

My Thoughts on Sex Work and the Law

I propose that we decriminalize sex work in the Republic of Ireland. My 20 point plan.

Dear Enda Kenny, Taoiseach, Eamon Gilmore, Tanaiste, Alan Shatter, Minister for Justice and James Reilly, Minister for Health,

Previously, I have written to you all to advocate that we turn a new page regarding sex work and the law in the Republic of Ireland.

In my first letter, I pointed out to you the flaws of David Stanton's Joint Oireachtas Committee on the review of the laws on prostitution.

<http://paulcarr.wordpress.com/2014/02/12/dear-alan-shatter-minister-for-justice-defence-and-equality-on-the-flaws-of-the-joint-oireachtas-committee-on-the-review-of-prostitution-legislation/>
(<http://paulcarr.wordpress.com/2014/02/12/dear-alan-shatter-minister-for-justice-defence-and-equality-on-the-flaws-of-the-joint-oireachtas-committee-on-the-review-of-prostitution-legislation/>)

Not least among them, Mr Stanton's refusal to consider any other legislative model other than the so-called Swedish model of further criminalization, that is, the criminalization of the purchase of sex, which is opposed the world over by sex workers and sex worker representatives.

In my second letter, I pointed out to you that significant international reports published by WHO, UNAIDS and the Global Commission on

HIV and the Law have called for the decriminalization of the sex work industry in its entirety and that UNAIDS and the Global Commission on HIV and the Law have specifically rejected the Swedish model of criminalizing the purchase of sex which is a sex work abolitionist approach/zero tolerance approach/law enforcement approach rather than a harm reduction approach/empowerment of sex workers approach.

<http://paulcarr.wordpress.com/2014/02/15/it-is-time-to-move-from-a-criminalization-model-of-sex-work-to-a-decriminalized-model/>
(<http://paulcarr.wordpress.com/2014/02/15/it-is-time-to-move-from-a-criminalization-model-of-sex-work-to-a-decriminalized-model/>)

I also suggested that we move from a prohibition model that obtains here in the Republic of Ireland towards sex work to a decriminalized model as obtains in New Zealand and New South Wales in Australia. I take a particular interest in the New Zealand model and I promised that I would write back to you in more detail on that and I do so now.

I propose that we adopt a new comprehensive law in the Republic of Ireland that, first of all, decriminalizes sex work and then provides the architecture of a decriminalized framework built upon that.

First of all, I propose that we repeal sections 7,8,9,10 and 11 of the Criminal Law (Sexual Offences) Act that criminalizes soliciting, loitering for the purposes of prostitution, organization of prostitution, living on the earnings of prostitution and brothel keeping.

Repeal Section 23 of the Criminal Justice (Public Order) Act 1994 that criminalizes advertising prostitution.

Repeal Section 2 of the Criminal Law Amendment Act 1885 that criminalizes procuring.

Repeal Section 5 of the Criminal Law (Human Trafficking) Act 2008 that criminalizes soliciting a trafficked person for the purposes of prostitution.

The repeal of Section 5 of the Criminal Law (Human Trafficking) Act 2008 may excite controversy for some. However, the evidence is mounting that the two groups of people who are most instrumental in rescuing minors under the age of 18 years old from working as prostitutes as well as those who have been trafficked into prostitution

are, first of all, the sex workers themselves and secondly the customers of sex workers.

I draw your attention to the work of Durbar Mahila Samanwaya Committee which has a membership of 65,000 sex workers, men, women and transgender people, in West Bengal, India. It is the largest sex worker union in the world. Through the use of their self regulatory boards, rescues of minors and trafficked people into prostitution account for 80% of the total number of rescues in West Bengal between 2009 and 2011. Nearly 2,200 people were rescued between 2009 and 2011 and were provided with support to exit prostitution such as counselling, health care, the offer to join saving schemes and other community programmes that offer these people self empowerment.

