

## The Limits of Vulnerability: Arguments Against the Inclusion of Sex Workers Within Hate Crime Policy in England and Wales

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### Abstract

On 23rd September 2020, the Law Commission launched their Hate Crime consultation paper, which suggested including 'sex worker' as a protected characteristic when considering hate motivated violence. The inclusion of sex workers in policing hate crime policy had already been implemented in Merseyside in 2002, and Yorkshire in 2017 (Sanders and Campbell, 2020). From a policing perspective, this approach has its advantages: it encourages a more coordinated approach to crimes against sex workers, as well as having an educative and awareness raising function around the discrimination they face (Sanders and Campbell, 2020; Chakorabarti and Garland, 2012). However, those who advocate for this approach caution that whilst it is an important first step to address crimes against sex workers, it can only go so far in a legal framework where sex work is still criminalised (Campbell, 2019; Campbell, 2014; Platt et al., 2018). This article challenges the idea that increased hate crime legislation will reduce violence against sex workers, suggesting that it may in fact put sex workers in even greater harm by increasing their interaction with the police. We emphasise that there is limited evidence that higher sentences deter hate crime offenders, and it is almost impossible to assess whether this type of legislation even provides the educative function it claims to. This paper argues that full decriminalisation of sex work is the most effective first step to responding to violence against sex workers, rather than increased legislation and tougher sentencing (CPS, 2019). In doing so, we add to the growing body of literature evidencing how full decriminalisation increases safety of sex workers. We also aim to contribute to a broader understanding that harsher sentencing and increased carceral responses do not best protect vulnerable communities of any sort.

### Keywords

Hate crime; sex work; prostitution; decriminalisation; governance; policing

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## **Introduction**

On 23rd September 2020, the Law Commission launched their Hate Crime consultation paper, which suggested including 'sex worker' as a protected characteristic when considering hate motivated violence. The Law Commission's consultation paper asks whether there is 'a principled case' for recognising sex workers in hate crime laws based on three criteria: evidence that criminal targeting based on prejudice or hostility towards the group is prevalent; evidence that criminal targeting based on hostility or prejudice towards the characteristic causes additional harm to the victim or members of the targeted group, and society more widely; and suitability, asking whether protection of the characteristic would fit logically within the broader offences and sentencing framework, prove workable in practice, and represent an efficient use of resources.

Whilst this was a new suggestion for a national policy, it is not the first time an approach like this has been considered on a regional level. In 2006, the Merseyside police force recorded crimes against sex workers as hate crimes, and then in October 2019, North Yorkshire Police made the decision to include crimes against sex workers in their official policy for tackling and dealing with hate crime. From a policing perspective, this approach has its advantages: it encourages a more coordinated approach to crimes against sex workers; as well as having an educative and awareness raising function around the discrimination they face (Sanders and Campbell, 2020; Chakraborti and Garland, 2012). Changing Lives, a North East-based national charity that supports vulnerable people, including sex workers, reported that in Merseyside, between December 2017 and August 2019, 106 crimes against sex workers were reported, compared to only 47 reports in the preceding two years. This has led to approximately 20 arrests, and nine charges resulting in convictions, suggesting that this kind of policy can lead to increased reporting and greater conviction rates.

Those who advocate for this approach do caution that it can only go so far in a legal framework where sex work is still criminalised (Campbell, 2014; Platt et al., 2018; Campbell et al., 2020). Similarly to the authors already mentioned, we argue that more effort needs to be made to recognise and address the harms of hate-motivated violence wherever it occurs. However, we reject the idea that addressing violence should take the form of further hate crime legislation, which results in increased police powers and potentially harsher punishments for an already stigmatised community. In this way we align ourselves with an abolitionist perspective; we see hate crime legislation as a false promise (Lamble, 2021) which can lead to increased harm to the communities it purports to protect.

This article will argue that including violence against sex workers within the category of hate crime legislation will not achieve the desired outcome of a reduction in violence against this community. Hate crimes flourish in an enabling environment, and UK state practices, policy and rhetoric provide ample ground from which hate crime emerges (Perry, 2001). This is especially apparent for sex workers. Recent scholarship on hate crime has suggested moving away from ideas of identity towards questions of perceived vulnerability and difference (Chakraborti and Garland, 2012; 2015), and as emphasised in this article, this vulnerability is often given as a reason for the inclusion of sex workers within hate crime legislation. However, 'vulnerability' is a highly complex term, and while it is frequently used in conjunction with sex workers, the roots of this vulnerability are rarely investigated. A key argument made in this article is that sex workers are perceived as vulnerable, not due to their innate identity, but due to the criminalisation of their workplaces, which is a direct result of current policy. Criminalisation of sex workers' workplaces, for example through brothel keeping laws, means that increased interactions with police through hate crime legislation can likely threaten their safety and livelihood, instead of keeping them safe. In making this argument, we add to the growing literature evidencing that harsher sentencing and increased carceral responses do not best protect vulnerable communities (e.g., Wilson Gilmore, 2007; Spade and Willse, 2000; Lamble, 2013).

Our arguments are grounded in an extensive review of the literature on both hate crime policy, violence against sex workers, and the impact of decriminalisation on this community (e.g., Mac and Smith, 2018; Platt et al., 2018; Armstrong, 2017; Mgbako et al., 2013; van der Meulen, 2011). We draw on the wealth of evidence showing that full decriminalisation of sex work is the most effective first step in responding to violence against sex workers, although we note that decriminalisation is not the end goal (Mac and Smith, 2018).

In making these arguments, we also draw on our extensive experience within the world of sex worker organising. Both authors have been involved in sex worker activism in various capacities for over six years. We are deeply aware of the impact that both laws and social attitudes have on the material realities of sex workers as we encounter these realities on a daily basis. We speak to and support workers who experience the sharp edge of criminalisation and violence, and we also see the ways in which this plays out through police intervention and changes in policy. Therefore, we write this paper as scholar-activists, and draw explicit political conclusions about the position of sex work in the UK. In doing so, we also make a necessary and important contribution to scholarship around sex work which is based on personal, lived experience of this industry.

