

# Anti-Social Powers and the Regulation of Street Sex Work

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*This article focuses on the use of anti-social behavior powers in relation to a group of vulnerable women – street sex workers. It illustrates how the use of legal tools – anti-social behavior orders and public nuisance injunctions – against sex workers has been both misplaced and ineffective. The article also considers the use of anti-social powers in light of the government’s leaning towards the coercive (or some might argue the compulsory) rehabilitation of sex workers. In doing so, it draws attention to the lack of research on the impact of both exclusion orders and rehabilitation orders for sex workers. Whilst it is important to fill this knowledge gap, it is argued that future investigations in this area would benefit from social network research approaches.*

## Background

According to the 1957 *Wolfenden* Committee, many issues in society may be considered immoral, but that this alone is insufficient to bring them to the attention of the law (Wolfenden, 1957, para. 12). The Committee reasoned that the exchange of money for sex between two consenting adults was one such issue. Nevertheless, the visibility of sex workers was deemed injurious to society and the public nuisance created by street sex workers was considered self-evident (paras. 225–7). It is well known that the recommendations of the Committee were enshrined within the Street Offences Act 1959, which targets known prostitutes who solicit or loiter on the streets. At the time of writing, the Act remains the primary legislative tool used to control street prostitution in England and Wales. Yet, the longevity of a legislative measure does not necessarily equate to its effectiveness. The inability of the police to remove sex workers permanently from the streets has been a feature of each subsequent decade, and the ‘inevitability’ of sex work in communities has resulted in various public nuisance control initiatives; collectively these represent an attempt to keep street sex work within manageable limits and appease those communities that are negatively affected. However, during the last ten years attempts to appease the community have intensified as street sex workers have been caught within the New Labour government’s anti-social ‘net’ as creators of public nuisance (Home Office, 2000). Those sex workers who are visible to the general public have proved ideal subjects for a test case of the government’s anti-social behaviour initiatives, including anti-social behavior orders (ASBOs) and public nuisance injunctions (PNIs). Therefore, whilst it is acknowledged that sex work in the United Kingdom is diverse in terms of ‘nature, location and characteristics’ (Sanders, 2007: 74), this article focuses on street level female sex workers as a distinct group targeted by anti-social powers.

Although the article discusses the use of prohibitory exclusion orders/injunctions against female street sex workers over the last decade, the analysis is set within a contemporary policy framework. In recent years, sex workers have not only found

themselves a focus of New Labour's anti-social crusade, they are also facing the consequences of a new 'moral' crusade. As in the United States (Weitzer, 2007), the fear of sex trafficking in the United Kingdom has brought sex work into the spotlight, with arguments suggesting they are victims of sexual exploitation being used in an attempt to secure legal change and policy reform (see for example, Bindel, 2008a, b). These arguments reject the reasoning of the Wolfenden Committee where prostitution is seen as a matter of choice and a consensual act is a *victimless* crime. Even so, the moral crusade has successfully claimed government policy in the UK, with the result that the Home Office's *A Coordinated Prostitution Strategy* (Home Office, 2006) aims to eradicate prostitution by targeting the purchasers of sex and assisting the victims (those who sell sex) to rehabilitate and leave the streets. The 'victim' status of the sex worker is, however, forsaken in the name of public protection where anti-social behavior is persistent. According to the Home Office, the nuisances associated with street sex work are forms of anti-social behavior and the 'law should be used vigorously to clamp down on unacceptable behavior' (Home Office, 2004, para. 7.21). Towards this end, the *Prostitution Strategy* clearly states that ASBOs should be used against kerb crawlers and can be used against street sex workers (Home Office, 2006: 40), despite criticism from the National Association of Probation Officers that the ASBO moves offenders 'up tariff' and results 'in inappropriate use of custody' (Home Affairs Select Committee, 2005). However, the Home Office believes that ASBOs can be effective if they are linked to support services to tackle the underlying causes of sex work and attached to Intervention Orders where sex work is drug related (Home Office, 2006: paras. 2.20 and 2.21). In this way, the *Prostitution Strategy* dovetailed with the anti-social agenda. It is within this framework that exclusion orders/injunctions are being issued against street sex workers.

