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Beyond the Gaze and Well Beyond Wolfenden: The Practices and Rationalities of Regulating and Policing Sex Work in the Digital Age

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Drawing on the largest study of the United Kingdom online market in sexual labour to date, this article examines the legal and regulatory consequences as aspects of sex work increasingly take place within an online environment. Our research shows that while governmental policy has not kept abreast of these changes, the application of current laws (which have, since the 1950s, focused on public nuisance and, more recently, trafficking and modern slavery) are pernicious to sex workers and unsuited to recognizing and responding to the abuses and exploitation in online markets in sexual labour. These injustices are likely to be exacerbated if policies and policing do not better align with the realities of these markets in the twenty-first century. This demands a more nuanced regulatory approach which recognizes that people may engage in sex work of their own volition, but which also addresses conditions of labour and criminal exploitation.

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INTRODUCTION

Advances in technology have had a considerable impact on the sex industry.¹ Our work and that of others evidence an increased movement of sex workers into internet-enabled private spaces as sexual services are increasingly sold via the web.² The majority of independent sex workers providing escorting and other in-person services, as well as escort agencies and some massage parlours, now advertise their services on the internet.³ New markets in sexual labour such as webcamming have also developed entirely from the opportunities created by digital technology.⁴

Despite these changes, the influence of new technologies on commercial sexual transactions has largely been ignored in current government policy in the United Kingdom.⁵ Laws such as the Street Offences Act 1959 and the Sexual Offences Act 2003 have typically been formulated in response to concerns about public order, health, and morality, or conceptions of control by third parties, and have traditionally focused on more 'public' forms of sex work, such as street soliciting, or on 'managed' sectors, particularly brothels.⁶ While sexual labour still takes place in these contexts, as noted above, the internet has facilitated independent sex work, including direct sexual exchanges and indirect forms of digitally-mediated sex work.⁷ Nonetheless, independent self-employed sex work tends to remain unrecognized in national policy deliberations in the United Kingdom, with the exception of the Home Affairs Select Committee (HASC) Report in 2015,⁸ which acknowledges evidence that many people sell sexual services independently.

At present, we know little beyond anecdote as to how digitally-mediated forms of sex work are regulated and policed. This article draws on the first major study of the online commercial sex market in the United Kingdom,

- 1 S. Cunningham and T.D. Kendall, 'Prostitution 2.0: The Changing Face of Sex Work' (2011) 69 *J. of Urban Economics* 273; S.R. Peppet, 'Prostitution 3.0?' (2013) 98 *Iowa Law Rev.* 1989.
- 2 T. Sanders, 'Researching the Online Sex Work Community' in *Virtual Methods in Social Research on the Internet*, ed. C. Hine (2005) 67; T. Sanders et al., *Internet Sex Work: Beyond the Gaze* (2018).
- 3 A. Ray, 'Sex on the open market: Sex workers harness the power of the internet' in *C'lickme: A netporn studies reader*, eds. K. Jacobs et al. (2007) 45; J. Pitcher, 'Direct sex work in Great Britain: reflecting diversity' (2015) 11(2) *Graduate J. of Social Sciences* 76 ; S. Cunningham et al., 'Behind the screen: commercial sex, digital spaces and working online' (2018) 53 *Technology in Society* 47.
- 4 A. Jones, 'Sex work in a digital era' (2015) 9 *Sociology Compass* 558.
- 5 C. Ashford, 'Sex Work in Cyberspace: Who Pays the Price' (2008) 17 *Information & Communications Technology Law* 37.
- 6 B. Brooks-Gordon, *The Price of Sex: Prostitution, Policy and Society* (2006).
- 7 J. Pitcher, 'Sex work and modes of self-employment in the informal economy: diverse business practices and constraints to effective working' (2015) 14 *Social Policy and Society* 113; Jones, op. cit., n. 4.
- 8 House of Commons Home Affairs Committee, Third Report, *Prostitution*, HC (2016–17) 26.

which confirms a migration of sex workers into internet-mediated private and public spaces and documents the impact of technology for those working in the sex industry and those responsible for implementing legislation.⁹ Informed by interviews with individuals involved in policing strategy and operations, managers of online platforms and sex workers' own experiences, we investigate the ways in which policing in the United Kingdom is endeavouring to deal with a rapidly changing market and the impact this has on those working in it.

The findings we discuss here centre on new knowledge about sex workers but also about policing sex work. We demonstrate the new opportunities that online labour production has for sex workers, but at the same time reveal further vulnerabilities to exploitative working conditions and new digitally facilitated types of crimes. We look at the implications of the practices of policing as well as ideological discourses and their impact on relationships with sex workers. By looking in detail at the empirical findings from sixteen police forces across the United Kingdom, we examine the way in which investigations are carried out online, and how police officers interpret policing guidance and apply this to online settings. We also dissect the nuanced ways in which discourses around safeguarding, vulnerabilities, and Modern Slavery agendas impact upon voluntary online sex work.

We discuss whether the online environment poses new problems, or simply different versions of existing crimes or forms of exploitation, and consider how policing practices may address or exacerbate these problems. In doing so we distinguish between the conceptualization of prostitution as equivalent to gendered sexual exploitation, often equated with slavery-like conditions, and that which views sex work as a form of labour, in which there is the potential for varying degrees of exploitation, depending on the context in which it takes place. We argue that this more materially nuanced notion of exploitation is helpful in understanding the changes and continuities in power relations that define sex work in this digital age.

In the following sections, we begin by outlining the regulatory framework that surrounds internet sex work, followed by a more detailed examination of its central concepts. We examine, in particular, interpretations of trafficking and exploitation: terms which a rich body of feminist and critical scholarship reveal have contrasting definitions, with liberal understandings of individual coercion seemingly contested by radical feminist accounts of sex work as equivalent to trafficking and hence in itself sexual exploitation. Research has shown that these competing accounts inform the policing of sex trafficking¹⁰

9 E. Bernstein, *Temporarily Yours: Intimacy, Authenticity, and the Commerce of Sex* (2007).

10 J. O'Connell Davidson, 'New slavery, old binaries: human trafficking and the borders of freedom' (2010) 10(2) *Global Networks* 24; V. Munro, 'Of Rights and Rhetoric: Discourses of Degradation and Exploitation in the Context of Sex Trafficking' (2008) 35 *J. of Law and Society* 240.

and in the main section of our article our empirical data reveals similar tensions in the contemporary policing of internet sex markets. This has a number of negative consequences for sex workers and for the effective control of exploitation which, in the final discussion, we conclude may be better served by moving beyond the current criminal framework.

REGULATORY FRAMEWORKS AND INTERNET SEX WORK

At present, across Great Britain, the exchange of sexual services for money between two consenting adults is, in itself, legal; however, many related activities are subject to criminal sanctions. The current legal position owes much to the deliberations of the Wolfenden Committee Report 1957 which deemed that ‘there must remain a sphere of private morality and immorality which is, in brief and crude terms, not the law’s business.’¹¹ These liberal sentiments informed the regulationist approach that followed which confines state intervention to prostitution’s public aspects and where there is deemed to be harm to others.¹² The legislation subsequently enacted,¹³ which continues to inform policing in the area,¹⁴ prohibits both soliciting and brothel keeping.¹⁵ The operation of these laws has created a paradoxical situation where, although prostitution is not illegal, it is difficult and sometimes impossible for individuals to work safely or without breaking these laws. Decades of research confirm that the only way to avoid criminal charges has been to work alone, in private spaces. Though some independent escorts may navigate this terrain, others are vulnerable to exploitation and violence and are reliant on third parties rather than the police, for protection.¹⁶

While more recent reforms seek to tackle vulnerability,¹⁷ the focus has been on the individual and situational vulnerabilities of certain sections of the market, notably street sex workers, and on abstract ideologies of sexual exploitation, with little attention paid to the intersection of structural inequalities – sex, gender, money, migration, and law – which coalesce to

11 Wolfenden Committee, *Report of the Committee on Homosexual Offences and Prostitution* (1957; Cmnd. 247) para. 60.

12 R. Matthews, ‘Beyond Wolfenden? Prostitution, Politics and the Law’ in *Confronting Crime*, eds. R. Matthews and J. Young (1986) 188.

13 The Sexual Offences Act 1956; The Sexual Offences Act 1959; The Street Offences Act 1959.

14 The Sexual Offences Act 2003, ss. 52–53.

15 Wolfenden Committee, *op. cit.*, n. 11, p. 17.

16 T. Sanders, ‘UK sex work policy: eyes wide shut to voluntary and indoor sex work’ in *Regulating Sex for Sale: Prostitution Policy Reform in the UK*, ed. J. Phoenix (2009) 67.