We begin by expounding our definition of hate crime and then contextualise this to show how the law as it stands affects sex workers and their ability to work safely. Building on the work of other hate crime theorists, we discuss possible strengths of hate crime laws. Following this, we position ourselves as broadly critical of the functionality of hate crime and show how the very conceptualisation of sex workers as vulnerable under hate crime laws is problematic. We end by reinforcing our argument that fewer laws - through a policy of full decriminalisation of sex work; instead of more - through increasing the scope of hate crime legislation, will keep sex workers safer and reduce the harm they face.

### **Definitions of Hate Crime**

Racist discrimination was officially legislated against in the UK under the Race Relations Act of 1965, but the Stephen Lawrence case in the 1990s saw the beginning of a continual increase of legal reform and stronger punitive response to racially motivated violence and hate speech. Hate incidents are acts of hostility against targeted groups – not just racialised, but on the grounds of gender, sexuality, religion or disability - and today, when incidents cross over into criminality - threats, damaging property, violence or harassment - they are considered hate crimes by statute. When an incident becomes a ‘hate crime’, a judge can impose a more serious sentence, known as a ‘sentence uplift’, under the Sentencing Act 2020, s66.

Barbara Perry’s (2001) seminal conceptualisation argues that what we know as ‘hate crimes’ are part of a process of repeated or systematic victimization which is at once interpersonal but shaped and upheld by dominant structures and rhetoric. She writes that the “state is itself deeply implicated in the politics of difference, and not usually in progressive ways... [it] reinforces and often creates images of the Other that portray them as deviant or menacing” (Perry, 2001: 226). For example, we can see this in the legislative moves of welfare benefit reform which positioned disabled or unemployed citizens as ‘scroungers’ or ‘undeserving’ (Crow, 2014; Tyler, 2008). To Perry, what defines a hate crime is that victims - whether they are disabled, Jewish, gay, a migrant, a person of colour or any other minoritized community - are interchangeable; that the perpetrator chooses their target based on the victim’s subordinate identity rather than any actual contact between the parties (Perry, 2001; Chakraborti and Garland, 2012). Hate crimes, then, do not appear out of thin air, they are acts of intimidation and violence against marginalised communities, replicating and reinforcing the power dynamics present in society and in government (Perry, 2001; Chakraborti and Garland, 2015).

Chakraborti and Garland (2012) build on this work but suggest that singular constructions of identity through communities creates a divisive and hierarchical approach to hate crime policy, with some groups taken more seriously than others (Mason-Bish, 2013). Instead, Chakraborti and Garland suggest, the law should extend boundaries, and that “perceived vulnerability and difference” should feature more prominently in how policy makers and researchers conceptualise hate crime, rather than particular subsets of society (2012; 2015). A more nuanced framework is necessary for targeted attacks against the vulnerable, attacks which are not motivated by hate, per se, but by boredom and opportunity against people who are too vulnerable to fight back (Chakraborti and Garland, 2012; Chakraborti and Garland, 2015; Chakraborti, 2015). These authors suggest that the kinds of biases, prejudices and stereotypes that form the basis of hate crimes are not the exclusive domain of any particular group. Perpetrators who see “their target...as weak, defenceless, powerless, with a limited capacity to resist” may well attack those who do not identify in one of the listed, minority groups, but they argue, ought to be accounted for in hate crime legislation (Chakraborti and Garland, 2012; 2014; 2015).

Perry’s (2001) established conceptualisation of hate crime, which foregrounds ‘othering’, discrimination and social marginalisation, along with Chakraborti and Garland’s broader, yet more nuanced, approach, speaks to much of sex workers’ experience of targeted victimisation (Sanders and Campbell, 2020; Campbell, 2014). Sanders and Campbell (2020) suggest including sex workers as a group to be protected in hate crime law based on their perceived vulnerability. The increased prosecutions seen after Merseyside trialled recording crimes against sex workers as hate crimes has led Sanders and Campbell to advocate for this approach across the UK. They also draw on Perry’s (2001) theorising that hate crime is an expression of power, prejudice and discrimination, which establishes and re-establishes the relationships and positions between the Self and those who are ‘othered’ (Perry, 2001; Campbell, 2014; Tyler, 2020; Skeggs, 2005). This seems to fit with the experiences of sex workers, whose stigmatised and criminalised status in society is used as a point of leverage and justification by those who cause them harm (Sanders and Campbell, 2020; Phipps, 2013; Kinnell, 2008).

We concur with Perry (2001) and stress that the individual crimes against sex workers cannot be divorced from legislative and socialised discrimination against sex workers. Yet, we part ways with Sanders and Campbell (2020) whose emphasis on hate crime legislation to protect sex workers is, we believe, misguided. Perry herself acknowledges that a useful starting point in eliminating targeted hate is the “elimination of [the] types of exclusionary legislation” (2001: 229). Individual hate crimes, according to Perry, cannot be divorced from

power dynamics pervasive in society which normalise the ‘othering’ of those perceived as different or vulnerable. To combat this, structural and legislative changes are needed to remove difference and hierarchy, rather than a sticking plaster of expanded hate crime laws. Without full decriminalisation of sex work, hate crime legislation is a curiously conservative and symbolic move which can only serve as a “false promise” in the protection of sex workers from violence and hate (Lamble, 2021; Perry, 2001). Sanders and Campbell (2021: viii) argue for a “package” of decriminalisation and hate crime legislation, however this essay will argue that this is grounded in an inconsistent premise.

### **Sex Work and the Law**

The only way to work legally in England and Wales as a full-service<sup>2</sup> sex worker is to work in a premises alone, with no security, no management, no colleagues, and with limited public facing advertising or communicating. The role of law and state agencies is thus focused on reducing both demand and supply through a partially criminalised framework (Scoular and Carline, 2014; APPG, 2014; APPG, 2018).

Violence against sex workers is statistically highly likely, with attacks ranging from harassment, robbery and stalking through to sexual violence or murder (Phipps, 2013; Sanders et al., 2017; Ward et al., 1999). Sanders (2016) has argued that targeted violence against sex workers is not inevitable, but dependent on three primary dynamics. First, the physical spaces where sex work happens; second, the relationship to the state and the legal framework; and third, how stigmatised the particular form of sex work is in the society where it is occurring. Sex work, then, is not dangerous per se, but workers are made vulnerable to violence through their working conditions, legal status or by compromised access to services and help (WHO, 2013; Sanders, 2016; Platt et al., 2018).