<http://www.ncbi.nlm.nih.gov/pubmed/24179187>
(<http://www.ncbi.nlm.nih.gov/pubmed/24179187>)

I also mentioned the Turkish hotline in my previous letter. In Turkey, there was a hotline for sex trafficking set up in 2005. For the final 6 months of that year, 80% of the phone calls to rescue suspected trafficked persons came from the clients of sex workers. That hotline led to the destruction of 10 trafficking networks and the freedom of 100 women from coercion.

To return to Section 5 of the Criminal Law (Human Trafficking) Act of 2008, my point is that by criminalizing the client who solicits a person who is trafficked for the purposes of prostitution, we deter the client from reporting anything suspicious the client sees to the police. This is Psychology 101. A person is not going to report suspicious goings-on to the police if, by doing so, s/he will likely incriminate him/herself. I suggest that blunt law enforcement measures, aside from the unnecessary expense involved, will be ineffective. I suggest instead that we work with sex workers and clients and not against them. Allow the police to use them as their eyes and ears, so to speak, so that trafficked persons or children in prostitution are detected and offered an exit plan.

I also pointed out in my previous letter that the Republic of Ireland has a number of international obligations. Principal among these is the Council of Europe Convention on Action against Trafficking in Human Beings which the Republic of Ireland ratified in 2010 and which requires that action be taken to discourage demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. However, this Convention does not oblige the

Republic of Ireland to adopt a punitive law that would criminalize a sex buyer who buys sex from a trafficked person, whether the sex buyer knows it or not. Article 19 states that each state party *shall consider* adopting such legislative and other measures as *may be* necessary to establish as criminal offences the use of prostitution services, with the knowledge that the person providing such services is a victim of trafficking in human beings.

I have now suggested that a number of sections of our criminal law that criminalizes various aspects of the sex work industry such as soliciting, loitering for the purposes of prostitution, organization of prostitution, living on the earnings of prostitution, brothel keeping, procuring and soliciting a trafficked person for the purposes of prostitution be repealed from the statute book. We now return to a clean surface, a clean slate, if you like, on which to build a new decriminalized legislative framework. I will now propose to you one such decriminalized legislative framework. I will borrow heavily from the Prostitution Reform Act, enacted in New Zealand in 2003, as well as make some improvements to it and I will present my proposals in a number format.

You can read for yourself the New Zealand Prostitution Reform Act here:

<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>
(<http://www.legislation.govt.nz/act/public/2003/0028/latest/DLM197815.html>)

I also recommend you study the Clean Slate Act of 2004 which enabled sex workers to have their previous prostitution related convictions, such as solicitation offences, quashed or hidden.

<http://www.legislation.govt.nz/act/public/2004/0036/latest/DLM280840.html>
(<http://www.legislation.govt.nz/act/public/2004/0036/latest/DLM280840.html>)

For space purposes, I will not be referring to every detail of this Act of Parliament. I will refer to its salient points. I have broke my proposed Act into 20 parts.

In relation to my proposed bill that I wish to see enacted in the Republic of Ireland.

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1) I propose that we call this new Act, "The Sex Worker Solidarity

Act”.

2) We state the rationale of this Act at the beginning. I borrow from the New Zealand Prostitution Reform Act.

The purpose of this Act is to decriminalise prostitution (while not endorsing or morally sanctioning prostitution or its use) and to create a framework that—

- (a) safeguards the human rights of sex workers and protects them from exploitation.
- (b) promotes the welfare and occupational health and safety of sex workers:
- (c) is conducive to public health:
- (d) prohibits the use in prostitution of persons under 18 years of age:
- (e) implements certain other related reforms.

3) We set up a new “Irish Sex Workers’ Union”. Its headquarters will be in Dublin with regional bureaux in Sligo, Galway, Athlone, Limerick, Cork and Waterford. Department of Health and Department of Justice money that is presently being channelled into Ruhama and the Health Service Executive – Women’s Health Project will instead be diverted into this new Irish Sex Workers’ Union.

