

# **Saving Fallen Women Now? Critical Perspectives on Engagement and Support Orders and their Policy of Forced Welfarism**

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## **Abstract**

The UK seems set to follow the increasingly abolitionist trend that is taking hold in Europe, in response to the issue of prostitution. While some argue that an abolitionist approach signals a serious attempt to tackle the injustices and gendered aspects of commercial sex, we are less optimistic. Drawing upon the findings of the first study to evaluate Engagement and Support Orders, we argue that any focus on women's needs is distorted by the continued zero tolerance approach to street sex work and the criminal justice setting it takes place in. New revolving doors have been created for those involved in the most visible sectors of the industry and support agencies have been made to take on an increased policing role. This narrow focus individualises the causes of poverty and prostitution, elides the wider structural factors that shape sex work and does little to address the real needs of this vulnerable group. In conclusion, we argue that future policy should engage more productively with the rich cultural study of sex work. This will enable the development of ground-up responses and allow for a more effective role for the criminal law.

## **Introduction**

For a number of years, Laura Agustín has highlighted what she calls the 'need for different kinds of research' (2002: 30-31), that move beyond moral debate and an over-emphasis on the 'perpetually stigmatized' category of women who sell sex. She argues:

With the academic, media and 'helping' gaze fixed almost exclusively on women who sell sex, the great majority of phenomena that make up the sex industry are ignored, and this in itself contributes to the intransigent stigmatization of these women ... commercial sex is usually disqualified and treated only as a moral issue. This means that a wide range of ways of study are excluded.

(Agustín, 2005: 619)

Agustin's call to adopt a wider cultural analysis has, however, thus far been ignored by policy makers in the UK. There is now a wonderfully rich body of empirical data on men and women's experiences of working in the intersections between commerce and sex,<sup>1</sup> which suggests varied regulation that could support women to work more safely and experience less exploitation, whether physical, economic and/or social (see Sanders, 2005; Sanders and Campbell, 2007; Sullivan, 2010). Nevertheless, law reform continues to pursue a narrow law and order/abolitionist agenda and has been informed by a restricted research base. For example, the remit and evidence base of recent reviews and policy on prostitution (Home Office, 2004, 2006) stems from a preceding review of sexual offences (Home Office, 2000) and is informed by researchers in the field of violence against women. This has meant that sex work is presented as inherently abusive and the role of law and state agencies is to stymie both supply and demand. The rationale of the government's 'new' approach to prostitution was outlined in their coordinated strategy:

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<sup>1</sup> Throughout this article, we are primarily concerned with women involved in sex work. This is not to disregard the diversity of actors in sex markets. Rather, it is a reflection of the gendered nature of street sex work in the areas involved in the ESO study and the heteronormative nature of the policy in this area. None of the projects involved in the study knew of any men who had received an Engagement and Support Order.

It is crucial that we move away from a general perception that prostitution is the ‘oldest profession’ and has to be accepted. Street prostitution is not an activity that we can tolerate in our towns and cities. Nor can we tolerate any form of commercial sexual exploitation, whether it takes place on the street, behind the doors of a massage parlour or in a private residence.

(Home Office, 2006: 1)

Throughout the reform process, it appears that decades of research highlighting the many harms that criminalisation brings have been ignored. Furthermore, such harms may even be amplified, due to the government’s on-going attempts to reduce commercial sex (Home Office, 2008). There has been an increased problematising, policing and stigmatising of purchasers of sex (Sanders 2005, 2009b; Sanders and Campbell, 2008; Brooks-Gordon, 2010), with the aim of deterring clients. This has included the introduction of, or amendments to, kerb-crawling offences (see Prostitution (Public Places) (Scotland) Act 2007 and s19 Policing and Crime Act 2009) and the adoption of ‘naming and shaming’ policies (Home Office 2007b). More radically, s14 of the Policing and Crime Act 2009 criminalised the act of *paying* for (certain) adult sexual services. It is now an offence to make or promise payment for the sexual services of a prostitute who has been subjected to exploitative conduct by a third party. It is significant that this is a strict liability offence - a buyer’s knowledge or otherwise of the exploitation is irrelevant.

This focus on sex buyers has not, however, displaced the government’s attention from sex workers, and facilitating the exiting of prostitution is a central element of the UK’s prostitution policy. This strategy commenced with the publication of *Paying the Price* (Home Office, 2004), which set out the aim to eradicate all forms of prostitution. Sex workers were not consulted and alternative approaches – such as the use of managed zones to deal with on-street sex work which were, at that time, being explored in Liverpool (Clark et al., 2004) - were rejected (Home Office, 2006). Proposals to allow women to work together in order to increase safety were also rejected without discussion.