Since the 1970s, and with a more recent resurgence, sex worker rights activists, allies and scholars have been advocating for the full decriminalisation of sex work, a move which would mean fully removing state intervention and regulation (Mac and Smith, 2018). Under a decriminalised framework, brothel keeping, solicitation and kerb crawling would be legal, and coercing a person through intimidation, grooming or violence into any sexual act - commercial or not - would remain illegal (SWARM, 2019). Decriminalisation could mean that sex workers would no longer be targeted by the police for breaking the law just by working together but could work with police to ensure their safety from violent clients or exploitative pimps. It would

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<sup>2</sup> By full-service sex work, we refer to in person sexual intercourse in exchange for money.

equip sex workers with employment rights, thus empowering them against exploitative managers or third parties. Of course, police could still pursue sex workers along anti-social behaviours legislation (Anti-social Behaviour, Crime and Policing Act 2014, s1 and s 22), but there is strong and extensive evidence that decriminalisation can improve relations between sex workers and the police, improve sex workers' access to healthcare and contribute to decreasing stigma toward them (Mac and Smith, 2018; Platt et al., 2018; Armstrong, 2017; Mgbako et al., 2013; van der Meulen, 2011).

Before putting forward our views on the weaknesses of hate crime legislation and the specific problems raised by the inclusion of sex workers, we wish to briefly summarise arguments in favour of broadening hate crime statutes. Although we are critiquing this suggestion, we do not wish to suggest that sex workers' experiences of violence do not meet the criteria for the definition of hate crime that Sanders and Campbell (2020, 2021) use.

Sex workers are frequently considered a higher risk for harassment and violence than the general public (Kinnell, 2008; Campbell, 2014; Sanders and Campbell, 2007; Sanders, 2004). This is particularly true for sex workers who are more visible to the public, whether by working outdoors (as opposed to indoors in a brothel or flat) or occupying a more socially marginalised identity (such as being transgender or a migrant). A study conducted in 2001 across three cities in the UK found that 81% of street-based sex workers had experienced violence (Church et al., 2001) and further studies have found that street-based sex workers experience higher rates of violence than their indoor counterparts, but are less likely than them to report it to the police (Sanders and Campbell, 2007; Sanders et al., 2020; Kinnell, 2008). Violence against sex workers is frequently underreported to the police; and they experience stigmatisation, or 'whore stigma', a key driver of violence (Pheterson, 1983).

Sex workers deserve to have their risks and experiences of violence treated as the serious issue it is. In this section, we set out some of the arguments made in favour of including sex workers within hate crime legislation. For the purposes of this article, we categorise these as falling under two themes: firstly, that it would make a symbolic statement that violence against sex workers is to be taken seriously, pushing back against the idea that it is somehow less serious than violence against those who do not sex work. Secondly, through hate crime's policy of prioritisation, it would aim to address issues of sex workers underreporting crimes and their lack of trust in police, ensuring that sex workers who report crimes are believed. While we share many of the aims behind including sex workers in hate crime legislation, we feel that arguments for doing so are based on flawed assumptions about what is needed to make sex workers safer.

As Phipps (2013) has pointed out, violence against sex workers is inextricably bound up in questions of gender politics. Of course, not all sex workers are women, and sex workers of all genders experience violence. The majority of sex workers either are women, or are perceived by their clients to be women, however, and much of the violence experienced by sex workers is situated in a very specific form of misogyny. There is a pervasive belief that sex workers can be treated differently to women who do not sex work, who stay broadly within the category of 'good' woman, as defined by traditional gender roles (Monto and Hotaling, 2001). This is in part "due to the impression (and reality) that there will be few reprisals when they are attacked" (Phipps 2013: 91). Within the media and wider social discourses, sex workers are frequently constructed and portrayed as non-ideal victims (Corteen, 2018; Christie, 1986), by which we mean women who, through their choices and actions, bring about harm to themselves, and so are considered to be less deserving of public sympathy, less able to claim legitimate victim status. Christie (1986) asserts that victimhood is socially constructed, and discourses about criminal and victim, guilty or innocent, bad or good, mean that sex workers are often believed to be committing crimes rather than the victims of them. With the state framing sex work, and its surrounding issues, as a criminal problem, sex workers are necessarily perpetrators of the crime (Graham, 2017).

As Sanders and Campbell (2007: 793) highlight, sex workers sit within a "discourse of disposability", which often exists in counterpoint to violence against 'innocent' (or non-sex working) women. These attitudes are particularly evident in the language used around the murders of women who sell sex. Discussing the murders of women in Ipswich in 2006, forensic psychologist Dr Michael Berry shared his views with Radio 4's evening programme, saying, "I think quite clearly this guy has been targeting prostitutes rather than women...and I think at the moment he'll carry on killing prostitutes. He's got something against them" (Bennett, 2006). This is an echo of comments made decades earlier by the Attorney General Sir Michael Havers, with regards to the murders committed by Peter Sutcliffe. Speaking about the victims, Havers stated that "some were prostitutes, but perhaps the saddest part of this case is that some were not. The last six attacks were on totally respectable women" (Pidd and Topping, 2020).

These examples make starkly evident the distinction drawn in society between 'prostitutes' and 'women', when sex workers are conceptualised as outside of the community in which they exist (Mac and Smith, 2018; Graham, 2017; Walkowitz, 2017; Nussbaum, 1998). If we are to meaningfully address violence against sex workers, we must address this distinction. Incorporating sex workers into hate crime legislation could be symbolically important (Corteen, 2018; Mason, 2014; Christie, 1986). Those in favour of expanding hate



crime legislation argue that the addition of sex worker as a protected characteristic, and the subsequent harsher sentencing for those who commit these acts, will be a symbol of society's condemnation of violence against this vulnerable group (Sanders and Campbell, 2020; Campbell, 2014). As well as punishing the offender, hate crime legislation will legitimately rebuke the perception that sex workers are disposable, a discourse identified by John Lowman (2000) whereby media descriptions of the ongoing attempts of politicians, police, and residents' groups to get rid of street prostitution from residential areas contributed to a sharp increase in murders of street-based sex workers. In rebuking these discourses through legislation, it is hoped that these laws will better recognise the effects of the violence on victims and their wider community, and revalue the identity of the targeted persons (Perry, 2008).