Both Ruhama and the Health Service Executive – Women’s Health Project work with women in prostitution but both these organizations take an ideological, as opposed to a non-judgemental and evidence based view, of sex work, regarding all sex work as violence and rape. They seek the abolition of sex work. The vast majority of sex workers in the Republic of Ireland do not want to go near them.

The new “Irish Sex Workers’ Union” will, by contrast, be comprised of the sex workers, past and present, will work for the sex workers and will be run by the sex workers. I suggest you liaise with the Sex Workers Alliance of Ireland to set this up.

4) Street sex work will be allowed everywhere in the country. Street

Sex Workers will as a general rule of thumb be allowed to operate everywhere, however, I propose that we give the Irish Sex Workers Union policing power to persuade a sex worker by means of moral persuasion rather than coercion to move from an area in exceptional circumstances, for example, if s/he operates too close to a school or church resulting in offence to the moral sensitivities of some in that community. I advise against local authorities passing by-laws that would force street sex workers to operate in badly lit industrial areas or other specially set aside areas that will only serve to stigmatize their work and make them more vulnerable to violence from local hooligans and others. Local problems often just need informal local solutions that are adhered to by the local community not the blunt hammer of local authority by-laws, still less, national laws. I am proposing complete decriminalization as in the New Zealand model not limiting legalization, as is practised in Germany. In German cities, apart from Berlin, "Sperrbezirk", that is, areas that prohibit street prostitution, are extensive. In certain German states, towns with populations of less than 35,000 people, ban street sex work everywhere.

5) We allow what we call "Small Owner Operated Brothels" where up to 4 sex workers can work together from a house. They don't need to apply for an "Operator's Certificate" from the registrar of the High Court in Dublin. They don't give any money to a "pimp" or a middleman. They keep all their earnings. Surveys all over the world show that sex workers who work together have more job security.

6) For a brothel of 5 or more people, an operator will have to apply to the registrar of the High Court in Dublin for an "Operator's Certificate". This will be granted subject to payment of the prescribed fee, the completion of other formalities, and a criminal background check. If the applicant has committed one of a number of certain disqualifying offences, his/her application is refused. The New Zealand law suggests a number of such disqualifying offences, such as participation in an organized crime group, sexual crimes, murder, manslaughter, assault, abduction, robbery, extortion, burglary, money laundering, possession of firearms, misuse of certain drugs as well as infringements under the New Zealand Prostitution Reform Act itself such as operating a brothel without an operator's certificate or operating a brothel after having one's licence refused or failing to get it renewed or employing an underaged sex worker. If an operator is refused a certificate, s/he must be informed in writing why the application was refused. An applicant can appeal any refusal to grant him/her a license by applying for a waiver of disqualification. An

operator's certificate must be renewed every year. In New Zealand, a number of operators have been prosecuted because they have employed under-aged people resulting in criminal convictions for these operators. They take this law seriously. Nowadays, brothel owners are more careful to ask for photo ID from any potential employees in order to check his/her age.

As I mentioned in my previous letter, numbers 5) and 6) above are an illustration of how the New Zealand law and my proposed law acts with both carrot and stick; carrot insofar it empowers the sex workers to work together, and stick insofar as would-be violent and abusive "pimps" will be unable to get registration and therefore work legally.

7) The Sex Worker Solidarity Act will make clear that one's entitlement to social security is not affected if one chooses to work as a sex worker or refuses to work as a sex worker. Sex work will not be promoted as a job in any state or state funded job agency in the Republic of Ireland.

8) No person may assist a person under 18 years old in providing commercial sexual services. No person may receive earnings from commercial sexual services provided by a person under 18 years old. No person may contract for commercial sexual services from, or be a client of, a person under 18 years old. No person who contravenes the above may be charged merely by providing legal advice, counselling, health advice, or any medical services to a person under 18 years old. No person under 18 years old may be charged as a party to the offences mentioned above.

9) No person can be deported, even if s/he is undocumented, solely because s/he is found to be doing sex work.

10) A person may refuse to provide commercial sexual services at any time even if a contract has been drawn up.