This article begins by discussing the gendered construction of the anti-social subject. It draws on a progressive body of research to outline the connections between women who are targeted by anti-social measures and women as sex workers, and highlights inconsistencies within New Labour's social welfare and social control approaches. These themes are further explored in the second section of the paper, which discusses the use of exclusionary injunctions in the governance of street sex work. In this context, the paper brings into focus a confused political agenda, which, it is argued, is having a negative impact on sex workers. Particularly worrying is that exclusion as a tool of social control can restrict access to support services – services the government recognises as essential to the sex worker exit process (Home Office, 2006). It is argued that the government's failure to acknowledge the complexity of sex work and its propensity to encourage the implementation of strategies that lack an evidential foundation is central to this dilemma. Thus (at the risk of 'shouting into the wind'), in the wake of the government's 2006 *Coordinated Prostitution Strategy* and in anticipation of legislative reform which will provide for the rehabilitation of sex workers via court order (see, cls. 15 and 16 of the Police and Crime Bill 2008), the third section of the paper argues against pursuing a coercive rehabilitation regime without supporting evidence, and suggests that effective policy development requires intensive research into the lives of sex workers.

### **Anti-social behaviour – a gendered construct?**

Although government discourse on anti-social behavior is gender neutral, researchers have begun to make links between anti-social control and women. For example, Hunter

and Nixon (2001) found that lone parent women are not just being targeted for their own behaviour, but also for that of others – women have been held responsible for the behavior of their children and even for that of visiting boyfriends, with the result that they have been evicted from their homes. Research such as this has enabled academics to pin point both the complexity and contradictory nature of the government's social policy and social control agendas. By way of illustration, Lister draws on the work of Hunter and Nixon to argue that the government has given insufficient attention 'to the (gendered) relationship between financial deprivation and the ability of parents to fulfil the parenting responsibilities expected of them' (2006: 327). Lister talks of the 'decoupling' of children from their mothers in child welfare policy and argues that the government's 'Children (but not women) first' approach has failed to recognise that child poverty and well being are inextricably linked to maternal poverty and well-being.

Further conflict within the government's approaches to child welfare and social control has also been highlighted by Garrett (2007). His analysis of the government's 2003 White Paper *'Respect and Responsibility: Taking a Stand against Anti-Social Behaviour'* led him to conclude that child protection concerns have been superceded by concerns of anti-social behavior and community protection. Garrett contends that the message from the Home Office to professionals engaged in intervention work with families to remember that communities must come first appears to 'substantially erode, even contradict, the position contained in the 1989 Children Act, that the welfare of the child (or children in the family) must be the 'paramount' consideration' (Garrett, 2007 at p. 846). Yet, the 'community first and children second' discourse has passed by almost unnoticed.

The consequences of a government agenda that divorces child welfare from that of their parents and which prioritises the community over child protection are felt by lone parent women who are the object of anti-social measures (including exclusionary civil orders and injunctions, anti-social behavior contracts, truancy orders and parenting orders). And, there is little public concern. Today, lone parent women are constructed as 'feckless and wilfully responsible for the poverty in which [they are] confined to live' (Phoenix, 1996: 175 in Spinney *et al.*, 2006: 9) and the lived experiences of the women are cast aside in legal proceedings (see, Nixon and Hunter, 2009). As Brown also points out, issues such as mental illness and domestic abuse are common features of anti-social behavior cases, but these are often not taken into account. This is because the government has developed a highly sophisticated (and extremely contentious) legal system to tackle anti-social behavior, but which is unconcerned by intention and motivation (2004: 206–7).

Placing sex workers within a gender analysis framework is important, particularly for street sex workers who are subjected to anti-social powers. According to the English Prostitute Collective, many sex workers (both on and off street) are mothers living with poverty (Lopez-Jones, 2000). The government itself recognises that sex workers can experience domestic abuse and homelessness (Home Office, 2006). It also recognises the additional features of 'low self esteem, poor educational achievement and other indicators of social deprivation' (Scoular and O'Neill, 2007: 769). Nevertheless, just as New Labour's aims to stamp out child poverty have failed to focus on eradicating women's poverty, the recognition of the factors associated with sex work has not led to debate about the 'distributive and associational aspects of social justice' – rather they have served to further criminal control (Scoular and O'Neill, 2007: 769).