The stigma which motivates perpetrators of violence is the same stigma which then later affects the credibility of sex workers - they are frequently seen as unreliable narrators of their own experiences. As a result, victims are left reluctant to report to the police (Bowen et al., 2021; Connelly et al., 2018) and perpetrators often rely on this, believing that there will be few reprisals for their attacks (Phipps, 2013; Kinnell, 2008). Penfold et al. (2004: 367) note that the criminalised activities around sex work leads to a "perception among street sex workers that they have no recourse to justice, resulting in a reluctance to report violent clients". Campbell (2002) also emphasises that sex workers fear reporting to the police as this could lead to further fines or warrants against them, or the possible disclosure of their identity to their family, friends and wider public.

The inclusion of sex worker as a protected characteristic aims to address all these issues by making a concerted statement that violence against this group is unacceptable, and that their safety and wellbeing is a key concern of the government. Through inclusion in hate crime policy, sex workers would be able to see evidence of the police and wider society being concerned with their welfare, as codified in policy, which in turn, it is hoped, would increase trust in them. When attacks against sex workers were recorded as hate crimes in Merseyside, overall conviction rates for crimes against sex workers increased to 84%, with sex workers reporting greater trust in working with the police (Taylor, 2010; Sanders and Campbell, 2020b). Violence against sex workers is a serious issue which has no easy solution, but the inclusion of this group within hate crime legislation is an attempt to address the imbalance of justice. However, it is important to note that most advocates of this approach do not see it as the only required action. For example, Campbell and Sanders (2021: viii) argue that this approach can only go so far in a framework of criminalisation, and that decriminalisation of sex work is necessary as part of the "package" to further enhance the rights and safety of sex workers.

Whilst we welcome the focus on decriminalisation, we argue that hate crime would undermine the strengths of decriminalisation, as we show in our next section.

### ***The 'False Promise' of Hate Crime Legislation***

In this section, we argue that confused discourses apparent in English and Welsh policy negate the possibility that hate crime policy could be a meaningful deterrent for violence and could backfire and present additional dangers for the communities it aims to protect. We will assess the overall weakness and 'false promise' of hate crime legislation, before moving onto a discussion of the specific problems raised by the inclusion of sex workers within it, in particular their conceptualisation as vulnerable.

Not only are there significant challenges in prosecuting hate crime (Law Commission, 2020), but using legislation to raise awareness displaces the responsibility from structural inequality to badly behaved individuals. We can see how successive governments, the police and the CPS often give out mixed messages: on the one hand deploring violence against vulnerable communities by legislating for sentencing uplift; and on the other, advocating hostility toward vulnerable communities through actions such as the Hostile Environment policy (Immigration Act 2014; Immigration Act 2016). The same government which supports hate crime legislation against disabled people (Criminal Justice Act 2003) has cut the benefit of Employment and Support Allowance and pulled funding from disability advocate charities such as Possibility People and the UK Disabled People's Council (Ryan, 2019; McWade, 2014). This mixed messaging is particularly evident when applied to the context of sex work – to include sex workers within hate crime legislation as a vulnerable group in need of protection, without removing the policies which contribute to this perceived vulnerability, will make no meaningful difference to violence against this community.

We do not suggest decriminalisation as a 'silver bullet', but a starting point. Decriminalisation does not eradicate social stigma, nor can it ensure rights for many migrant, disabled, queer or minoritized sex workers (Aantjes et al., 2021). As Mac and Smith (2018) point out, for decriminalisation to be a panacea, sex work would have to be one singular problem rather than a matrix of oppressions and intersecting struggles. As abolitionists, we argue not just for a repeal of laws and police powers, but for increased funding for the many social issues that those who sell sex face: for example, affordable housing; flexible and affordable childcare; accessible healthcare for all; and substance misuse services including the decriminalisation of drugs and provision of safe injection sites.

*Raising Awareness?*

Hate crime legislation, both as a concept and as a collection of policies, aims to combat bigotry in its various guises by criminalising behaviour as well as the prejudicial intent behind it (Chakraborti and Garland 2014; Mason, 2014). However, we argue that these prejudices are rarely created in a vacuum – they are formed, shaped and upheld by societal wide stigma. Some groups are even conceptualised as risky to the wider population; as was the case for HIV stigma and the gay population, as well as contemporary discourses which present sex workers as vectors of disease (Nova, 2016; Lister, 2020). These deep-rooted narratives and beliefs propagated throughout society are not so easily overcome by legislating against those who uphold them, especially when there are no preventative measures to counter them.

Hate crime legislation enshrines the idea that equality and justice can be achieved through outlawing the behaviour of a few irrational individuals and raising awareness to the needs of marginalised groups (Spade, 2010; McBride, 2021). Rather than raising awareness, we argue that hate crime laws actually displace awareness-raising by locating the source of the problem onto mistaken individuals rather than systemic prejudice. The government which ‘raises awareness’ about the unacceptability of violent prejudice and which calls for hate crime to be enshrined in law against minoritized communities is the same government that deports migrants, institutionalises racism and cuts funding for disabled services across the country. There is a constant framing of sex workers as a nuisance, as demonstrated by loitering or brothel-keeping laws (Street Offences Act, 1959, s1; Sexual Offences Act 1956, s33-36) so it is incongruent and discordant to frame them as vulnerable and in need of protection too.

Dixon and Gadd (2006: 309) have pointed out that the supposedly clear deterrent and denunciatory message contained in hate crime policy is either “drowned out or distorted” by other signals coming from the same government about crime, immigration and ‘community cohesion’. If the government truly wanted to raise awareness about hate crimes, removing funding from communities who need support surely dehumanises marginalised communities beyond the repair of a symbolic hate crime law.

*Providing Enhanced Police Protection*

For most people, the police are the first point of call for reporting a crime, so if hate crime legislation is to be effective, victims must feel safe to approach the police and report any instances of hate motivated violence - unfortunately, this is frequently not the case. The Sussex Hate Crime Project (2017) findings showed a lack of reporting came from the victim's

beliefs that the criminal justice system was not built to protect them; it was set up against them. To many, hate crimes seem so normalised and accepted in society, there seems little reason to report them (Law Commission, 2020; Walters et al., 2017).