Throughout the reform process, and drawing upon ‘Nordic’ models, there was a greater emphasis on women as victims. Many have viewed this as a welcome change. However, and in contrast to Sweden, there has been no corresponding proposal to decriminalise those who sell. Instead, the government continued with a criminal justice approach and vowed to create a climate of zero tolerance regarding street sex work.<sup>2</sup> This was to be achieved via increased enforcement responses, including the use of ASBOs, along with the promotion of prevention and support for women to exit prostitution. To this end, ESOs were introduced in England and Wales for those convicted of soliciting in a street or public place for the purposes of prostitution.

This article provides a critique of this policy agenda. To this end, we draw upon findings of the first empirical study of Engagement and Support Orders (hereafter ESOs) introduced to tackle on-street prostitution. The study was concerned to examine perspectives from a range of actors: support workers, criminal justice and law enforcement personnel, and those who had received an ESO. Through these conversations we were able to explore some of the wider cultural factors pertaining to sex work, in particular the impact of the politics of

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<sup>2</sup> Street sex work has been the major focus of government attention. Indoor work, which represents a far greater section of the sex industry, is almost ignored. Perhaps this is because indoor sex work presents a more complex account of women’s agency beyond apparent victimhood, thus making the impetus to ‘save’ and control less immediate and self-evidently justified.

austerity and poverty, along with issues relating to criminality, urban space, gender and citizenship. With these factors in mind, the article will highlight the inefficacy of the orders and wider policy to provide a productive response to prostitution.

### **Facilitating Exiting or Criminalising the Vulnerable? Engagement and Support Orders**

In order to ‘save fallen women’, those found soliciting, in lieu of a fine, can now, under s17 Policing and Crime Act 2009, be required to attend three meetings with ‘a suitable person’. During these meetings, individuals are expected to ‘address the causes of conduct constituting the offence’ and ‘find ways to cease engaging in such conduct in the future’. The meetings must be conducted within six months and a failure to attend without a reasonable excuse will result in a breach. Upon breach, the magistrate may revoke the order and re-sentence accordingly, which could be either a fine or another order. If following a breach an offender is summoned to court and she fails to attend, a warrant for her arrest may be issued. If arrested, she may potentially be held for up to 72 hours before her court appearance (Policing and Crime Act 2009, sch 1). Furthermore, the notion of persistence, which is a fundamental requirement of the underlying offence, is now defined as two or more occasions over a period of three months (s16 Policing and Crime Act 2009). This is a significant extension from the previous requirement of two or more occasions in one day.

Throughout the reform process, strong feelings both for and against ESOs were expressed (see House of Commons, 2009). Those in favour considered the orders to be an essential part of a reform package that would successfully eradicate prostitution. They were perceived to be evidence of a ‘renewed welfarism’ in this area (Matthews, 2005). Others, however, have raised concerns. These include: the increased social control of the most vulnerable members of society through ‘forced welfarism’ and ‘be helped or else’ attitudes (Scoular and O’Neill, 2007; Phoenix, 2008; Sanders, 2009a;); the tendency of the orders to elide the State’s responsibility for the social factors causative of prostitution, in favour of an individualised responsabilization agenda (Scoular and O’Neill, 2007); and the on-going criminalisation of those who are involved in sex work, despite their apparent universal victim status (Carline, 2012).

There has, however, hitherto been no empirical evaluation of such measures to support either perspective. In order to evaluate the orders, we engaged in a small empirical project, funded by the British Academy.

#### *Enforcing Welfare? An Evaluation of Engagement and Support Orders*

The study involved semi-structured interviews with 31 participants: 13 project workers/ESO supervisors, 11 police officers and seven ESO recipients, across eight cities. To commence, we submitted a Freedom of Information request to ascertain details regarding the implementation of the orders (see table below). We contacted service providers in the relevant regions and also placed an advertisement for participants on the UKNSWP website. Ethical approval was obtained from the University of Strathclyde. Informed consent was obtained from all participants and anonymity and confidentiality guaranteed. Interviews explored the following key research aims:

1. The extent to which ESOs are supported and utilised by practitioners in England and Wales.
2. The effectiveness of the ESOs in achieving their aim of facilitating exiting from prostitution.

3. Participants' views of this model of intervention and how this compares to academic critiques of the orders.
4. The impact, if any, of the ESOs on the lives of those subjected to them.