17 Home Office (HO), *A Co-ordinated Prostitution Strategy and a Summary of Responses to ‘Paying the Price’* (2006).

render sex workers vulnerable.¹⁸ Moreover, sex worker safety has never been an objective. Rather, informed by an abolitionist worldview, commercial sex is seen as uniform and reduced to being considered a form of exploitation in and of itself. As a result, some jurisdictions including Northern Ireland and the Republic of Ireland have followed Sweden's lead and criminalized the purchase of sex.¹⁹ Despite similar attempts in Scotland, England, and Wales, legislators have not yet followed suit. Nevertheless there is evidence of a 'creeping abolitionism' as purchasing sex has been subject to increased sanctions, and exiting is promoted in policy, funding priorities, and measures such as Engagement and Support Orders (ESOs).²⁰

Prostitution is also frequently viewed as synonymous with human trafficking, an issue which is high on national and international policy agendas which prioritize criminal justice responses.²¹ In the United Kingdom a great deal of legislative time and police resources have been spent on drafting and enforcing laws to combat trafficking. Trafficking has now been incorporated into a larger regime to tackle modern slavery, which is problematic, because it invites binary conceptions of 'free' and 'unfree' labour and confines regulatory responses to specific exemplars of abuse, precluding alternative legal remedies to address wider labour exploitation.²² Section 14 of the Policing and Crime Act 2009 creates a new strict-liability offence of purchasing sex from a person controlled in prostitution, while section 21 provides additional police powers to close premises upon the 'reasonable belief' that trafficking for sexual exploitation, or causing, inciting or controlling prostitution for gain is occurring.

Rather ironically, even though this decade of intense prostitution policy and legal reform (2000–2009) coincided with a period which witnessed a rise in online markets, no legislation or policy has focused specifically on the use of technology in prostitution. The internet was mentioned in the *Paying the Price* consultation document only in relation to young people.²³ Rather incongruously, ss. 46–47 of the Criminal Justice and Police Act 2001 made

18 J. Scoular and V. Munro, 'Abusing Vulnerability? Contemporary Law and Policy Responses to Sex Work in the UK' (2012) 20 *Feminist Legal Studies* 189.

19 Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015; Criminal Law (Sexual Offences) Act 2017.

20 A. Carline and J. Scoular, 'Saving fallen women now? Critical perspectives on engagement and support orders and their policy of forced welfarism' (2015) 14 *Social Policy and Society* 103.

21 J. Chuang, 'Rescuing Trafficking from Ideological Capture: Prostitution Reform and Anti-Trafficking Law and Policy' (2010) 158 *University of Pennsylvania Law Rev.* 1655.

22 J. Fudge, 'Modern Slavery, Unfree Labour and the Labour Market: The Social Dynamics of Legal Characterization' (2018) 27 *Social & Legal Studies* 414.

23 Home Office (HO), 'Paying the Price: a consultation paper on prostitution' (2004) 21.

the placing of advertisements relating to prostitution in public telephone boxes an offence, despite their relative decline and the high numbers of online advertisements.²⁴

The HASC inquiry into prostitution (in 2016) referenced research which reports indoor and online sex work as larger sectors than street, but did not go into any depth. Its recommendations to better protect sex workers were unrealized as the Committee was disbanded in 2017, although its findings prompted funding of an ongoing research project into the ‘nature’ and ‘prevalence’ of prostitution and sex work in England and Wales.²⁵ A self-appointed All-party Parliamentary Group (APPG) on Prostitution and the Global Sex Trade remains the only active group. Its 2014 report failed to consider the role of the internet, despite a stated remit to look at the global nature of the sex industry, and its recent focus on ‘pop-up brothels’, as we discuss in detail below, shows a similar lack of awareness of the use of technology in this area.

Amidst this flurry of activities to control, shrink, and displace markets in sexual labour, internet-based markets appear to have adapted and expanded. They are now arguably the largest markets, situated at a contradictory axis – highly visible, yet with a largely hidden community,²⁶ with little beyond anecdote known of their regulation or policing.²⁷ Our research offers insights into the current policing and regulation of online sex work, while also adding to debates around the very meaning of exploitation – and the role of technology therein – which is understood in a number of differing and competing ways in legal and academic discourses.

CONCEPTUALIZATIONS OF EXPLOITATION AND REGULATION IN ONLINE SEXUAL LABOUR

When considering the advent of online sex work, commentators have tended to predict that technological advances will either obviate, or increase the need for regulation. When considering markets in sexual labour from a liberal economic perspective, the new era of digitally mediated sex work has been welcomed by writers such as Cunningham and Kendall, and Peppet, who stress the potential of new technologies to make commercial sex safer, to improve sexual health, and appear more socially acceptable, thus reducing

24 P. Hubbard, ‘Maintaining family values? Cleansing the streets of sex advertising’ (2002) 34 *Area* 353.

25 <www.gov.uk/government/news/home-office-funds-university-of-bristol-research-into-prostitution>.

26 A.K. Murphy and S.A. Venkatesh, ‘Vice Careers: The Changing Contours of Sex Work in New York City’ (2006) 29 *Qualitative Sociology* 129; Pitcher, op. cit., n. 3.

27 Jones, op. cit., n. 4.

the need for regulation.²⁸ By contrast, those who support the abolition of sex work call for greater regulation of information technology which is seen as facilitating the ‘industrialized commodification of women’.²⁹

Our empirical work paints a more complex picture of how the internet-based sex industry operates.³⁰ While there is also diversity in other sectors in the sex industry, our research indicated that the profile of internet-enabled sex workers also differs from that of workers in other sectors in sexual labour, in terms of generally higher average age, gender balance, and level of qualifications. Increasingly the blend of advantages to the work (flexibility; reduced hours; mobility; control over working day/customers/services) is tempered by the disadvantages (precarious income; digitally facilitated harassment and unwanted contact; extreme concerns about privacy and being outed).

While the internet has facilitated communication between providers and clients in direct sexual services, these services are still delivered in traditional settings, including sex workers’ own or rented homes, hotels or temporary rented accommodation, as well as managed premises. Workers in all these settings are often self-employed, although the involvement of third parties differs between those in managed environments, where the working relationship is closer to that of employer/employee, and independent sex workers, who may sometimes contract third parties to deliver aspects of their business.³¹ Those working in the digital environment, such as webcammers, are also self-employed and may work from home or temporary premises, but usually rely on third-party webcam platforms to deliver their services.³² While there is often an assumption in law that the involvement of third parties in the sex industry is automatically one of control, these relationships are in practice far more varied and can be mutually beneficial³³ but also create the potential for financial and labour exploitation, as well as the more traditionally assumed sexual exploitation.

The complex and diverse nature of digitally-facilitated sex work that we detail in our work, means that, as Jones³⁴ suggests, while the internet may bring benefits to sex workers, there is also the potential for new risks from using online technologies. This means that these binaries of increased versus reduced regulation may be poorly suited to the field. Furthermore, proposals

28 Cunningham and Kendall, op. cit., n. 1; S. Cunningham and T.D. Kendall, ‘Prostitution 3.0? A Comment’ (2013) 98 *Iowa Law Rev. Bull.* 131; Peppet, op. cit., n. 1.

29 D.M. Hughes, ‘The Internet and sex industries: Partners in global sexual exploitation’ (2000) 19 *IEEE Technology and Society Magazine* 35, at 41.

30 Sanders et al., op. cit., n. 2.

31 J. Pitcher and M. Wijers, ‘The impact of different regulatory models on the labour conditions, safety and welfare of indoor-based sex workers’ (2014) 14 *Criminology and Criminal Justice* 549.

32 Cunningham et al., op. cit., n. 3.

33 Sanders et al., op. cit., n. 2; C. Bruckert and C. Parent (eds.), *Getting Past ‘The Pimp’: Management in the Sex Industry* (2018).

34 Jones, op. cit., n. 4.

for legal remedies to address problems encountered in internet-enabled sex work also depend on interpretations of exploitation in sexual labour markets.