Although hate crime legislation seeks to remedy resistance by encouraging reporting, red-flagging reports and monitoring trends in reporting, criticisms remain on a practical and implemental level (Law Commission, 2020; Sanders and Campbell, 2014; Campbell, 2014). The police are inconsistent, uneven and subject to bias in their handling of reports, on top of societal distrust in their effectiveness (Law Commission, 2020; Walters et al., 2017; Chakraborti, 2009). Sanders et al. point out that “the structure of police organisations means that police move in and out of roles quickly, taking with them what they’ve learned with little chance for handover. Knowledge is lost resulting in institutional amnesia as new staff take time to develop meaningful expertise” (Sanders et al., 2020: 7).

We wish to be clear that we do not argue the answer lies in extra funding to the police to overcome these challenges. We argue that using the police to deal with hate crime at all is the wrong solution - focusing on individual perpetrators when talking about hate-motivated violence distracts society from addressing broader social causes of violence. Rather, to help prevent communities from being vulnerable to attack, funding ought to be rediverted away from the police and invested in the communities, services and organisations which directly support those who have protected characteristics. For sex workers, instead of an increased police presence, this divestment might look like provision of centres open throughout the night where they can get support, advice and something to eat, or meet other sex workers and build a community (Bedingfield, 2020; O’Neill, 2020). The incoherent policy approach which slashes funding to public services, and then increases punitive responses means that harm reduction has been replaced with ‘tough on crime’ messages (Sanders-McDonagh et al., 2016). This allows lawmakers to emphasise punishment of individuals as a solution to violence and inequality, rather than improving living conditions or access to the resources desperately needed.

The operational benefits of hate crime legislation are centred around the police and the CPS being more alert to the needs of a particular community, and with a better response, arrests and prosecutions are more likely. Police and other services should take crimes against marginalised groups seriously without symbolic calls for harsher sentencing. Raising awareness of vulnerable groups is left in the hands of the police who are often assumed to be neutral and benevolent and not perpetrators of violence themselves, despite evidence to the contrary (Klambauer, 2018). For many people, there are barriers to reporting regardless of a

crimes' status which need to be addressed before further hate crime implementation. Issues of police discrimination, patchwork policies, supposed victim credibility, and fear of legal repercussions from marginalised communities cannot be done away with so easily.

### *A Deterrent for Violence?*

Ultimately, and most pressingly, there is no evidence that hate crime policy deters violence against vulnerable groups from happening. While deterrence is a subjective matter, the Law Commission in its recent consultation report states that “there is no empirical evidence that higher sentences are capable of deterring offenders” (Law Commission, 2020). Lamble (2021) further refers to hate crime legislation as a ‘false promise’ in this way, not achieving what it sets out to do. Hate crime laws are not preventative, they are reactive - they add harsher punishment in the form of longer sentences after the crime has been committed, *if* prejudice can be proven as a motivating factor (Hall, 2005). With 96% of hate crime reports not ending in a conviction, the deterrent value of prison is weak at best (Hall, 2005; Powell, 2021; Walters et al., 2017). Given the paucity of evidence to support increased sentencing as a form of deterrence, it is questionable that the heightened penalties imposed are capable of preventing hate crime (Mason, 2014; Dixon and Gadd, 2006) a point even acknowledged by those advocating for it (Sanders and Campbell, 2020).

By singling out selected victim attributes such as race or religion, and then punishing particular forms of prejudice against them, legislatures are seen to be sending a clear message both that some attributes are deserving of protection more than others, and that those who act on their prejudice are deserving of more punishment than others (Mason-Bish, 2013; Mason, 2014; Schweppe, 2012; Campbell, 2014). We argue that whether it is a specific victim attribute or more general ‘perceived vulnerability’, highlighting the individual responsibility of the offender locates the source of the problem in the wrong place: that of the individual person rather than in a system which is endemically biased against marginalised groups (Bent Bars, 2021; Lamble, 2013). Worryingly, hate crime legislation positions interpersonal violence as the only violence worth focusing on rather than, say, the state sanctioned violence of poverty – which disproportionately affects disabled populace (Mac and Smith, 2018; Ryan, 2019); the violence of deportation – which disproportionately affects migrant populace; and the violence of the criminalisation of sex work. Ultimately, by enshrining the protective promise of hate crime legislation, state intervention and the state’s own form of punitive violence is offered as the solution to harm, simultaneously deflecting its role in perpetuating it and renewing trust in the state to solve it. By prioritising the notion of prejudice or ‘hate’ as the reason behind violence, the state manages to renew vigour in community

deterrence reflecting the neoliberal state's reorientation away from welfare and onto criminal justice (Lamble, 2013).

### ***Problematizing the Inclusion of Sex Workers Within Hate Crime Legislation***

With these broader critiques of hate crime legislation in mind, we now argue that expanding the definition of hate crime to include sex workers may in fact create more harm for this group. As Perry (2001) highlights, hate crimes proliferate in an enabling environment, and so we address what that means for sex workers. In this section, we will engage with the state practices, policy and rhetoric showing how it provides ample ground from which hate crime emerges in England and Wales. One of our key arguments is that sex workers are vulnerable to violence, not due to their innate identity as workers in the sex industry, but due to the criminalisation of their workplaces. Therefore, we begin this section by turning to the category of 'vulnerability' as it is applied to sex workers as a potentially protected group under hate crime legislation. We will then explore the relationship between sex workers and the police, and the specific problem this creates for the inclusion of sex workers within hate crime legislation. Finally, we will touch on the issue of wider feminist rhetoric, and its role in creating an enabling environment for violence against sex workers, which remains unaddressed by expanding hate crime legislation. Hate crime legislation does little to alleviate these issues, and we again suggest the full decriminalisation of sex work, along with other abolitionist strategies, as a more effective strategy for harm reduction.

#### *The Problems of Vulnerability*

Conceptualising 'vulnerability' is complex and there is significant contestation over its definitions (Chambers, 1989; Appleton, 1999; Levine et al., 2004). Interrogating this term is a highly relevant area of investigation for this article, due to the frequent conceptualisation of sex workers as 'vulnerable' without further thought given to exactly what this means. Who are they vulnerable from? What are they vulnerable to? How can we address this vulnerability in a way which does not remove their agency and rights? We echo the concerns of Munro and Scoular, who state that vulnerability has "has entered—and influenced—the political and legal lexicon with too little interrogation" (2012: 191).