### Anti-social measures against sex workers

The purpose of the following discussion is to situate the use of anti-social powers against sex workers more firmly in a critical analysis of New Labour policy which calls for a broader social justice agenda that is gendered (see, Lister 2006; Hunter and Nixon, 2001; Scoular and O'Neill 2007). Concentrating on the use of ASBOs and PNIs against sex workers, this section of the article builds on previous arguments that point to the senselessness of issuing civil injunctions against street sex workers (see, Sagar, 2007, 2008), but importantly it also draws attention to an increasingly punitive control agenda that is without evidential foundation.

Both ASBOs and PNIs have been issued against street sex workers in the Ladywood area of Birmingham. Given the 'newness' of the ASBO, the first targets would of course test the potential of the ASBO to prevent persistent anti-social behavior in the community. Significantly, early indications pointed to sex workers breaching the exclusionary orders and to displacement (Jones and Sagar, 2001). Regardless of this, in 2002/2003 Birmingham City Council took what it referred to as an 'innovative step' and applied for PNIs (via section 222 of the Local government Act 1972) against 20 sex workers also in the Ladywood area (Sagar, 2008). The PNIs prohibited the sex workers from soliciting for one year and from entering the Ladywood area (Birmingham City Council Legal Services, 2004).

Pertinent legal issues concerning the use of the PNI against sex workers have been discussed in detail elsewhere (see, Sagar, 2008). However, to illustrate how local authorities can choose punitive policy over, and to the detriment of, more welfare-based alternatives it is important to point out here that the use of the PNI against sex workers is equally worthy of criticism (if not more so) as the ASBO was before it. In comparison, the definition of public nuisance is even less well defined than anti-social behaviour. Public nuisance is any nuisance 'which materially affects the reasonable comfort and convenience of life of a class of Her Majesty's subjects' (Rhomers, J. in *Attorney-General v PYA Quarries Ltd* [1957] QB 169: 184). Furthermore, at the time the applications were made, the civil status of the injunction meant that hearsay evidence was admissible and thus the court needed only to be satisfied that the order was necessary on a balance of probabilities.<sup>1</sup> In contrast, the standard of evidence demanded to secure an ASBO must satisfy the court beyond reasonable doubt that the ASBO is necessary in accordance with the House of Lords ruling in *R (McCann) v Crown Court at Manchester* [2003] 1 AC 787. Even more controversial, unlike the ASBO, the PNI can last indefinitely. Breach of the PNI is an offence (a contempt of court) which renders the offender liable to up to two years imprisonment.

According to Birmingham City Council, the PNIs reduced the numbers of women working the area from 50 to less than five (Birmingham City Council Legal Services, 2004: para. 4.13). However, some sex workers were found to have breached the PNI (para. 4.12) just as those subjected to ASBOs had (Jones and Sagar, 2001). Another connected problem is that injunctions, like ASBOs, can displace sex work (see, Lowman, 1992) and in doing so remove sex workers out of the reach of front-line services. Importantly, while the applicants of the PNI emphasised (as did the applicants of the ASBO) that they had encouraged the women who were subjected to the injunctions to access support services in the area such as 'Safe' (a city health project aiming to facilitate new lifestyles) (see, Birmingham City Council Legal Services, 2004), during this period of zero tolerance, the attendance of sex workers at Safe fell significantly (UKNSWP, 2004).