FEMINIST FRAMEWORKS

Competing perspectives on sexual labour have been discussed in depth elsewhere.³⁵ While we do not intend to repeat these discussions here, it is pertinent to note that polarized conceptions of prostitution, as consonant with exploitation of women, versus sexual labour viewed as a form of work, have tended to dominate policy debates in the European Union, the United Kingdom, and other western states. The former perspective sees the application of the criminal law as a means of addressing prostitution as gendered exploitation, whereas the latter suggests that liberalization of the laws relating to prostitution is necessary to support the human rights of sex workers. These polarizations have also permeated discourses on trafficking.³⁶

There are two dominant constructions of ‘trafficking for sexual exploitation’, which is the term now used in the Modern Slavery Act 2015.³⁷ The first is predicated on notions of consent and individual agency. This liberal approach prioritizes interpersonal coercion and violence and views human trafficking as a human rights violation.³⁸ The second is a radical feminist approach which sees prostitution and trafficking as synonymous, related to an underlying system of patriarchy.³⁹ The criminal justice system is prioritized in this schema to tackle this most fundamental form of sexual exploitation. It has been argued that the liberal approach to ‘trafficking for sexual exploitation’ fails to recognize structural inequalities, viewing ‘unfree’ sexual labour as individualized cases of extreme control rather than an outcome of gender hierarchies (as per the radical feminist argument) or structural capitalist power relations, as per Marxist critiques.⁴⁰ The radical approach, meanwhile, has been critiqued for its essentialized approach to

35 J. Comte, ‘Decriminalization of sex work: Feminist discourses in light of research’ (2013) 18 *Sexuality and Culture* 196; T. Sanders et al., *Prostitution: Sex work, policy and politics* (2018, 2nd edn.) ch. 1.

36 J. Doezema, ‘Now you see her, now you don’t: sex workers at the UN Trafficking Protocol negotiation’ (2005) 14 *Social & Legal Studies* 61.

37 K. Cruz, ‘Beyond Liberalism: Marxist Feminism, Migrant Sex Work, and Labour Unfreedom’ (2018) 26 *Feminist Legal Studies* 65.

38 J.A. Chuang, ‘Exploitation Creep and the Unmaking of Human Trafficking Law’ (2014) 108 *Am. J. of International Law* 609.

39 C. MacKinnon, *Towards a Feminist Theory of State* (1989); C. MacKinnon, ‘Gender – The Future’ (2010) 17 *Constellations* 504; M.M. Dempsey, ‘Sex trafficking and criminalization: In defense of abolitionism’ (2010) 158 *University of Pennsylvania Law Rev.* 1729.

40 K. Strauss, ‘Coerced, Forced and Unfree Labour: Geographies of Exploitation in Contemporary Labour Markets’ (2012) 6 *Geography Compass* 137; O’Connell Davidson, op. cit., n. 10; Cruz, op. cit., n. 37.

power; the fact it offers no recognition of agency or other structural factors as it over-determines gender oppression and victimhood.⁴¹ Nevertheless, as Munro and others' work confirms, both the liberal and radical approaches to 'anti-trafficking' influence the decisions and actions of legal functionaries, including judges, the police, and policy makers.⁴²

The re-emergence of concerns about human trafficking has also tended to be dominated by binary conceptualizations of freedom versus unfreedom. Moreover, as Strauss and others have noted,⁴³ terms such as forced labour, trafficking, and modern slavery are often used interchangeably, with little or no attempt to disentangle their meanings. A more nuanced approach is offered by critical scholars who argue that it is more appropriate to conceptualize freedom and unfreedom as part of a continuum, with routine labour exploitation at one end and, at the other extreme, slavery-like practices.⁴⁴ Within this continuum, certain groups or individuals may be at a greater disadvantage, with factors such as ethnicity, gender, and migrant status being relevant considerations.

Reflecting on our empirical findings, we consider how these different perspectives relate to the context of the policing of internet-enabled sex work. Thus, we show that while digital technologies have positive implications for sex workers, such as the potential to market services independently, internet-enabled sex work also presents opportunities for the exploitation of individuals selling sexual services. This may be better understood via the sexual labour framework advocated by writers such as Strauss et al.⁴⁵ Yet, we show both the liberal and radical approaches to 'anti-trafficking' continue to influence police decisions. This has a number of negative consequences for those involved in the sector which we consider in more detail below.

RESEARCHING THE ONLINE SEX INDUSTRY

This article draws on the first major in-depth exploration of the online sex industry in the United Kingdom. The study consisted of an online survey of 641 sex workers based in and/or working in the United Kingdom, who use the internet in their work; semi-structured interviews with a further 62 sex workers; semi-structured interviews with 56 police representatives, and 21 managers or moderators of online advertising platforms, forums, and safety schemes for sex workers; an online survey of 1,323 customers; an online

41 J. Scoular, *The Subject of Prostitution: Sex Work, Law and Social Theory* (2015).

42 Munro, op. cit., n. 10.

43 Strauss, op. cit., n. 40; K. Skrivankova, *Between Decent Work and Forced Labour: Examining The Continuum of Exploitation* (2010), at <<https://www.jrf.org.uk/report/between-decent-work-and-forced-labour-examining-continuum-exploitation>>.

44 Strauss, id.

45 Skrivankova, op. cit., n. 43.

survey of 49 projects providing support to online sex workers; and desk research to map online spaces where sex workers market and/or provide services.

Whilst other elements of the project consider the impact of the increasing use of technology on advertising, marketing,⁴⁶ and its impact in terms of sex workers' experiences of crimes and safety, in this article we draw primarily on the interview data with police representatives, as well as data collated from sex workers, to focus on the impact of technology on regulation and policing activities.⁴⁷

POLICING ONLINE MARKETS IN SEXUAL LABOUR

In the sections below, we assess current police awareness of online markets, how information is gathered and analysed, and how laws are implemented. We consider the impact and the interpretation of safeguarding, vulnerability, and modern slavery discourses. Finally, we assess how this affects sex workers' experience of law, its enforcement, their safety concerns, and their confidence in reporting crimes.

1. Investigation and awareness of online markets

Overall, we found limited knowledge of online markets in sexual labour in our interviews with police officers. This was linked in part to resources, such as staffing and skills, but policing priorities also played a significant part in whether intelligence was gathered. Internet sex work was a lower concern for many forces, unless it was reported as a problem by the public in terms of public nuisance or protection, or was seen as part of the modern slavery remit, which is now high on the policy agenda. As one male Detective Sergeant noted, unless a specific crime was reported 'it's probably just monitoring it'.

We found some evidence of the 'increased surveillance of profiles and chatrooms', and platforms predicted by some commentators.⁴⁸ More often, however, police monitoring appeared regionally variable and was often spasmodic. In many instances police forces had not developed an organized approach and were aware their intelligence on online sex work was limited. In part, this was because they did not have the up-to-date technology or staff resources to collect and interpret 'forensically sound' data:

46 Cunningham et al., op. cit., n. 3.

47 Sanders et al., op. cit., n. 2. This also offers a more comprehensive account of the project's research methodology.

48 T.J. Holt and K. Brevin, 'Examining Sex Work from the Client's Perspective: Assessing Johns Using on-line Data' (2007) 28 *Deviant Behaviour* 333.

I do feel as if the police are sort of left behind to a degree, and we are still concentrating, probably for good reason, on the street work . . . But as this shift happens to the more sort of online, indoor arena, I'm not entirely sure we're currently equipped to deal with that effectively.
(Male Chief Inspector, Strategic Lead)

Where any monitoring took place, this tended to be a one-off, snapshot piece of work, though a small number of forces we spoke to were undertaking more routine regular surveillance of online activities and platforms markets in their area, especially where they had a team whose remit was human trafficking. The focus for these officers was the identification of certain indicators of vulnerability and exploitation:

We have a number of platforms . . . where sex workers would advertise and our team, on a daily basis . . . scan those websites looking for people advertising . . . and looking for indicators that would help us ascertain or make an assessment that they're part of a broader network of organised prostitution and are likely not to be in control of their own destiny.
(Male Detective Superintendent leading on Modern Slavery)

In line with the gender focus in much policy discussed earlier, forces generally did not include monitoring of male escort websites or gay hook-up and dating platforms or specialist platforms for transgender sex workers, despite research which now firmly recognizes diversity in sexual labour markets⁴⁹ and our own findings which show that male and trans sex workers represent a significant proportion of the online sector.⁵⁰

In addition to national legislation and policy, police-specific guidance also plays a part in dictating investigation of online markets in sexual labour. As we discuss below, there is often a tension between different agendas, which creates dilemmas for local policing practice as well as leading to safety issues for internet-based sex workers.

2. Interpretation of policy and principles guiding investigation of online adult sex work

The most recent National Policing Sex Work Guidance, for England and Wales,⁵¹ takes a victim-centred approach, which seeks to balance public protection duties to sex workers with a proportionate response to community impacts. This applies to all sectors of the market, including the online market.⁵² Adult sex work does not come under the banner of modern slavery, although the Guidance makes reference to trafficking and slavery as potential associated crimes, along with other forms of coercion. Our research

49 N. Smith et al., 'Being, thinking and doing "queer" in debates about commercial sex' in *Queer Sex Work*, eds. M. Laing et al. (2014) 1.