*Implementation of ESOs - better than a fine?*

Throughout the preceding policy documents (Home Office, 2004; 2006), the traditional punishment for soliciting – a fine, up to a maximum of £1000 – came under attack, as having ‘little deterrent value’ and ‘often paid through the proceeds of prostitution’ (Home Office, 2004: 86), hence constituting a ‘revolving door’. However, ESOs have not been implemented uniformly across England and Wales. Project workers and police officers generally commented that implementation occurred when prostitution was a high policing priority, but also noted that those priorities could shift very quickly, depending upon personnel.

	<b>Engagement &amp; Support Orders Issued</b>	<b>Engagement &amp; Support Order Breached</b>
Avon & Somerset	2	
Cambridgeshire	1	
Cleveland	17	
Dorset	3	1
Greater London	15	3
Greater Manchester	29	5
Kent	16	8
Lancashire	2	
Northamptonshire	4	1
Nottinghamshire	18	
South Wales	2	
South Yorkshire	9	
Staffordshire	19	2
West Midlands	62	7
West Yorkshire	3	1
<b>Total</b>	<b>202</b>	<b>30</b>
"- " = Nil.		

(Number of orders issued and breached according to local criminal justice board area, in England and Wales, between April 2010 and June 2012. Source: Her Majesty's Courts and Tribunals Service, Libra case management system [Ref. 916-12 FOI 79466]).

In those areas where ESOs had been implemented, study participants agreed with the problematic nature of fines, which were considered to be ‘ridiculous’ and ‘awful’ (PW1) as they simply pushed women back on to the streets. ESO recipients expressed similar sentiments:

[It's all about] engaging and getting support, ....so it's better than the fines, ... For the fine, you have to go out to work to get the money to pay the fine....It's just redundant (R1).

Accordingly, it was felt that the orders were positive in that they provided an opportunity for support to be offered to a hard to reach group.

### *The Engagement and Support Order: A new revolving door?*

The precarious, complex and chaotic lives of those who are involved in on-street prostitution are well documented; difficulties include: violence, 'problematic drug and/or alcohol use', homelessness, 'low self-esteem', 'harassment from police and communities', criminalization, and 'negative experiences of accessing statutory services' (Pitcher, 2006: 236). It is also well known that exiting prostitution is an exceptionally difficult and lengthy process, often involving periods of re-engaging in sex work and multi-agency support (see for example Hester and Westmarland, 2004; Cusick et al., 2011).

Consequently, during the reform process concerns were expressed with regards to the usefulness of three meetings, given the complex needs of those involved (Carline, 2010). These misgivings are supported by the findings of the study. To this end it was considered that the orders would be best focused on those who had only just become involved, 'the new faces, the ones that haven't been in long, so you're nipping it in the bud quite quickly' (PW9).

Home Office guidance acknowledges that exiting is unlikely to occur after three meetings and that repeat orders are a strong possibility (Home Office, 2010). This, however, led to some concerns regarding the possibility of over-enforcement. Furthermore, for some women it was considered that the reality of exiting was very unlikely: 'there's been girls that have been working for years and years and years on ESOs and they're still working, and they're gonna work, no matter what you do, they're gonna work' (Pol6). Moreover, when exiting or work reduction had occurred, this was generally linked to a range of factors other than the orders, such as becoming drug free, access to children, fear of assault and poor health.

The order, thus, provides a mechanism to justify the increased criminalisation of women and the potential to impose a more punitive sanction. There was a growing concern, particularly amongst the police, regarding the numbers of orders an offender should be allowed to receive. One police officer doubted the efficacy of repeat orders 'but they haven't engaged with the first one, so why are they gonna engage with the second one?' (Pol4) This in turn led to a mistaken belief amongst some that an offender was 'only entitled to get two ESOs' (Pol6), along with a growing practice in certain areas that after two ESOs an offender would be given an ASBO. This, however, impacted negatively upon women. ESO recipients talked about feeling watched, surveyed and not safe, as they had to move away from visible areas to meet clients. It was commented that the police could do more to support and protect them: 'they're quite against you, they're not with you and not trying to do stuff for you to get you...even to keep you safe or summat' (R4).