11) It shall be an offence to induce or compel a person to provide commercial sexual services or to give his/her earnings from sex work. A threat or promise can be explicit or implicit such as abuse of a position of authority or of a relationship, commit an offence that is punishable by imprisonment, make an accusation or disclosure (whether true or false), or supply or refuse to supply any controlled drug.

12) Local authorities may make by-laws for the purposes of regulating the location of brothels. However, no local authority is permitted to

completely zone brothels out of their local authority. When considering an application for the use of land for the purposes of a new business of prostitution, the local authority will consider whether the new business of prostitution (a) will likely cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or (b) is incompatible with the existing character or use of the area in which the land is situated. Small Owner Operated Brothels, employing up to 4 people, are exempt and can be set up anywhere within the jurisdiction of the local authority.

13) Advertising for commercial sexual services will be permitted on the internet and in the classified sections of certain newspapers and periodicals. However advertising for commercial sexual services will be not be broadcast on radio or television or screened in a cinema.

14) Local authorities may make by-laws to regulate signage that advertise commercial sexual services in its area according to the criteria I have already noted in Point 12 above namely whether the signage (a) will likely cause a nuisance or serious offence to ordinary members of the public using the area in which the land is situated; or (b) is incompatible with the existing character or use of the area in which the land is situated.

15) The Irish Sex Workers' Union will liaise with the Department of Health in drawing up Health and Safety guidelines to be followed by all brothels in the country. Brothels run by an operator will be subject to health and safety regulations as other businesses are run. Health inspections of brothels will be conducted under the same rules as health inspections of other businesses are conducted. For example, it will be an offence to obstruct a health inspector in the course of his/her inspection in a brothel or any other place of business. Small Owner Operated Brothels will be exempt from health inspections.

16) A search warrant may be issued to the police to enter a business of prostitution where the police have reasonable grounds to suspect that an offence has been, is being, or is likely to be committed in relation to a) an underaged person working at the premises in question or b) evidence that the operator does not have an operator's certificate to operate the brothel or c) the police want to prevent the commission or repetition of either of these crimes, that is a) and b), or d) for the purposes of an investigation of either of these crimes, that is a) and b).

17) A Clean Slate provision will be provided so that sex workers, past and present, with previous convictions for prostitution-related

offences, can apply to the High Court to have these previous convictions erased from their records or hidden so that other potential employers cannot see them. This will assist sex workers to leave sex work, if they so wish, to apply for other jobs.

18) The Police's role will move from prosecuting sex workers to protecting them. The Police Code of Conduct will be updated accordingly.

19) Contracts will be recognized and disputed contracts can be referred to the Labour Court.

20) The Sex Work Law Review Committee will be set up as soon as possible after the Sex Worker Solidarity Act comes into force. It will assess the number of sex workers working as sex workers in the Republic of Ireland as well as other related matters. It will conduct ongoing review of the operation of the Act and issue a preliminary report 3 years after the enactment of the Sex Worker Solidarity Act and a final report 5 years after the enactment of the Sex Worker Solidarity Act. In these 2 reports, it will assess the work, health, safety, legal and human rights conditions of sex workers, study the entry routes into sex work and the exit routes from sex work, ascertain if any amendments to the Sex Worker Solidarity Act can be made and make as accurate a count as possible of the number of sex workers there are in the industry, sector by sector, region by region, gender by gender. The Sex Work Review Committee will be comprised of 11 members appointed by the Minister for Justice including 5 nominated by the Irish Sex Workers' Union.

<END>



And that is that. Over the next 7 days, I will write 2 further letters to you all. In my next letter, I will write about *how* we implement the law I propose above. In my fifth letter, I will address the question: why we should do this?

As with my two previous letters, in addition to Messrs Kenny, Gilmore, Shatter and Reilly, I will carbon copy this email to all other members of the Fine Gael and Labour parliamentary parties. I will also publish this letter to my blog at <http://paulcarr1974.wordpress.com> (<http://paulcarr1974.wordpress.com>).

Thank you for reading,

Best,

Paul Carr, A Concerned Irish Citizen

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