In this section, we will draw attention to the long history of perceived vulnerability being used to control the bodies and actions of sex workers, before moving onto an assessment of this in contemporary social and political contexts. In doing so, we do not dispute that sex workers may be targeted because of their perceived vulnerability, but we do not see hate crime

legislation as a way to change this. Vulnerability is not an inherent part of the sex working identity; it is the intended consequence of a criminalised economic activity.

### *What is Vulnerability?*

Vulnerability as a concept is explored across a range of disciplines, so definitions necessarily vary depending on the context and field of study. There is general agreement, though, that however it is used the concept requires closer engagement as an analytical category. In the context of law, in 2003 the UN observed that “the use of the words ‘vulnerability’ and ‘vulnerable’ has been quite loose in policy contexts and has entailed neither the theoretical rigour nor the degree of elaboration that one finds in analytical works” (2003: 14); further, legal theorist Martha Fineman describes vulnerability as a “grossly under-theorised” and “ambiguous” concept (2008: 9).

With regards to vulnerability as a category in law and policy, Munro and Scoular consider how there has been an “exponential rise in the discursive emphasis” on vulnerability by law and policymakers in contemporary culture (2012: 190). Whilst vulnerability was utilised as a welfare concept prior to 1997, Brown (2012) highlights that vulnerability in the UK took on a new significance in social policy during the New Labour era. This was most notable in policy arenas related to disability, services for children and families, housing, as well as crime and disorder. There is significant literature which highlights the strong moral connotations attached to ideas of vulnerability, particularly evidenced in the field of disability research (see Goodin, 1985; Turner, 2006). Brown (2012) notes that this is because discussions of vulnerability frequently take on a strong paternalistic quality (see Wishart, 2003; Hasler, 2004). The anticipated weakness of those designated as ‘vulnerable’ align with strong moral obligations to help them, at any cost, meaning that the usual limitations on how we might engage are frequently ignored. Labelling someone as vulnerable often implies they are ‘weak’, and may give us permission to insert ourselves, both physically and metaphorically, into the lives of others without necessarily asking if that is actually a desired action.

Brown notes that in the UK, since 1997, vulnerability has been used as “tacit moral justification for stronger social control mechanisms” (2012: 46), and exceptions made on the basis of perceived vulnerability “have a tendency to enhance the power of ‘professionals’ to make decisions on behalf of those they support” (ibid). This is evident in policy decisions affecting groups including disabled people, children, and sex workers. Brown (2012) gives the example of financial support for disabled people. After winning the right to receive ‘direct payments’ in 1996, disabled people were entitled to arrange some of their own services and

assistance as they wanted. However, New Labour then altered initial plans for the direct payments scheme, with 'vulnerable' disabled people deemed incapable of making these decisions (Hasler, 2004). While Brown points to the agendas of re-moralisation of vulnerability pushed under New Labour, the construction of sex workers as always and unavoidably vulnerable has long been given as justification for control and regulation of their bodies, neatly sidestepping their need to consent (Scoular and O'Neill, 2007).

Categorising a person as vulnerable justifies a range of measures which, whilst done under the auspices of protection, have the capacity for significant harm. Of particular interest to this article, then, are the links between the vulnerability discourse and sex work, and the implications of morality within this. Brothel raids, frequently done with the stated aim of helping victims of trafficking, often achieve nothing more than arrests, deportations, closure of someone's workplace, and the confiscations of earnings under the Proceeds of Crime Act 2002 (English Collective of Prostitutes 2017). Sex working mothers are frequently labelled as vulnerable, as are their children, and in doing so, are at risk of being separated from each other 'for their own good' - although the good in question often remains vague and undefined (Sloss and Harper, 2004; Dodsworth, 2012). Discourses of vulnerability can "re-cast boundaries of inclusion and exclusion around one's compliance with norms of 'responsible citizenship'" (Munro and Scoular, 2012: 203) and make it possible, even inevitable, to consider those who fall outside of these boundaries as "a partial subject/object who has limited agency" (Scoular and O'Neill, 2007: 775). In other words, the vulnerability paradigm helps to legitimise a more punitive approach by the state.

### *Vulnerability, Morality and Sex Work*

Sex workers have been constructed as vulnerable since the early modern period (Caslin and Laite, 2020), with religious groups often seeking to incarcerate those labelled as prostitutes in institutions where they could be saved from their sinful ways, the roots of what Agustín (2007) describes as the 'rescue industry' (see Walkowitz, 1992; Agustín, 2007; Laite, 2011). This construction is still frequently taken for granted with little explanation. In contemporary sex work discourse, notably in social policy such as 'Paying the Price' (2004), 'A Coordinated Prostitution Strategy' (2006), 'Tackling the Demand for Prostitution' (2008), and 'Policing and Crime Act' (2009), vulnerability is regularly assumed as an identity category. However, definitions of this vulnerability are not interrogated throughout these documents, either in language used or imagery chosen (Munro and Scoular, 2012: 192), and questions around what might make someone vulnerable such as poverty, austerity and their material conditions



are broadly absent. Instead, vulnerability is taken as a given, a fixed and unmovable category, and one that merits sex workers as deserving, even needing, external intervention.

Sex work, in particular hyper-visible forms such as outdoor work, are also considered within a strong moral framework. As Penfold et al. (2004) highlight, street prostitution has traditionally been framed within a public nuisance discourse which is still apparent, evidenced by groups such as 'Save Our Eyes', an organisation which campaigned against the now-closed Managed Approach in Leeds<sup>3</sup>. As the name makes clear, they describe themselves as "blighted" by the managed zone, and prior to its closure would regularly post pictures of sex workers and their clients online, with little regard for the harm this could cause. This is, as Brown (2012) emphasises, an example of how English and Welsh policies on prostitution are driven by the opposing motivations of a moral desire to rescue women from perceived exploitation as well as a desire to contain a potentially dangerous and contaminative risk. Sex workers are at once both too vulnerable to be able to protect themselves, and too dangerous to the rest of society to be allowed to exist. These dichotomous desires necessarily lead to the confused policy, which lies at the heart of our objection with including sex workers within hate crime legislation. Without removing policies driven by the conceptualisation of sex work as something inherently immoral and risky, such as brothel keeping and solicitation laws, adding in legislation driven by the idea of sex workers as vulnerable will do nothing to address violence against them.