Numerous police officers further argued that the ESO was perceived to be an 'easier option' (Pol4) and a 'toothless tiger' (Pol12) which had little, if any, deterrence value. To this end, some officers suggested that a breach of an order should lead to a harsher sanction, such as imprisonment (Pol4). It can, however, be queried whether it is appropriate to assess ESOs according to their (in)ability to deter. During the reform process, it was made clear the aim of this new disposal was to facilitate rehabilitation (Home Office, 2004, 2006). Moreover, most of the participants, in line with government rhetoric (Home Office, 2004, 2006), maintained that the vast majority of women engaged in street sex work were victims and not working through choice. Herein lies a contradiction. On the one hand it is maintained that a woman's involvement is involuntary. Therefore, if it were at all possible, she would not engage in

prostitution. On the other, it is assumed that she can be deterred through increased criminalization. This shows the problematic of the ‘enforcement plus support’ model (Phoenix, 2009).

Continuing tensions thus exist with regards to the manner in which the female street sex worker is constructed as both a victim and offender (Carline, 2012; Sanders, 2009a). Throughout the reform process the government was keen to highlight the plight and vulnerability of those involved in prostitution in order to promote a zero tolerance policy. At the same time, however, such women remain subject to ongoing, and potentially increased, criminalization, despite the fact that a criminal record is a formidable barrier to gaining employment.

### *Individualising the problem? The inability of ESOs to address wider social problems*

Supervisors hailed from a myriad of support agencies, including sex work projects, criminal justice agencies and Christian charity groups. There was, nevertheless, a level of consistency in practice. During the three meetings, supervisors primarily adopted a flexible and person-centric approach. The meetings focused on an array of practical issues and material needs and were frequently a continuation of pre-ESO involvement. This ranged from securing access to drug treatment, attending hospital appointments, help with benefits, debt management and accommodation, and liaising with magistrates to quash outstanding fines. However, for many projects, focusing on exiting was generally not a key priority. Indeed, many supervisors would discuss harm reduction strategies, such as safe-sex, along with providing condoms, and with respect to drug taking.

Difficulties remain, however, as the orders assume that involvement in prostitution is due to individual failings, as opposed to recognising the wider economic, social and structural factors causal of prostitution.<sup>3</sup> Poverty, in particular, was a key issue, and one that cannot be effectively dealt with via any number of meetings with a supervisor. One project worker commented: ‘I don’t think you’ll ever get rid of prostitution because there’ll always be poverty in a capitalist society’ (PW10). The link between prostitution and the ‘feminization of poverty’ (O’Neill, 1996: 15) is well documented. Moreover, this is likely to deepen, given the disproportionate impact of the government’s austerity measures upon women (Fawcett Society, 2011; Women’s Budget Group, 2011). Indeed, study participants expressed disquiet that the ‘politics of austerity’ increased a woman’s need to engage in sex work. Reductions in and sanctions of benefits were cited as reasons of continued involvement, at times over and above drug use:

Because all this dole and all that now, it’s just, like, three minutes late, five minutes late, you’re getting sanctioned, how can you live? You’re gonna starve. What if you’ve got no family and friends to help you? (R4)

Another ESO recipient noted ‘[the] benefit money just ...doesn’t go far. Doesn’t even cover just the gas and electric that I use’ (R5). Police also commented that some women had recently returned to sex work: ‘people who used to work have come back out, and people who are finding themselves in difficult financial times are working, you know (Pol3).

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<sup>3</sup> For a further analysis see for example O’Neill (1996), (2001) and Phoenix (1999).

Whilst it was noted by one police officer that the orders were concerned with enabling women to engage ‘in what we might think of as a normal lifestyle’ (Pol8), difficulties existed due to the lack of jobs, with one ESO recipient noting that there is ‘not much work around here’ (R4). This led some support workers to be pessimistic about what they could really offer. Given the instability of the job market in the UK, not to mention the record high levels of female unemployment (Fawcett Society, 2013), such fears are well founded. One project worker commented that much more was needed in terms of funding and support ‘to be able to address the underlying issues’ (PW13).

### *Enforcement or support agencies?*

Over the past years, there has been a growth in projects offering a wide range of services and support to those involved in prostitution (Pitcher, 2006). However, with the implementation of the government’s prostitution strategy (Home Office, 2006) and ESOs, such projects have increasingly become part of the criminal justice system and consequently responsible for operationalizing the government’s policies. It is generally acknowledged that a ‘non-judgemental approach on the part of staff and volunteers in support projects is ... vital to ensure engagement of sex workers’ (Pitcher, 2006: 249). However, requiring projects to promote exiting reduces the potential for a ground-up resistance to an increasing law and order agenda, as funding requires adherence to an abolitionist agenda. This can thus be seen to be an aspect of the neoliberal governance of prostitution (Scoular and O’Neill, 2007).

