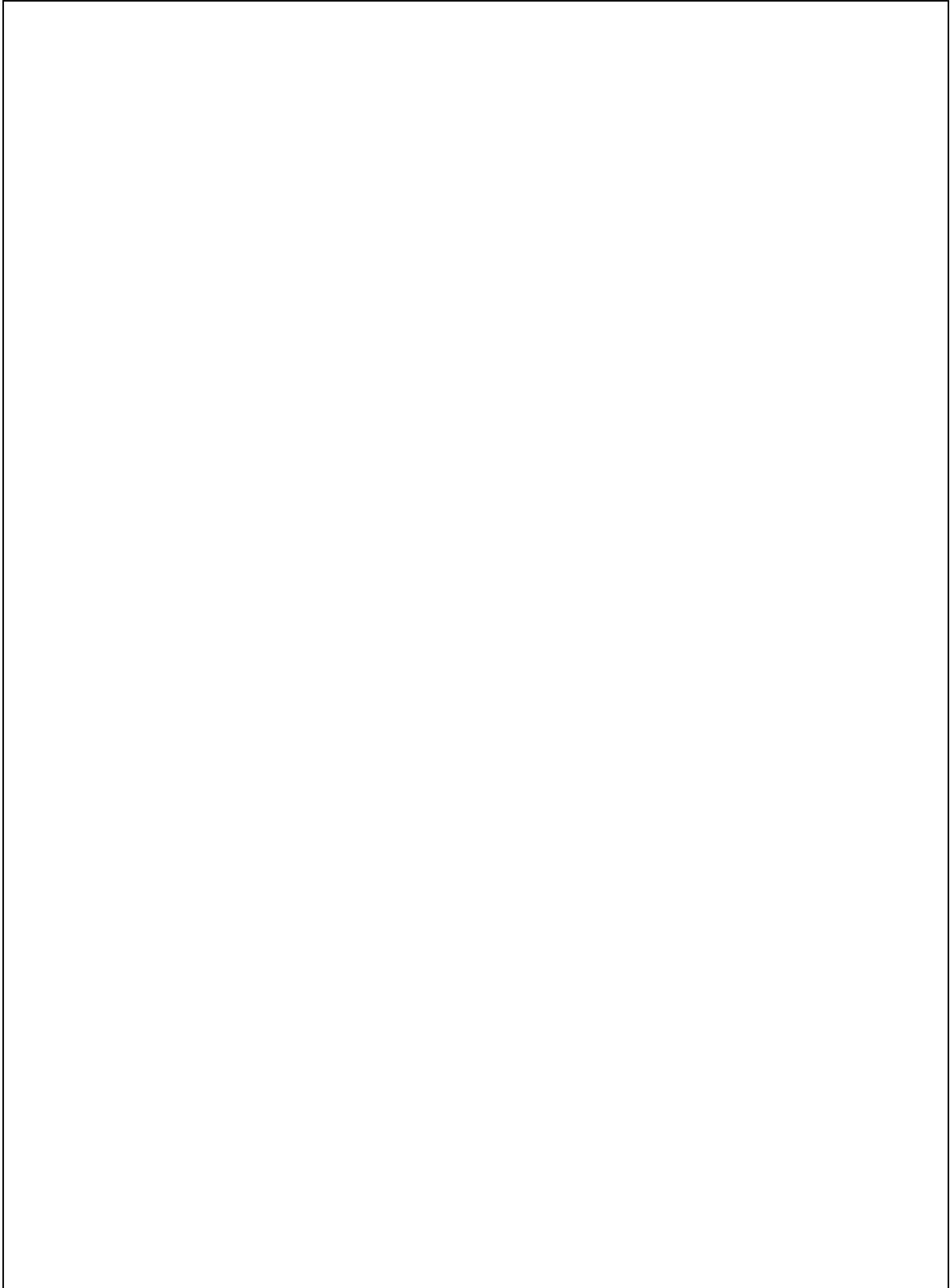


## Justice Issues (Chapter 11)

This section considers the legal position and proposes continued legal protection of those vulnerable to involvement in prostitution. It also proposes a review of the law on soliciting. The change proposed would replace criminalisation of soliciting *per se* with a focus on the offensive behaviour or conduct arising from a prostitution related sexual transaction – whether the offensive behaviour or conduct is caused by the purchaser or seller.



If you would like to comment on any other part of the report, or have any general comments to make, please do so in the box below.

A large, empty rectangular box with a thin black border, intended for providing comments on the report. The box is currently blank.

## RESPONDEE INFORMATION FORM

Please complete the details below and attach it with your response. This will help ensure we handle your response appropriately:

Name:

Postal Address:

Consultation title:

1. Are you responding as: (please tick one box)

- |     |   |                                       |
|-----|---|---------------------------------------|
| (a) | an individual                               | <input type="checkbox"/> (go to 2a/b) |
| (b) | <b>on behalf of</b> a group or organisation | <input type="checkbox"/> (go to 2c)   |

### 2a. INDIVIDUALS:

Do you agree to your response being made available to the public (in SE library and/or on SE website)?

- |                      |                          |
|----------------------|--------------------------|
| Yes (go to 2b below) | <input type="checkbox"/> |
| No, not at all       | <input type="checkbox"/> |

2b. Where **confidentiality is not requested**, we will make your response available to the public on the following basis (please tick **one** of the following boxes)

- |  |                          |
|--|--------------------------|
| Yes, make my response, name and address all available        | <input type="checkbox"/> |
| Yes, make my response available, but not my name or address  | <input type="checkbox"/> |
| Yes, make my response and name available, but not my address | <input type="checkbox"/> |

### 2c ON BEHALF OF GROUPS OR ORGANISATIONS:

Your name and address as respondees **will be** made available to the public (in the SE library and/or on SE website). Are you content for your response to be made available also?

- |     |                          |
|-----|--------------------------|
| Yes | <input type="checkbox"/> |
| No  | <input type="checkbox"/> |

## SHARING RESPONSES/FUTURE ENGAGEMENT

3. We will share your response internally with other SE policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for the Scottish Executive to contact you again in the future in relation to this consultation response?

Yes           

No