50 Sanders et al., *op. cit.*, n. 2.

51 National Police Chiefs' Council, *National Policing Sex Work Guidance* (2015).

52 *id.*, p. 9.

sought to discover the extent to which this resonates on the ground, how the policy is being operationalized, and how officers balance these duties.

For some interview participants, the national guidance has changed the balance of policing priorities in relation to sex work generally. One officer observed that the guidance ‘swings it completely the other way and we go for safeguarding now over enforcement’ (male Inspector carrying out scoping of sex work). Some police interviewees were more aware of the need for a welfare-oriented, non-judgemental approach which would help to build trust among sex workers, although this tended to be set in the context of a wider public protection or safeguarding remit. This, it was said, might include an approach which considered vulnerability more generally and engaged with sex workers as individuals, as well as with organizations working with sex workers:

So in terms of what we focus on, of course we’re focused on exploitation, trafficking, slavery, but we’re focused on that within a much wider engagement strategy, not just around sex workers, but around victims of exploitation. (Male Sergeant in Public Protection)

This broader approach was also seen to encourage reporting of other risks or crimes against sex workers. Nonetheless, there was frequently a tension between the enforcement and safeguarding agendas. This was summed up in the press by one sex worker: ‘You can literally go from being the victim, to being the criminal in a matter of minutes.’⁵³

While the National Guidance focuses on sex work more broadly and recognizes that there are varying views on sex work and prostitution, we found that in many instances, the officers who held the remit for adult sex work were also responsible for action in relation to modern slavery. Thus, while at national level in England and Wales, the issues remain separate, there has been some convergence in many local forces, which influences how adult sex work is perceived and investigated. Moreover, not all participants interviewed were aware of the national guidance, which also does not include Northern Ireland or Scotland, and thus the approach to sex work was not consistent across forces.

Not all forces had linked sex work with modern slavery or trafficking, although one male Sergeant working in Public Protection commented that both sex work and trafficking had a strategic location within safeguarding. Where exploitation was discussed, this tended to be seen as relating to sexual exploitation, with a frequent narrative emerging of predatory individuals or groups (typically male) who controlled, coerced or misled vulnerable women into selling sexual services. The notion of labour exploitation was not considered in many instances, with a few exceptions, for example, where police forces had consciously adopted a policy on adult sex work and had liaised

53 D. Lee, ‘How “pop-up” brothels transformed Britain’s suburban sex industry’ *Guardian*, 25 November 2017.

with projects advocating sex workers' rights and/or sex worker support groups. In one area, offences against sex workers had been categorized as hate crimes, but this approach was an exception.

In some cases, there was recognition that people might engage in sex work of their own volition. For example, one male Sergeant who had a sex-work liaison role noted that the sex workers he had come across were 'generally single females who are just making a living'. A Detective Superintendent leading on modern slavery distinguished between sex workers who were assessed as vulnerable and those who are 'willing' sex workers. Overall, the focus was very much on supporting 'vulnerable' individuals or generic approaches to coercion, particularly within the framework of human trafficking, rather than considering the rights of people selling their sexual labour. This is perhaps not a surprising finding, given that the police, although sometimes using the language of sex work, are still operating within existing regulatory frameworks which relate to safeguarding and enforcement of prostitution-related offences and, more recently, the policy focus on modern slavery.

3. The impact of safeguarding, vulnerability, and modern slavery discourses

'Trafficking' and 'modern slavery' appear as new priorities for policing as a result of the introduction of the United Kingdom Modern Slavery Act 2015 and also the government policy agenda, which, as one female Detective Sergeant in a Protecting Vulnerable People's Unit commented, resulted in the Home Office 'really pushing' activities relating to modern slavery. A female Superintendent in public protection described the trafficking agenda as a 'big ticket issue for local authorities'. We found that, while some police participants described trafficking as a subset of modern slavery, others sometimes used the two concepts interchangeably, which may also reflect the confusion in policy discussed earlier. With responsibility for adult sex work often being subsumed within a broader modern slavery remit, much policing of on- and off-street sex work consequently had a relatively narrow focus.

As our work and other international studies confirm, police activities under the trafficking banner also include the extensive monitoring of internet-enabled sex work.⁵⁴ One police participant noted that, while online sex work is not in itself illegal, the Modern Slavery Act:

... is brand new legislation. And, of course, that lends itself to be able to tackle online sex working and trafficking, sex trafficking and things like that. So – for forces nationally, it is very much a new area of business.
(Male Sergeant, Adult Sex Work and Slavery Team)

⁵⁴ Peppet, *op. cit.*, n. 1; A. Farrell and S. Cronin, 'Policing prostitution in an era of human trafficking enforcement' (2015) 64(4–5) *Crime, Law and Social Change* 21.

This suggests that, while internet-enabled sex work has in the past been largely peripheral to police investigations, the recent policy focus on modern slavery may lead to increased surveillance of online spaces. The additional funding sometimes available to pursue modern slavery may also drive monitoring activities, although, as we noted earlier, many forces perceived themselves to be under-resourced in terms of staffing and expertise in general.

While the Modern Slavery Act is gender neutral in its discussion of sexual exploitation, police activities were in the main centred on female victims of trafficking, reflecting the policy deliberations and media focus discussed earlier in this article and the distinctions frequently made between sexual exploitation (of women) and labour exploitation (of men). Indeed, the Crown Prosecution Service report on Modern Slavery⁵⁵ appears to imply both gender and categorical distinctions, noting that: ‘While trafficking for sexual exploitation remains a priority, we have seen a growing number of cases involving the trafficking of vulnerable male victims into forced labour being referred to us.’ Hence, with a few exceptions, as discussed above, labour exploitation was not a consideration when addressing issues related to female sex work.

In part, conceptualizations of exploitation were linked to the remit of the team and the experience of officers responsible for investigating adult sex work. Where online investigations were linked to a modern slavery agenda, police interviewees frequently cited a set of indicators that would trigger concerns about potential offences related to sexual exploitation. Factors such as sex worker mobility, payment mechanisms, and types of sexual services offered, particularly unprotected sex, were all identified as potential signifiers of trafficking (for the purposes of sexual exploitation which is the definition in the Modern Slavery Act 2015). Profiles of (primarily female) sex workers which appeared sporadically on major online directories, in contrast with those which appeared on a regular basis, also raised concerns. Other indicators that sex workers may be controlled were said to include the use of consecutive mobile phone numbers in adverts (suggesting that more than one SIM had been bought at the same time) or the use of one number by several different profiled women over time, a rapid turnover of different women in the same location, and similarities between advertisements, or services offered.

Intelligence was collected where language used in the advertisements indicated that the sex workers advertising were not native English speakers, which was perceived by some to be one of the signals that the women concerned might be trafficked. Some police interviewees noted that where migrant workers were involved, their assumption was that they had been trafficked. Thus, the onus appeared sometimes to be on the sex workers to

55 Crown Prosecution Service (CPS), *Modern Slavery Report 2017–18* (2018) 1.

prove that they were not trafficked or exploited, which could be difficult for them to achieve if their first language was not English.

While the presence of such indicators was frequently seen to be evidence of involuntary labour, there was some consciousness that certain indicators used to identify ‘trafficked victims’ might encompass ‘voluntary’ sex workers, although this was not the intention of specialist teams:

... we’re not targeting sex work, you know. We’ve got miles better priorities than targeting ... we’re only targeting exploitation and vulnerability in sex work, yeah.

(Male Detective Constable, Modern Slavery Unit)

Fall[ing] back on the National Crime Agency (NCA) assessment, you know where they do your – the top ten source countries for potential victims of modern slavery. So you’re looking at your Romanians, your Poles, your Slovaks. But that kind of contradicts with some research that’s been done somewhere, which says that maybe 8 per cent or 10 per cent of migrant sex work is actually trafficked.

(Male Detective Inspector leading on Trafficking and Intelligence)

This officer talked about using the NCA list of ‘suspect countries’ as indicators of trafficking, but also acknowledges research that highlights that many migrants travel voluntarily.⁵⁶ It is not surprising that the police struggle to make these distinctions. The line between ‘forced and free’, is not easy to draw, especially from the vantage point of a criminal justice professional on the front line.⁵⁷ Moreover, as we discussed earlier, the conceptual distinction between the two is not clear and it is more appropriate to see ‘free’ and ‘unfree’ labour along a continuum rather than as a binary.