The approach taken in Birmingham is in line with current policy. As noted previously, the government encourages the use of civil orders and injunctions against sex workers, so long as they are linked to Intervention Orders/local support projects. Yet, as illustrated in Ladywood, the very nature of an exclusion order renders this link problematic. Furthermore, it remains the case that local authorities can opt to employ anti-social measures to act as a 'deterrent' against street sex work. For example in 2008 Lambeth Council issued PNIs against three street sex workers, and, although the Council reported that it is working with the women to assist them to leave the streets, it also emphasised that the impetus for the injunctions was to 'send out a strong message' (Lambeth Council, 2008). Such 'strong messages' give rise to a risk of displacement; however, the true effects of 'exclusion' remain unknown. The government has failed to commission in-depth research into the effectiveness of anti-social measures or into the impact exclusion has on sex workers and their families. The lack of evidence is frustrating, not least because it has enabled New Labour to conceal the true extent of the current coercive and authoritarian policy agenda against sex workers in the name of community protection and 'to remove itself from any role in the processes of social exclusion' (Scouler and O'Niell, 2007: 769). Further, the lack of analysis enables the government to press ahead with its 'tough love' approach: 'respect or else' is to be juxtaposed with 'rehabilitate or else' as discussed below.

### **Rehabilitation and anti-social powers**

At the time of writing, the government's proposals for legal reform to tackle street sex work lie before Parliament. The Policing and Crime Bill 2008 aims to replace the fining system under the Street Offences Act 1959 and provide for the rehabilitation of persistent sex workers (those who are cautioned twice within a three-month period) by way of a diversionary court order (cls.15). Sex workers are to be ordered to attend three meetings with an appointed supervisor within a six month period (cls. 16). It is envisaged that during these meetings the causes of conduct will be pinpointed and appropriate exit routes pursued. In instances where sex workers fail to attend meetings, the court can summons the offender back to court and deal with her in any way in which the court would have dealt with the offender had she been convicted of the offence (Schedule 1 Part 2). This of course includes the imposition of another order, a Criminal ASBO for example, which, if breached, may result in imprisonment. The possibility of imprisonment, where a sex worker fails to respond to a court summons, is also a cause for concern (*Hansard*, 2009). Thus, given that routes to imprisonment can be identified there is justifiably a reason to question the government's plans for *compulsory* rehabilitation (rehabilitation orders that are backed up with the threat of punitive sanctions hardly offers sex workers a choice, but see Seddon (2007) for a discussion on the conceptual, ethical and criminological aspects of coerced drug treatment).

According to the Home Office, 95 per cent of street sex workers are addicted to A class drugs (Home Office, 2007). If this statistic is correct, exit will become synonymous with drug treatment. However, pertinent concerns should include: the patchy service provision on the ground (Cusick, 2005; Melrose, 2007), the lack of additional resources (Melrose, 2007), the lack of motivation to engage in treatment (Longshaw and Teruya, 2006), the possibility of limited programme retention/desistance from drug use (McSweeney *et al.*, 2007) and the need for post-treatment follow up and associated costs (Fischer, 2003).

While the government is silent on these issues, research in progress in Wales indicates that resources on the ground are very limited and that services are not equipped to deal with the chaotic lifestyles of sex workers. Furthermore, some sex workers do not want to be rehabilitated and thus they are often considered inappropriate candidates for treatment. Most importantly, where sex workers are referred to drug treatment via the criminal justice system, they have overwhelmingly failed to sustain engagement (data on file with author).

The government may have faith in court diversionary schemes which are linked to Drug Intervention Programmes for sex workers (Home Office, 2007), but examples of successful outcomes are lacking. If this approach fails, it will simply serve as another example of the increasing criminalisation of women: the warning signs are not good. For example, McSweeney *et al.* (2007) found that people receiving treatment through court orders were likely to find it more difficult and were less likely to be retained and succeed in treatment than those who entered the same treatment services through non-criminal justice routes. Furthermore, towards the end of treatment and at the end of the follow-up period individuals were inclined to become reacquainted with old networks and thus spend time in the company of others with drug and alcohol problems, rendering desistance from drug use problematic. If these findings are applied to the rehabilitative agenda for sex workers, success may depend on sex workers removing themselves permanently from old networks. In this context, rehabilitation might prove to be even more of a problem because 'old networks' are known to provide much needed social support. To illustrate, McLeod (1982) found that sex workers under probation orders were inclined to return to their peer group for companionship, risking prosecution for prostitution. My own research in Cardiff found that off-street workers regularly returned to the streets to catch up with friends and to talk over problems – again risking prosecution (Sagar, 2002). More recently, Coy's research demonstrates how young sex workers who have spent time in Local Authority care can feel socially isolated and that they tend to form very strong bonds with other sex workers (2008).