#### *Vulnerability Through Context, Not Identity*

As Munro and Scoular emphasise, the approach to sex work policy which focuses so heavily on vulnerability "tends to generate a rather 'flat' notion of vulnerability" (2012: 193). It ignores the variety of experiences which exist within the sex industry, as well as failing to "dissect and interrogate the multiple and complex causes (both inter-personal and social) of that vulnerable condition" (Munroe and Scoular, 2012: 193). In this way, it becomes far easier to ignore the voice of the individual person - she is simply a 'vulnerable woman', regardless of her reality, her material needs or her experience. Attaching vulnerability to the individual in this way also clears the way for state intervention, and "accepts uncritically the appropriateness of criminal law" (Munro and Scoular, 2012: 193). We can see this uncritical appropriateness at work in the desire to adopt broader hate crime legislation - sex workers are conceptualised as

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<sup>3</sup> The Managed Approach area in Leeds allowed sex workers to operate without prosecution from around a patch of the city's non-residential Holbeck neighbourhood within the agreed hours of 8pm – 6am.

vulnerable, and therefore in need of further protection, with no thought given to the nature of that protection, or the impact of the identity of the protectors.

Research by the International Committee on the Rights of Sex Workers in Europe (ICRSE) found that the “legal status of sex work can be a critical factor in shaping patterns of violence against sex workers and directly impact their vulnerabilities” (ICRSE, 2020) – it seems counter intuitive for the government to ‘protect’ sex workers with hate crime legislation due to their vulnerability when their vulnerability is due to the partial criminalisation of their job. Any supposed benefits from extra policing protection for sex workers will likely be negated by their fear of arrest. In their report, ICRSE (2020) also wrote that one of the key reasons for victimisation is the lack of safe working places, and while safe working places remain a reason for arrest through brothel keeping legislation, the argument becomes circular. The same is true when sex workers are required to sex work to earn money to pay fines for sex working, pushing them out onto the street for longer hours throughout the night heightening their vulnerability and proximity to violent attacks.

We can see, then, that it is not necessarily the identity of sex workers which makes them vulnerable to violence (although this is not insignificant), rather it is the law pertaining to their work which puts them at most risk – and this is because of a policy approach which does not put the safety of this group at the forefront. A criminalised workplace is a dangerous one, and the result of this criminalisation forces sex workers to work in ever more invisible locations. Including sex workers within hate crime legislation, and increasing their interaction with the police, will do nothing to alleviate their vulnerability or their proximity to violence. Advocating for hate crime policies is not the best way of tackling or targeting this. Instead, we should be asking: how can we reduce violence against sex workers? How can we make it easier for them to report the violence they already experience? In asking these questions, we now turn to an exploration of sex workers’ relationships with the police.

### *Relationships with Police*

As we have established throughout this paper, relationships with the police are a crucial factor in reporting hate crimes. Whilst we acknowledge that individual officers may be sympathetic towards sex workers, and various localised initiatives exist which aim to reduce violence against sex workers, they cannot compensate for a criminal justice system which is sexist, transphobic, racist, and biased against gender non-conforming people (Faye, 2021; ICRSE, 2020; Mac and Smith, 2018). As Bowen et al. highlight, “the power imbalance between the police, who are imbued with a socially legitimate authority by the state, and sex workers, who

are systematically disempowered, creates the ideal conditions for stigma to flourish” (2021: 888). For any hate crime policy to work, it would require police officers (and others working in the criminal justice system) to put their assumptions about sex workers to one side and recognise agency in their involvement with the industry, their boundaries and ability to engage in and withdraw consent. Research has found that even those sex workers who had positive experiences with the police did not expect respectful treatment (Klambauer, 2018) and there is vast evidence that the police perpetuate violence and stigma, codify gender norms, and stereotype sex workers based off media representations (Klambauer, 2019; Bowen et al., 2021; ICRSE, 2020).

Police, despite their (non-enforceable) guidance (Feis-Bryce, 2019), can rarely prevent violence from happening in the first place; additionally, policing strategies to deter crimes and boost public confidence in their working may have unintended consequences. Sindall and Sturges (2013) as well as Salmi et al. (2004) have found that visible police patrolling in public spaces can have positive effects on the community, but while it may ostensibly prevent violence against sex workers, the criminalised nature of soliciting or advertising means that police visibility is a clear risk to sex workers and clients, both of whom may fear arrest or dispersion. In 2014, a pilot scheme of a Managed Area (MA) in West Yorkshire was trialled for sex workers. Between 7pm and 7am, along a designated area, sex workers could operate, and police would issue no cautions or arrests for loitering, soliciting or kerb-crawling (Sanders and Sehmbi, 2015). A key outcome of the MA was improved relations between sex workers and the police due mainly to “the[ir] policy of none arresting” (Sanders and Sehmbi, 2015: 1).

Whilst research from Connelly, Kamerade and Sanders (2021) demonstrates that street-based sex workers are more likely to report violent crimes to the police than their indoor counterparts, other research from The London School of Hygiene and Tropical Medicine (Platt et al., 2018) showed that while reports were made by street-based sex workers, overall interactions between sex workers and the police were negative. Platt et al. (2018) found that interactions between sex workers and the police involved dispersing workers, confiscating money or condoms, or threatening them with arrest, all of which had a negative effect on sex workers - but it did not stop them working. Instead, sex workers involved in this study suffered increasingly poor sexual health, poor mental health and experienced higher rates of violence from clients; the latter because sex workers went out of their way to avoid further interactions with the police and worked in isolated places (Stuart and Grenfell, 2021; Platt et al. 2018; Phoenix, 2009). Sex workers may have felt safe enough to report to the police, but these interactions had overall negative consequences on their health and safety.

We highlight these issues to show that as long as sex work is criminalised, the police cannot be an instrument of safety for sex workers. Unless the fear of arrest is removed through decriminalisation, more police powers and increased police intervention will make sex workers less safe, not more (Platt et al., 2018; Klambauer, 2018; Sanders, 2004).