The indicators used by police participants tended to apply to people offering direct sexual services who advertised online, rather than sex workers providing newer forms of digitally-mediated services such as webcamming. In most instances, therefore, further investigation would be required to ascertain the situation of those individuals: ‘Whether it’s of their own free-will, we’ll only ever find out by interacting with that individual’ (male Intelligence Officer). This prompted visits by the police who described their role in these instances as gathering intelligence or as part of a welfare function.

Recently, considerable media and policy attention has been given to the apparently new phenomenon of the ‘pop-up brothel’. The term, has been used to refer to short-term property leases and rentals being used to facilitate sex work, and has appeared repeatedly in national and local news reports during the last few years, with links frequently made to trafficking and

56 The NCA publishes a list of the most common countries of origin and nationalities of ‘potential victims’ of trafficking.

57 J. Doezema, ‘Forced to Choose: Beyond the Voluntary v. Forced Prostitution Dichotomy’ in *Global Sex Workers: Rights, Resistance and Redefinition*, eds. K. Kempadoo and J. Doezema (1998) 34; Cruz, op. cit., n. 37.

sexual exploitation and organized crime.⁵⁸ At the time of writing, and prompted by this sensationalist media coverage, an all-party group, the aforementioned APPG, has launched an inquiry, ‘prompted by growing reports of organised crime groups establishing pop-up brothels to sexually exploit women.’⁵⁹

Our interviews also revealed that ‘pop-up brothels’ are a ‘new’ concern for the police, often discussed as a front for organized crime or trafficking, with officers describing them as a ‘clever tactic’ to evade detection, rather than as an established business practice:

... they have what’s termed as the pop-up brothel, which is in a cash rented terraced house, for example, and will move instantly if there’s interaction with law enforcement.

(Male Intelligence Officer)

We’re not seeing so many of the residential houses ... But we are finding that you’ve got more hotels that are having short lets, you know, a couple of nights. And before somebody’s cottoned on what’s happening, they’ve moved ... so that makes it harder for us because they’re not based in one location in a street, which is a bit more visible ... it’s quite a clever tactic.

(Female Chief Inspector and Sex Work Liaison Officer)

Online brothels featured prominently in police problem profiles and motivated surveillance operations. Invariably there was a focus on migrants and, in particular, Eastern European sex workers. When certain nationalities were referred to in the advertising of these ‘pop-ups’, it would operate as a catalyst for further policing investigation, based on indicators of trafficking discussed earlier.

A few police participants expressed awareness that these short-term lets might be premises where sex workers were working independently and/or of their own volition. In some instances, police interview participants recognized the problematic nature of laws that do not allow for distinctions of ‘type’ where people are working together, whether in temporary premises or as a longer-term prospect. Some understood that the law treated the managed brothel as the same as two women working together, outlawing both:

... when you start looking at brothels, you have to think, right, well okay, ... is it just a couple of sex workers who’ve got themselves together and they – they’re running a brothel, or are they all working for somebody else, in which case that would fall back under the Slavery Act.

(Male Sergeant, Adult Sex Work and Slavery Team)

Most officers we interviewed, however, were not aware of the established practice of sex workers ‘touring’ and working in different towns for short spaces of time, and who, like many, use technology to source short-term

58 B. Abbit, ‘The Rise of Pop-up Brothels – How Shame and Fear is Changing the Face of Prostitution in Manchester’ *Manchester Evening News*, 13 July 2017; N. Harley, ‘Seaside town plagued by pop-up brothels in holiday lets’ *Telegraph*, 5 May 2017.

59 APPG 2017, at <www.appgprostitution.uk/inquiry>.

rentals, where they may either work alone or with other sex workers.⁶⁰ It is likely that touring may have been further facilitated by the internet and new rental options that are now much more accessible via internet platforms such as Airbnb. The opportunities that technology brings, in combination with the decline of street and fixed-location brothel markets facilitates more mobile forms of working. It also brings with it a number of risks as it facilitates more isolated forms of working. The assumed nuisance and criminality of ‘pop-up brothels’ obscures these broader features of new economies which could be tackled by more generic forms of property and planning regulation rather than the blunt tool of criminal law.

4. *The impact of policing activities on relations with sex workers*

While surveillance of internet-enabled sex work is a relatively new phenomenon, once the need for further investigation had been determined, policing activities tended to follow traditional lines. For example, some forces described visits where they appeared at premises unannounced having ascertained they were being used for sex work, others where they posed as clients on phone or text to make bookings, appearing at the booking time but then identifying as police. During these visits police had to use their judgement when speaking to individual sex workers, to determine whether to refer them to a specialist officer. Sometimes others, such as healthcare professionals, accompanied the police, as in the case of Support, Health and Wellbeing visits which operate in some cities in Scotland and ‘visit people involved in indoor prostitution to offer support and assess the safety and wellbeing of those involved.’⁶¹

These visits, however well-intentioned, induce fear amongst the sex working community. The negative impact of what many sex workers perceive as ‘raids’ has been documented in recent research by Mai and x:talk with migrant sex workers.⁶² More than a quarter of respondents to the survey of sex workers (26.7 per cent; n=171) were concerned that the police might visit their premises. This related to concerns about social stigma and the precarious situation in which sex workers renting premises may find themselves, where exposure of their sex working status may result in harassment and possibly eviction. Many sex workers are not able to be ‘out’ about their sex work to family, friends or other employers, and universities. Interview participants expressed concern about the potential repercussions of their identity being discovered by neighbours. Given the quasi-legal status of sex

60 Sanders et al., *op. cit.*, n. 2, ch. 3; for example, see F. Mullin, ‘Parliament’s inquiry into “pop-up brothels” is misguided and one-sided’ *Guardian*, 26 October 2017.

61 Scottish Government, *Exploring Available Knowledge and Evidence on Prostitution in Scotland Via Practitioner-Based Interviews* (2017).

62 N. Mai, *Migrant Workers in the UK Sex Industry (RES-062-23-137) – Research Report* (2009); the x:talk project, *Human Rights, Sex Work and the Challenge of Trafficking* (2010).

work and the fact that a number of those involved may be migrants, it is a real concern that these visits may lead to wider public identification, potential criminal charges,⁶³ or deportation.⁶⁴ This fear is aggravated by high-profile cases where immigration authorities have also been present in operations.⁶⁵

The use of criminal justice measures to buttress and assist welfare functions raises the issue of the appropriate use of police powers. Similar points have been made previously by authors in relation to ESOs where street sex workers are being compelled into exiting programmes in lieu of criminal sanctions.⁶⁶ Similarly, there is potential conflict between police monitoring activities of online sex work within a modern slavery agenda and sex workers' civil liberties. Our research showed that sex workers are keen to take their own safety measures to protect their identity online, which may be undermined by police surveillance and enforcement. Unless handled sensitively, police activities will disrupt the business of those who are sex working legally of their own volition and may render online sex work more hidden, driving the visibility of profiles and exploitation further underground. Concern was expressed by some police interviewees that their online surveillance might lead sex workers to move their advertising to other jurisdictions or to the dark web, which has been the experience in the Republic of Ireland and the United States of America:⁶⁷

[The information] I'm gathering through [a major platform] ... it's something that we can go on and look without causing any issue. And what we don't wanna do is for them to go to secret sites that we don't know about, because that's generally where the nasty people will go and look so they can't be traced.

(Male Inspector carrying out scoping of sex work)

These actions may run counter to the careful intelligence gathering and community relations policing required for successful trafficking operations,⁶⁸ and also reduce trust amongst sex workers and the police, undermining attempts to encourage the reporting of crimes committed against sex workers to the police, beyond those that fit within a narrow definition of trafficking for the purposes of sexual exploitation.

63 J. Stolarchuk, 'Police accused of terrorising women by using battering rams, sledgehammers during brothel raid' *Independent*, 9 December 2017.

64 T. Seaward, 'Campaigners hit out after immigration brothel raids' *Swindon Advertiser*, 6 July 2017.

65 A. Gallagher, '"Pop-Up Brothels" and Moral Panic' *London Rev. of Books Blog*, 6 November 2017.

66 Carline and Scoular, op. cit., n. 20.

67 M. Finn and L. Stalans, 'How Targeted Enforcement Shapes Marketing Decisions of Pimps: Evidence of Displacement and Innovation' (2016) 11 *Victims & Offenders* 578.

68 A. Farrell and R. Pfeffer, 'Policing Human Trafficking: Cultural Blinders and Organizational Barriers' (2014) 653 *ANNALS of the Am. Academy of Political and Social Sci.* 46; Farrell and Cronin, op. cit., n. 54.