Again, drawing on McSweeney *et al.* (2007), evidence appears to suggest that those more successful rehabilitation cases had forged stronger relationships with family members, children, neighbours, partners, friends etc. Yet, once more, this finding is problematic with regard to sex worker rehabilitation. The parents of a sex worker are unlikely to know that their daughter engages in sex work (Sanders, 2004); the same is true of their children (Sloss and Harper, 2004). Also, given the nature of sex work, neighbours and the extended community may be hostile rather than supportive (Pitcher *et al.*, 2006). The support of a partner may be negligible where they are also addicted to A class drugs (Hunter and May 2004). Finally, friends are likely to be fellow sex workers, and, whilst they might be supportive in numerous ways, the prevalent use of A class drugs amongst street sex workers (Hunter and May, 2004) places obvious limits on the ability of friends to support each other throughout the exit-focused rehabilitation process.

None of the above is intended to suggest that drug rehabilitation for sex workers is never a positive step; however, drug rehabilitation should be part of (but not the sole focus of) a broader harm reduction agenda (Cusick and Self, 2005). Rather, the analysis points to substantial obstacles which stand in the way of government's plans. Indeed, the government should take very seriously the probability that many sex workers may be unable and unwilling to relinquish their social network (which provides comfort and support in times of stress) in an attempt to rehabilitate. For those that are willing, the difficulty sex workers can face when attempting to 'cut off' from old ties in an

attempt to exit sex work (see, McNaughton and Sanders, 2007; Sanders, 2007) should be acknowledged. Questions should also be asked as to whether professionals and the state services are able to provide adequate support and fill the gaps left in the lives of those sex workers that do engage.

Much more evidence is needed and perhaps social network research could go some way to filling this void. By mapping the different patterns of relations within sex workers' social networks (including acquaintances, kinship, peers, companions, friends, supportive professionals) from the perspectives of women's lived experiences (see, O'Neill, 2007), social network analysis could identify the ways in which social network patterns affect the behaviour of individual sex workers and indeed sex workers as a group. This data could assist policy makers to identify and understand structural sources of support and to measure social capital and thus assist in the design of effective interventions (Marsden, 2006). The findings could also shed light on the true potential of the proposed rehabilitation strategy and, of course, facilitate a better understanding of the actual impact exclusionary anti-social behavior measures have on sex workers and their families.

## Conclusion

Notions that exclusion and rehabilitation are stepping stones to the social inclusion of sex workers rest on the premise that individuals have the will and the ability to responsabilise. The reality is that exclusion as a policy of control and deterrence for sex workers has not worked and the rehabilitative agenda is fraught with difficulties. Social support for sex workers may be provided by the state in terms of instrumental support (housing for example) and information support may be available (such as health and financial advice), but the importance of emotional support is underestimated in the current policy approach. At the moment, arguably, any social capital that sex workers might enjoy stands to be eroded by state disciplinary measures that enforce exclusion and rehabilitation. The danger is that without intensive research into the lives of sex workers, the impact and limits of government intervention will remain unknown and policy development will continue to lack a secure evidential foundation. Fundamentally, also, sex workers will remain the experimental pawns of the state.

## Notes

1 The use of the PNI may be restricted following *Birmingham City Council v Shafi* and another [2008]EWCA Civ 1186; [2008] WLR (D) 341. Here, the Court of Appeal declined to grant injunctions against gang members in Birmingham on the grounds that Parliament had recently legislated to restrain anti-social behaviour via the ASBO. The court reasoned that since the purpose of the PNIs would establish relief that was almost identical to that which could be obtained by the use of the ASBO, then the Council should seek a remedy in the magistrates court. Further, in *exceptional circumstances* where it may be necessary to consider an application for a PNI and where the relief sought was identical or almost identical to that provided by an ASBO, a criminal standard of proof was required following the approach of Lord Steyn in *R (McCann)* at para. 37.

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