### *Wider Feminist Rhetoric*

Finally, we examine the social context in which sex work sits in England and Wales, and indeed more globally. In doing so, we wish to highlight the enduring attitudes of feminists towards sex workers which contribute to a social and political climate in which hate crimes flourish (Perry, 2001). We argue that in a society where sex workers and their voices are repeatedly dismissed and ignored, where feminist discourse regularly describes sex workers in dehumanising and misogynistic terms, the inclusion of sex workers within hate crime policy emerges as a woefully inadequate solution.

The perception of sex workers as vulnerable, even deserving of violence, is a common one. We argue that a key factor in this construction of sex workers as vulnerable and inevitably deserving of violence can be found in the ways radical feminists speak about sex workers. From Home Office reports to mainstream journalism, radical feminists against the sex industry are the dominant voice and thus play a key role in shaping narratives about sex workers: who they are and how they ought to be treated. Radical feminist rhetoric regularly imagines and names the sex industry as a “flesh trade” (Ditum, 2021) or sex workers as objects to be traded and bought, who are “getting their thongs in a twist” (Bindel, 2017: 41) if they put forward reasons for workers’ rights or decriminalisation. Many radical feminists refuse the term ‘sex worker’, arguing that it is neither sex, nor work, instead preferring the term ‘prostituted women’ to emphasise the women’s lack of agency (Mackinnon, 2021; Bindel, 2017). Given that some of the most abusive and violent clients rationalise and justify their own behaviour by imagining prostitution as a ‘flesh market’ and sex workers as objects to be traded within that market, such representations of prostitutes as victimised ‘objects’, rather than as active – if constrained – subjects within the exchange may have unintended and hugely negative consequences for every sex worker, especially the most marginalised (Doezema, 2010; O’Connell Davidson, 2003).

Katherine Angel assesses radical feminist rhetoric and considers their “nose-holding disapproval” about “the women [they] are ostensibly concerned about” as somewhat hypocritical, “wielding an objectifying and dehumanizing gaze on the very women whose willing self-objectification they were lamenting” (2021: 57). As feminist economist Victoria

Bateman points out, the notion that buying sex is equivalent to buying a woman, seems to suggest that radical feminists themselves, ironically, see women as sex objects and little more (2021: 12). Radical feminists, much like the Save Our Eyes campaign, are therefore caught at the nexus of two opposing motivations: a seemingly moral desire to rescue so-called vulnerable women from the sex industry, and their thinly veiled disgust at sex workers' potentially contaminative risk. Considering that both abusive clients and dismissive police officers justify their behaviour on the grounds that sex workers are not people and are objects to abuse and maltreat, radical feminists who claim to want a reduction in violence against sex workers could very easily show their support to sex workers by stopping their insistent use of dehumanising language, both in academic texts, broader media or parliamentary sessions: language that sex workers vocally and regularly push back against (Lister, 2017). Instead, sex workers who ask to be treated with basic human respect are met with claims that they are not representative of the majority in the industry.

While attitudes are shifting, and those supporting the rights of sex workers are becoming more prominent in academia, journalism, and mainstream media (see Smith and Attwood, 2014; Smith, 2020; Amnesty International, 2019; Miren, 2021), such gains for sex workers have been dismissed as little more than “perky-boobed success stories” (Ditum, 2021) with those advocating for them as “fourth wave imbeciles” (Gold, 2019). Hate crime legislation which aims to protect sex workers from hate speech and violence serves little purpose in a society where such dehumanising language is considered feminist advocacy. Instead, sex worker voices need to be centred, and their repeated call for the decriminalisation of sex work must be prioritised.

### **Conclusion**

There is no safe way to protect a criminalised population without fully decriminalising that population first. As Lynzi Armstrong has shown, where sex work has been decriminalised “the balance of power between police and sex workers” has shifted “in two distinct ways: first, in reducing the power police have over sex workers by removing the risk of arrest; and second, they empower sex workers through the provision of their rights” (2017: 570). By emphasising criminal actions of the individual through hate crime legislation, and thus criminal solutions for the individual through harsher sentencing, state bodies can divert focus from their policies of immigration and asylum, austerity, partial criminalised legislative framework and substantial cuts to welfare, sexual health and women's services (O'Connell Davidson, 2002; Rottenberg, 2018; Bumiller, 2008). Emphasising a criminal justice focused approach helps to neutralise further critique that the state is not doing enough from those calling for better responses to

hate crimes. This individualising of action is a rationale grounded in neoliberalism (Bernstein, 2010; Bumiller, 2008) – a political discourse which emphasises cutting funding to welfare services in a bid to individualise circumstances, whilst simultaneously responding to community problems with increasingly punitive and carceral responses. As we have shown, the model of hate crime put forward by governmental policy bears little connection to wider structural factors rendering sex workers at risk to violence and is wholly attributed to the actions of bad men (Rottenberg, 2018; Bernstein, 2010; Bernstein, 2018; Carline and Scoular, 2017). This is why, to make steps toward truly tackling violence against sex workers, full decriminalisation is a priority. Without this, there can be little structural improvement or progress for those within the sex industry: their conditions will not change, and violence will not be reduced.

In this article, we have shown how sex workers are constituted as vulnerable, not because of their innate identity, but because of laws, stigma, and rhetoric. Sex workers are seen as ‘easy targets’ due to the criminalised nature of their workplaces and their work. They must work alone and are frequently disincentivised to report to the police out of legitimate fear of repercussions, intrusion, or violence. Hate crime legislation does not address these vulnerabilities. Before calling on governments to expand hate crime policy or to imbue police with more powers, we ought first to decriminalise sex work and empower sex workers with greater working rights. We must legislate so that sex workers are allowed to work with others for safety, rather than punish after sex workers have been attacked when they are alone and vulnerable.

We wish to emphasise however, that decriminalising sex work is just the beginning, not the end goal - it is, as Mac and Smith (2018) write, no silver bullet. Rather, decriminalisation can begin to create the conditions where sex workers can be safer at work and gain adequate protection through employment rights from violent, abusive or exploitative managers and clients. It is our hope that decriminalisation resolves the need for hate crime legislation at all.

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