5. Experiencing and reporting crimes and exploitation in the online workspace

Interviews with sex workers revealed a high incidence of crimes and low levels of reporting of such incidents to officials.⁶⁹ The trend appears to be that serious incidents of crime such as physical assault and rape and sexual assault are less commonly experienced by online sex workers, although other types of digitally facilitated crimes were reported at high levels. Most respondents (80.8 per cent; n=518) in our survey had experienced at least one form of crime in the past five years. The average (mean) number of different types of crime experienced in the past 12 months was three. Crimes experienced by the majority of online sex workers included: persistent or repeated unwanted contact or attempts to contact through email, text or social media; threatening or harassing texts, calls or emails; verbal abuse; non-payment or attempts to underpay for services.⁷⁰

While the internet may create new opportunities for marketing and delivering sexual services, the use of digital technologies may also introduce a new set of intermediaries to whom sex workers may hand over a degree of control. Internet platforms who often facilitate direct sexual exchanges or webcamming performances may have specific terms of use and also tend to charge a fee for their services.⁷¹ While some sex worker participants felt that they were getting a good business service from these platforms, others noted that rates could sometimes be extortionate, as webcam worker Michael observed;

It would be lovely if they charged less, and I certainly think they could take even half that money and still make an absolute fortune ... In the adult industry the right to earn money comes at a very hefty percentage price.
(Michael, independent webcammer)

Sex workers also reported concerns regarding security of personal data, which is particularly problematic in relation to the dangers of being ‘outed’ discussed earlier. Moreover, there is evidence of some stratification in access to and use of online platforms, according to workers’ ability to afford more extensive services with the potential for advanced data protection.⁷²

Whilst it has been well established in the literature⁷³ that formal crime reporting to the police by sex workers is low, we note this trend continues for online sex workers. The vast majority of crimes amongst online sex workers

69 Sanders et al., op. cit., n. 35.

70 R. Campbell et al., ‘Risking safety and rights: online sex work, crimes and “blended safety repertoires”’ (2018) *Brit. J. of Sociology*, at <<https://onlinelibrary-wiley-com.proxy.lib.strath.ac.uk/doi/epdf/10.1111/1468-4446.12493>>.

71 Sanders et al., op. cit., n. 2.

72 Cunningham et al., op. cit., n. 3; Ray, op. cit., n. 3.

73 E. Klaumbauer, ‘Policing roulette: Sex workers’ perception of encounters with police officers in the indoor and outdoor sector in England’ (2017) 18 *Criminology & Criminal Justice* 255.

went unreported: only 114 (23 per cent) out of 496 respondents stated that they had ever reported incidents to the police, proportionately more female than male respondents (25.4 per cent; n=93 compared with 16.5 per cent; n=15). Only 33.1 per cent (n=212) of respondents stated they were 'quite' or 'very' likely to report incidents to the police in future, whereas 39 per cent (n=250) felt they were 'quite' or 'very' unlikely to report incidents. Reasons include fears of being identified by the police; jeopardizing anonymity; previous experience of unsatisfactory response from the police; fears of reprisals, and perceptions of the 'severity' of the incident and how they would be treated in the criminal justice system.⁷⁴

As most sex workers purposely did not reveal their work or location to others, many independent escorts were remote from the police. This was in comparison to other more publicly accessible sex-work environments where police presence was more ordinary and where relationships were established:

... working in the parlours and stuff like that, the police used to come in there, you see, so the police were very aware of them and they'd come in and they ask about the people ... they [the police] would know you and chat to you.
(Kisses, 32, independent dominatrix and webcammer)

Even where workers were well aware of their rights in relation to unwanted contact, there was still a reluctance to involve the police. Workers chose to either deal with the person themselves, or just endure the abuse until it stops:

I don't feel I can go to the police because I don't think the other ladies will – most ladies don't want anything to do with the police, it just gets complicated.
(Maggie, 41, independent escort)

Yet other sex workers felt they were able to make contact with the police and report issues, using this with threatening customers as a deterrent:

I got a whole barrage of abuse by text message where he said, 'I know where you live. I'm gonna come round and paint over your doors and I'm gonna come round and brick your windows.' I live in a very nice street and I said to him, 'I'll go to straight to X Police with that one, thanks.'
(Ben, 32, gay male independent escort)

Whilst there was some evidence of constructive relationships between the police and the sex work community, especially where this is facilitated by a sex work liaison officer, it is clear that online sex workers generally will shy away from reporting crimes or other forms of exploitation they experience in the sex industry. Our study confirmed that despite higher levels of digitally facilitated crimes experienced by many sex workers (such as unwanted contact and harassment), there were still low levels of reporting to the police. Where reporting did take place, there were mixed experiences, with some sex workers stating that they would never report again, feeling they had not been taken seriously as victims of crime.⁷⁵

⁷⁴ Campbell et al., *op. cit.*, n. 70, p. 12.

⁷⁵ Sanders et al., *op. cit.*, n. 35, pp. 93–95.

Our research offers one of the largest datasets on the online sex market. Detailed interviews with police, sex workers, and other parties connected to the industry examine the implications of this changing environment for policing and regulation. Since such developments have been ignored in legal reforms of prostitution law and, as our findings reveal, police awareness of much of what is now the routine practice of online sex work is modest, the operation of existing policies and policing practices are shown nevertheless to be pernicious to sex workers working in this field.

In this discussion, we consider the implications of a policy framework that persists with a criminal justice-centred approach, which we argue not only leads to a number of unintended consequences but fails to tackle – and may even normalize – the forms of exploitation in this sector/market, all of which render the vulnerable more vulnerable.⁷⁶ In order to understand and obviate these harms, a more expansive understanding of exploitation is required which, for it to be tackled, necessitates sex work to be decriminalized, and recognized and regulated as sexual labour.

DISCUSSION

1. *The persistent problems of a criminal lens*

Our research shows that policing practice is to ‘enact the law’, but while the national guidance appears to have some recognition of changes to markets in sexual labour and prioritizes safeguarding, police forces on the ground are often not aware of this guidance and many tend to set their view of sex work and consequent actions in the framework of either modern slavery (or sometimes human trafficking), or public nuisance. Where safeguarding is a consideration, this tends to relate to notions of sexual exploitation. This impacts on policing activities in relation to online sex work, where newer working practices are frequently construed as indicative of exploitation rather than examples of independent sex workers using the internet to market or provide their services. Labour exploitation lies outwith the ambit of policing and is not recognized in current policy.

There are, as noted, competing trafficking/slavery definitions and these are evident in policing practice.⁷⁷ We show similar tensions in the policing of online sex markets: police we interviewed have to navigate the pressure that comes from policy presumptions that many aspects of sex work are symptomatic of exploitation, alongside their responsibility to investigate individual instances of coercion and abuse that fit a criminal justice standard.

76 P. Hubbard and J. Scoular, ‘Making the vulnerable more vulnerable? The contradictions of street prostitution policy’ in *Safer Sex in The City: The Experience and Management of Street Prostitution*, eds. D. Canter et al. (2009) 135.

77 O’Connell Davidson, *op. cit.*, n. 10; Munro, *op. cit.*, n. 10.

While this may result in some successful prosecutions, these are very small in number, especially when compared with the apparent/stated scale of the problem of modern slavery.⁷⁸ Estimates cite 40.3 million victims worldwide and between 10,000 and 13,000 in the United Kingdom⁷⁹ and yet a recent FOI request revealed that the number of convictions in England and Wales, since the Modern Slavery Act 2015 came into force on 31 July 2015, is just 22.⁸⁰

This justice gap – the gulf that exists between the perceived scale of the problem and the number of successful cases – elicits two responses: the problem either requires greater punitive measures⁸¹ or is an exaggeration (claims of moral panic have been made in relation to both the phenomenon of ‘pop-up brothels’⁸² and trafficking more generally)⁸³ neither of which, we argue, are adequate explanations of what is going on and are in fact a direct result of the dynamics of regulation.

Our study examines the complex way in which policy and policing interact, as police personnel operationalize different definitions of trafficking and exploitation. According to Painter, policing practices are examples of ‘stateness’ being enacted and are profoundly different from formal policies.⁸⁴ Likewise Valverde and Dubber⁸⁵ note that policing is related to several differing temporalities, modes, and spaces of governance rather than simply upholding the criminal law. Discretion is inevitable in policing, which inverts the notion that police simply uphold the law or act upon policy. In our research we show that, while policing in this arena is shaped by laws and driven by targets, there is significant space for discretion, to interpret policy, particularly in the contested domain of trafficking and exploitation. Although obviously distinct, we argue that policing and policy have a constitutive relationship as police officers are not only the subjects of policy but also become policy agents. The apparent ‘moral panic’ around

78 J. O’Connell Davidson, *Modern Slavery: The Margins of Freedom* (2015).

79 The Global Slavery Index, at <<https://www.globalslaveryindex.org/2018/findings/highlights>>; Department of Justice (DoJ), *UK Annual Report on Modern Slavery 2018* (2018), at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/749346/2018_UK_Annual_Report_on_Modern_Slavery.pdf> 8.