These concerns were very much reflected in the opinions voiced by project workers regarding their involvement in ESOs, particularly as they are charged with breaching a woman. For example, one supervisor commented that they did not place any expectations on a woman regarding her engagement, ‘because I think that just shows completely we’re not judgmental, we’re holding the woman for as long as she needs to, until she’s ready’ (PW2). They continued to note that:

But I think that...so there’s a difficulty then when you start to say, okay, but your behaviour is now somehow not acceptable because you haven’t been engaging with me, and therefore I’m going to breach you. So that’s kind of like a mixed message for the women and it’s hard.

Consequently, supervisors were reluctant to breach, as this would push women further away and ruin the ‘street cred’ of the agency (PW12). It was further noted that they did not want to be seen as ‘an enforcement agency’ (PW12). Here, again, we see the inherent tensions in the ‘enforcement plus support’ model and the continued use of criminal law in order to deal with the problematic of prostitution. Indeed, one project worker noted: ‘I would question whether we should even be convicting the women because actually I see most of them as victims’ (PW13).

Thus, whilst the ‘enforcement plus support’ model was considered by all respondents to be an improvement upon fines, significant difficulties arise by placing support for vulnerable members of society in an enforcement framework. As outlined in previous research and highlighted by the findings of this small pilot study, these orders tend to impose unrealistic expectations of the ability to bring about exiting. They also individualize many of the issues that make sense of prostitution (Phoenix, 1999) such as enduring poverty and impoverished social and sexual options. As one project worker noted: ‘This is a plaster, this is a poor quality plaster ... this is not going anywhere near the root of the problem’ (PW11). In some

senses, our examination of how ESOs operate in practice is an attempt to pull back this 'plaster'. Doing so enables us to examine more clearly what neoliberalism looks like for some women in the UK, particularly those who are forced into informal, badly paid and precarious employment, and penalized when such work remains out of reach or is deemed unsuitable.

### **Enforced Welfare: Disciplining Female Sexuality and Anti-Social Behaviour**

Matthews (2005) has argued that New Labour's policy demonstrated that the regulation of prostitution had, in a positive manner, moved away from a criminalization/enforcement approach, to one that focused upon welfare based responses and multi-agency support. In contrast, however, it can be argued that the adoption of ESOs, alongside zero tolerance/abolitionist policies, continues to focus attention on sex work as extraordinary - as something the law should prevent. It maintains a focus on surveillance and control of public spaces of sex work, and intertwines with disciplining the female body and female sexuality. ESOs are an element of a wider agenda in which certain Others, such as sex workers, 'vagrants, buskers, gypsies, itinerant traders, teenagers and the homeless', are constructed 'as antithetical to the reinvention of city centres as safe, middle-class, family orientated consumption spaces' (Hubbard, 2004: 1689). The orders form part of a range of '[anti-social behaviour] mechanisms' (Sanders, 2009a) which are used to 'police certain sexual behaviours which are considered unwanted, while, at the same time, enabling others to remain free from surveillance' (Sanders, 2009a: 508).

Accordingly, it can be argued that ESOs amount to 'forced welfarism' (Sanders, 2009a: 513), whereby particular women are required to change their behaviour, on the assumption that such changes are beneficial for the individual woman, as well as the wider community. Yet, these benefits are not shared by all. Such models restrict social inclusion and citizenship to those who are deemed to be responsible citizens. Significantly, this process of inclusion/exclusion operates 'via techniques of risk management and responsabilization' (Scouler and O'Neill, 2007: 764). This has significant ramifications for women involved in on-street sex work, as engagement in prostitution is framed 'as an issue of personal responsibility' (Scouler and O'Neill, 2007: 772). Problematically, this fails to recognise the role of the State in maintaining and perpetuating the structural, social and material inequalities causative of sex work, particularly in an era of austerity. Those who fail to exit from prostitution remain socially excluded, stigmatized and criminalized, whilst at the same time the State does little to realistically alter the position of the sex worker. Consequently, neither exiting nor working safely is presented as a truly viable option.

In conclusion, we argue that the current UK policy is impoverished, as it continues to pursue a narrow abolitionist agenda, which focuses on the most visible, and frequently most vulnerable, corner of the industry. A shift away from the present singular focus to one that explores the rich culture of sex work, along with the complementary range of regulatory options, is required. To this end, we urge that the next period of reform begin with a more inclusive and ground-up debate regarding what kind of changes in the sex markets may be desirable, along with the development of a more focused and effective role for the criminal law<sup>4</sup> in policing actual (rather than rhetorical) violence.

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<sup>4</sup> Good examples include the Ugly Mugs scheme and hate crime initiatives (see for example Pitcher, this volume).

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