80 Freedom of Information Act (FOIA) Request – 181002017 (29 October 2018).

81 This has led to calls to criminalize the purchase of sex, more punitive measures, tighter surveillance, and even closing down of platforms as is the case in the United States: T. Williams, ‘Backpage’s Sex Ads Are Gone. Child Trafficking? Hardly.’ *New York Times*, 11 March 2017.

82 Gallagher, op. cit., n. 65.

83 R. Weitzer, ‘Flawed Theory and Method in Studies of Prostitution’ (2005) 11 *Violence Against Women* 934.

84 J. Painter, ‘Prosaic geographies of stateness’ (2006) 25 *Political Geography* 752.

85 M.D. Dubber and M. Valverde, ‘Introduction’ in *The New Police Science: The Police Power in Domestic and International Governance*, eds. M.D. Dubber and M. Valverde (2006) 1.

‘pop-up brothels’ is a good example of this process as it appears that policy direction has been partly informed by policing assumptions and/or media coverage. Policy interventions, such as the recent (APPG) inquiry into ‘pop-up brothels’ which strongly associates internet-facilitated sex work with increased exploitation has in turn, as our empirical work reveals, tended to influence the activities of law enforcement agencies at local level. What is interesting here is that the interplay between policing and policy becomes self-sustaining and, as a result, many problems faced by individuals selling sexual services in or through online spaces are simply not addressed.

Our work draws attention to the way in which limited understanding of the field, informs a narrow problematization of the issue (based on a stymied understanding of exploitation and sex work), which in turn authorizes a restricted range of governmental strategies⁸⁶ – namely, criminal justice powers. Rather ironically, such approaches simultaneously overlook, and hence potentially perpetuate, more routine exploitation. As Fudge perceptively notes (in relation to the domestic labour market, but equally aptly in the present context), a criminal justice response simply normalizes routine forms of exploitation – in that it reifies deregulation of this market, the lack of legal rights and labour law recognition and enforcement, and strengthens immigration and other punitive controls.⁸⁷ Furthermore, newer forms of online crimes against sex workers may go unaddressed, not only because the focus in policy is on sexual rather than other forms of exploitation, but also because the detrimental impact of many criminal justice measures on sex workers’ business and well-being has led to a general reluctance to report crimes.

The negative impact of legal moves to crack down on indoor establishments has some historical precedents. At the turn of the century the systematic repression of lodging-house brothels was carried out across Britain under police powers often with the support of vigilance and early feminist campaigners. Efforts to save poor women using ‘protective criminal justice measures’ displaced prostitution to other areas, dislocated prostitutes from their working-class communities, and undermined their social and economic autonomy as the laws ‘effectively destroyed the brothel as a family industry and a centre of a specific female subculture.’⁸⁸

In the twenty-first century we see similar dynamics being played out. Changes in the wider economy and advances in technology have transformed the sex industry. Our work has highlighted the problems when concerns regarding exploitation are operationalized in police activities such as ‘raids’

86 Scoular, op. cit., n. 41; J. Scoular and M. O’Neill, ‘Regulating Prostitution: Social Inclusion, Responsibilization and the Politics of Prostitution Reform’ (2007) 47 *Brit. J. of Criminology* 764.

87 Fudge, op. cit., n. 22.

88 J. Walkowitz, *Prostitution and Victorian Society: Women, Class, and the State* (1980).

under the banner of modern slavery. These may at the very least disrupt the business of sex workers (many of whom are working legitimately), or may lead to more serious consequences, such as sex workers being ‘outed’ and subsequently harassed and, more dangerously, threaten the safety of sex workers through leading to their eviction or forcing them to change working practices. For migrant workers, in particular, these raids have added significance.

The question we should ask is who profits from these disruptions? While there are doubtless a range of third-party intermediaries who capitalize from contemporary sex workers’ vulnerability, we have to ‘Get Past the Pimp’⁸⁹ – a stylized and often racialized cliché which fails to account for power dynamics beyond an overly individualized schema of exploitation. Yet, as Caradonna notes, independent workers are less ‘exploited by a single employer within a capitalist framework’ than they are ‘by the nebulous yet crushing demands of an entire market’.⁹⁰

This speaks to the need to address wider socio-economic conditions and to strengthen workers’ rights in the gig economy. The problem of course is that sex work is currently not recognized as a form of labour and current understandings of exploitation are narrowly focused on sexual exploitation.

2. *Understanding exploitation*

Contrary to current policy, which is heavily influenced by abolitionist ideology, the forms of harm and exploitation that we see in sex work (including online environments) are more complex than the simple amplification of patriarchal power. Such factors include poverty, austerity, precarious labour, and draconian immigration and criminal laws which impact on sex workers’ ability to work without risk of coercion or threats to their safety.⁹¹

Despite the rhetorical appeals of binary explanations, online sex work is neither liberating nor uniquely oppressive but, rather, is an activity which takes place in intersections of late capitalism. We see this from the range of findings in our study which highlights the many different sex-work and non-sex-work jobs that make up income portfolios as individuals navigate and manipulate both the informal (gig) and formal labour market to make a living. The neoliberal politics of digital sex work is both diverse and contradictory. As Jones notes, sex workers engage in a highly stigmatized form of labour but ‘are not mere handmaids, victims, or vectors of capitalism’.⁹²

89 Bruckert and Parent (eds.), *op. cit.*, n. 33.

90 A. Caradonna, ‘From brothels to independence: the neoliberalisation of (sex) work’ *Open Democracy*, 1 March 2019, at <<https://www.opendemocracy.net/en/author/ava-caradonna/>>.

91 Strauss, *op. cit.*, n. 40; Fudge, *op. cit.*, n. 22; Cruz, *op. cit.*, n. 37.

92 A. Jones, *Selling Sex Online: Work, Community, and Pleasure in the Adult Webcamming Industry* (2019, forthcoming) ch. 2.

Moreover, the way in which sex work is currently regulated in the United Kingdom creates the potential for highly exploitative work practices to go unaddressed. Currently, however, as sexual labour is not viewed as work in policy or law, sex workers do not have any labour protections and police responses tend to be limited to harm reduction, addressing complaints related to public nuisance (albeit less so for online workers), activities under the banner of modern slavery, or other safeguarding actions. Thus, other forms of exploitation currently go unaddressed.

A key issue for contemporary sex workers who see themselves as independent is that many would like to work with others for safety and companionship.⁹³ While the HASC report⁹⁴ recommended changes to the law to allow sex workers to share premises, this recommendation was not implemented. This means that cooperative sex work enterprises are currently not permitted in law as they may be construed as brothels – an interpretation even more likely as these relationships have been misinterpreted in policy deliberations, such as the APPG Inquiry discussed earlier, which sees the supposed advent of ‘pop-up brothels’ as a paradigm of exploitation which has fuelled a more punitive approach.

The continued negative effects of the criminal justice model that our research outlines questions this approach and lends further weight to arguments for decriminalizing sex work. Removing ancillary offences (of brothel keeping and soliciting) which prevent people working together and working in public spaces (which includes the internet) would assist with safety concerns and encourage sex workers to report crimes, which the internet appears to be facilitating. Decriminalization would also begin the process of re-situating online and indoor forms of sex work within a more suitable framework of sexual labour.

3. Decriminalizing sex work and moving to a sexual labour framework

There is a growing body of evidence to show that sex work may more productively be viewed in terms of a continuum of exploitation, similar to labour markets more generally.⁹⁵ This should include internet-enabled sex work, although, as our research demonstrates, there are also some additional considerations which may mean that policy/legal changes and any measures to address labour market abuses need to take into account the structures and working practices in online sexual labour markets. For instance, online sex workers often work in isolation, either in private premises or hotels or other temporary settings, such as holiday lets. They are frequently independent self-employed workers and thus do not usually have standard employer–employee labour relations, although some may work for agencies some of

93 Pitcher, *op. cit.*, n. 7.

94 Bernstein, *op. cit.*, n. 9.

95 Pitcher, *op. cit.*, n. 7; Cruz, *op. cit.*, n. 37; O’Connell Davidson, *op. cit.*, n. 10.

the time and a few may also work in brothels. Those working in newer forms of digitally-mediated sex work such as webcamming also have transactional relations with online platforms and these working relationships may also need contractual protection. Additionally, online sex workers may be subject to new forms of online abuse, exploitation or fraud, and while criminal activities should come under the remit of police forces, because of the conflicting agendas which mean that sex workers are often wary of involving the police (for example, because of experience of disruption of their business or exposure of their working status through ‘safeguarding’ activities, or fear of prosecution under laws related to brothel-keeping if they work together), crimes may go unreported.

The current legal approach, which fails to offer labour protections within sex work, is buttressed by laws relating to trafficking and slavery. Despite the Modern Slavery Act 2015’s claim to consolidate trafficking for sexual and labour exploitation into a single human trafficking offence,⁹⁶ the two remain distinct as ‘exploitation (which is termed as the ‘purpose’ of trafficking)’ encompasses slavery, servitude, or forced or compulsory labour,⁹⁷ or sexual exploitation.⁹⁸ Thus, as Cruz notes, exploitation in the context of trafficking into prostitution continues to be viewed as a *sexual* offence, and hence distinct from the exploitation of labour more generally.⁹⁹

The current regime does not extend labour protections to sex workers who might be seen as falling into the category of ‘voluntary’ sex workers, but only addresses criminality in relation to issues such as slavery and child sexual exploitation. To an extent, this was reflected in some of the interviews. For example, when discussing modern slavery or trafficking, some police participants distinguished between labour exploitation (which it appeared covers everything *outside* the sex industry) and sexual exploitation, relating principally to women in the sex industry. In the small number of instances where exploitation of adult sex workers was raised, it was generally linked to the concept of control rather than labour exploitation. This is not surprising, given that the police are not trained, or empowered via legislation, to see sex work as labour, whether voluntary or trafficked. It is the gap in knowledge around types of exploitation and the lack of tools to examine non-sexual forms of exploitation that have left the police focused only on extreme forms of coercion, control, and force. Yet, as O’Connell Davidson notes, ‘only a tiny minority of workers in the United Kingdom sex industry fit the criteria recognised by the relevant authorities as constitutive of “trafficking”’.¹⁰⁰

96 Modern Slavery Act 2015, s. 2.

97 *id.*, s. 3(2).

98 *id.*, s. 3(3).

99 Cruz, *op. cit.*, n. 37.

100 J. O’Connell Davidson, ‘Convenient Conflations: Modern Slavery, Trafficking, and Prostitution’ *Open Democracy*, 4 November 2014, at <<https://www.opendemocracy.net/beyondslavery/julia-o%27connell-davidson/convenient-conflations-modern-slavery-trafficking-and-prostit>>.

This does not mean that exploitation does not exist and that concerns are merely overblown panic. Rather, the current understandings, definitions, and regulatory mechanisms are too narrow to capture and tackle the structural and routine exploitation that exists. As Cruz notes, exploitation is widespread and stretches beyond the extreme forms proscribed by criminal law.¹⁰¹ Moreover, within online sexual labour markets, we found that working practices and relationships differ from more traditional managed environments such as brothels or lap-dancing venues, as many sex workers in internet-enabled sex work class themselves as independent. This may be simultaneously empowering and disadvantageous, in that it may entail greater autonomy than employed labour, but also greater precariousness.¹⁰² There is also a continuum within the independent online sector, from those who see themselves as small business owners, to sex workers who are working long hours to make a basic living in what is an extremely competitive market¹⁰³ due to the ‘broader incorporation of informal service work into the online, freelance, customer-reviewed “gig” economy.’¹⁰⁴

Furthermore, new digitally-mediated markets such as webcamming may provide lower levels of income than in independent direct sex work such as escorting, as they are often facilitated by third-party websites, which also charge a fee.¹⁰⁵ While these markets may provide the convenience of flexible hours, which may be beneficial to groups of workers such as students, the increase in these forms of sex work may also be indicative of financial constraints making it necessary to undertake additional work in order to subsist. It might be argued, however, that the stratification in independent online sex work also reflects structures in self-employment more generally, which is an issue that requires further discussion beyond the remit of this article.

There is thus considerable diversity within online sexual labour markets, with new forms of work also providing flexible and/or occasional work opportunities, but also the potential for financial exploitation in some instances. Currently, however, United Kingdom policy and legal systems tend to treat all sex work as uniform, with no capacity for consideration of differing forms of exploitation, particularly within labour relations.

Hence, while not addressing all potential forms of exploitation, decriminalizing sex work and extending the same legal protections as other self-employed occupations at least gives sex workers some rights as workers and access to legal redress where there is a significant risk of exploitation by third parties. Currently the police can only react according to the law; hence sex workers do not receive protection as workers, significantly limiting the

101 Cruz, *op. cit.*, n. 37.

102 *id.*; Pitcher, *op. cit.*, n. 7.

103 Sanders et al., *op. cit.*, n. 2.

104 Caradonna, *op. cit.*, n. 90.

105 Sanders et al., *op. cit.*, n. 2.

protection they can offer. Decriminalization would mean that sex workers would then have access to employment and contract law to resolve disputes between themselves and employers or clients, and the police could still investigate cases of trafficking or slavery under the Modern Slavery Act but as standard labour exploitation as well as other sexual offences committed against sex workers *as citizens* under the Sexual Offences Act 2003. The continuum approach is useful because it recognizes that sex workers are economically compelled workers who are often exploited – and allows us recognize ‘vulnerabilities’ such as gender and migration status and forms of abuse and exploitation, not through a safeguarding or victim lens, but as structural features of capitalist societies.

Of course this approach requires a fundamental change in public and political perceptions of the problem and legislative reforms, in an arena that is highly politicalized, fiercely contested, and notoriously impervious to nuance. Meanwhile, our research suggests some reforms at a policing level which could ‘trickle up’ and help to inform policy transformation. We discussed the conflation with sex work and trafficking, which stems from current legal discourse but is also related to where sex work is situated in police departments and where resources are focused. This means that in many instances sex work has become a sub-sector of modern slavery/human trafficking. Yet the two are separated in national police guidance which, we argue, could inform structural changes in some police forces which would help to ensure that sex work and sexual exploitation are not seen as synonymous. This would adhere more closely to the national guidance, which has been carefully negotiated and takes into account contemporary forms of sex work and its often independent nature, so that instances of actual exploitation or abuse are addressed separately according to normal police practice. This would certainly have an impact on the level of crime reporting by sex workers and address some, though not nearly all, of the injustices experienced.

CONCLUSION

Our research on the policing of online markets in sexual labour once again reveals the shortcoming of the current regulatory model. The current regulatory system in the United Kingdom, which sets all sexual labour in the context of criminal law, creates a justice gap. Despite a great deal of attention on the issues of exploitation, trafficking, and modern slavery, there has been a limited number of convictions, particularly under trafficking-specific crimes and legislation, leading to calls for further punitive measures.¹⁰⁶ Others

106 A. Farrell et al., ‘New laws but few cases: Understanding the challenges to the investigation and prosecution of human trafficking cases’ (2014) 61 *Crime, Law and Social Change* 139.

dismiss this as symptomatic of a moral panic, but that is too simplistic a conclusion. It is not that exploitation does not exist within contemporary sex markets – it is, rather, that current regulatory frameworks fail to address the forms of exploitation that may take place.

We are indeed ‘well beyond Wolfenden’; its notions of public nuisance and private life are now woefully out of synch with the fluid ways in which contemporary sex work occurs and its narrow focus on criminal exploitation is ill-suited to the harms and injustices that sex workers routinely encounter. This has not been helped by the recent focus on trafficking and modern slavery. Our study of policing online sex work shows that law enforcement activities and anti-trafficking initiatives rather than enabling safer working practices often compromise sex workers’ own safety procedures, while leaving many forms of exploitation untouched.

Our research also offers insights into how the law may be reformed. Returning to the opening section, we noted that commentators when considering the advent of online sex work, have predicted that technological advances will either obviate¹⁰⁷ or increase the need for regulation.¹⁰⁸ Our findings suggest neither side of this binary is particularly attractive. Digital technologies have positive implications for sex workers, such as the potential to market services independently and to be safer, but they also bring new crimes and opportunities for exploitation. Increased punitive responses, framed solely around the crime of sexual exploitation, will not only exacerbate harm but will normalize other forms of maltreatment, most notably labour exploitation. Leaving sex work to the vagaries of market forces, in the hope that imbalances will be corrected, will not work. Rather, our work points to the demand for a more nuanced regulatory approach which recognizes that people may engage in sex work of their own volition, but which also addresses conditions of labour and criminal exploitation.

107 Cunningham and Kendall, *op. cit.* (2013), n. 28.

108 Hughes, *op. cit.*, n. 29.