



CAAN NEWS:
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“Tiger Porn” case gives rise to Judicial Review of extreme porn law

One of the worst cases of the misuse of S63(7) CJIA 2008 legislation (which criminalises people for possession of “extreme pornography”) was the prosecution of Andrew Holland for possessing a comic video clip of a woman apparently having sex with a tiger (actually, a man in a tiger suit). The prosecution had a devastating impact upon Andrew’s life but was eventually dropped by the CPS. The circumstances of this case are quite appalling: further details are given in [this article from the Independent](#).

The excellent campaigners in ‘Backlash’ have provided the support needed to help Andrew obtain professional legal advice. In October Hodge Jones & Allen LLP solicitors began the legal process to challenge the compatibility of S63 with ECHR. It is argued that: -

- That the term “extreme” pornography is insufficiently clearly defined in S63. It is not clear from the wording and accompanying case law how a potential defendant would be able to understand its scope and foresee the consequence of his/her actions;
- There is insufficient guidance from the DPP as to when offences under S63 will be prosecuted; and
- The offence is a disproportionate means of achieving the legislation’s intended aims.

If you would like more information on this please get in touch and we will send this by e-mail. However, [this article in politics.co.uk by our very own Jane Fae](#) provides a very useful background to the legislation.

An unashamed appeal for donations

Over the 5½ years since S63 came into force it has become apparent that debate, campaigning and lobbying would not lead to repeal of the legislation; the only way to make progress is to fund a series of legal challenges to continually push back the scale of intrusion and reach of the law into our private lives. Obviously that is only possible if money is donated to those doing the fighting (funding legal representation for those unjustly attacked by S63 legislation). Currently that is “Backlash”; so please [make a donation now](#), small or large. ***Please don’t delay – do it now while this is fresh in your mind.***

[Find out more about Backlash](#) and their legal victories on their website.

Rape porn Bill introduced to Parliament (England, Wales and NI)

In February the government introduced a Bill to Parliament that will extend S63(7) CJIA 2008 to criminalise the possession of pornography that depicts rape. It is argued that it may have greater implications for the general public than the first four categories that were originally criminalised. This is because material that depicts rape can be difficult to define.

In 2010 the Scottish Parliament introduced its own possession offence legislation (S42 CJ&L(S)A 2010) which included a category that depicts rape. In the light of this, and recent demands from many feminist and religious groups, that material that depicts rape be made an offence to possess, the government brought forward legislation in the Criminal Justice & Courts Bill. This will shortly be enacted: for further details, click here for [the Bill's timetable and a copy of the legislation](#).

The key section says: -

37 Possession of pornographic images of rape and assault by penetration.....

After subsection (7) insert—

“(7A) An image falls within this subsection if it portrays, in an explicit and realistic way, either of the following:—

(a) an act which involves the non-consensual penetration of a person’s vagina, anus or mouth by another with the other person’s penis, or

(b) an act which involves the non-consensual sexual penetration of a person’s vagina or anus by another with a part of the other person’s body or anything else, and a reasonable person looking at the image would think that the persons were real.

(7B) For the purposes of subsection (7A)—

(a) penetration is a continuing act from entry to withdrawal;

(b) “vagina” includes vulva.”

We worked hard to stop the legislation but argued, if government is determined to take this step, it must provide absolute clarity and certainty in the definition of the offence. We issued a joint letter with 4 other campaigns (Backlash, Campaign Against Censorship, Sex & Censorship and the Sexual Freedom Coalition) but to no avail.

Many CAAN supporters will be appalled that some material exists that features real rape being committed and this is occasionally shared by exceptionally nasty people. But the publication and sharing of such material is already a criminal offence. Many of us have no sympathy for those who possess extremely brutal and callous depictions of rape, even those where models have consented to appear as ‘victims’, but the current legislation is sloppy, it is poorly drafted and will impact upon relatively soft bondage and domination themed material.

The legislation will also include anything that involves penetration with any object. So, if you were to possess an image of a submissive man, gagged, in bondage, with a butt plug being inserted, how could you prove that this was not rape? It could well be the case that the lucky man involved is having the best day of his life, but his facial expression might be interpreted by police as pain and the gag as proof that there was no consent to the act.

Nearly a third of the UK population (British Sexual Fantasy Research Project: 2007), fantasise about types of forced sex, often involving bondage, gags and invariably a dark dungeon. There is a huge amount of porn that caters for this demand, but anything without a BBFC certificate will be very dangerous to view/possess.

We wrote to over 100 potentially sympathetic MPs and peers warning of the dangers of this legislation, explaining the potential for thousands of harmless people to have their lives destroyed. The

government has pointed to the experience in Scotland and notes that it is believed there has only been one conviction for possession of material that depicts rape. However the government also predicted that S63(7) CJA 2008 would only result in “a handful of convictions” but the reality was very different, with over 5,500 people charged with offences since the legislation came into force. Our fear is that prosecutions will soar.

If you possess bondage themed sexually explicit material you need to give very careful consideration to the potential implications of the new law. We expect it to come into force early in 2015 so you have a little time. If the material was purchased from a licensed sex shop and/or carries a BBFC certificate you are fine. But you will have committed an offence if you extract images from BBFC material if, in isolation, they realistically depict rape.

Let there be no doubt that we are in engaged in war on two fronts. The state is determined to seize control over the internet and is equally determined to marginalise the lives of those who are into even the mildest forms of BDSM. Evidence is also mounting that police investigations and prosecutions are disproportionately being directed at the LGBT community. As a consequence we fear that the new legislation poses a serious threat to minority groups and have adopted the stance that if anything depicts a real rape, where there is no consent, that cannot be tolerated; but anything that is consensual should not be criminalised. Finding a watertight definition or dividing line between the various different categories of material that exist is impossible and so we opposed the creation of this new category.

Sadly it seems the lives of many harmless people will have to be blighted before the slow process of legal challenge forces government to properly define and restrict

the excesses of over-zealous police officers. This is another reason to ask you to donate to the work of Backlash (see 2. above).

The battle to stop the criminalisation of the purchase of sex: Modern Slavery Bill

The Modern Slavery Bill is currently working its way through Parliament. A few days ago an MP proposed an amendment which would insert a clause to criminalise the purchase of sex. The English Collective of Prostitutes jumped and in a very short space of time managed to get hundreds of people to write to Bill Committee members asking them to oppose the amendment. We won – MP's did not support the amendment. Further information may be obtained from [the ECP website](#).

[The Bill is set out here](#).

Sadly, the war is not over. There is a very real danger that criminalisation of the purchase of sex will appear in the forthcoming election manifestos of one or more of the main political parties. We need to pre-empt that and ask you to take one simple action.

Please write to you MP now!

Please use your own words, or express something along these lines: -

Dear MP

I was very concerned to read that an attempt was recently made to criminalise the purchase of sex during the passage of the Modern Slavery Bill. I am opposed to this because the Scandinavian model has not been a success. The New Zealand model of decriminalisation is humane, responsible and works and I appeal to you to do all that you can to ensure the UK follows this route.

You could add (and read for your own information): -

I enclose the following informative briefing from the English Collective of Prostitutes: -

Briefing against clauses to the Modern Slavery Bill: to prohibit the purchase of sexual services

An amendment and two clauses to the [Modern Slavery Bill](#) put forward by Fiona Mactaggart MP aim to 'make the purchase of sex illegal, remove the criminal sanctions against prostituted women and provide support to women who want to leave prostitution'.

We support the amendment which would remove the offence of loitering and soliciting for women working on the street. This decriminalisation should be extended to sex workers working from premises. The brothel-keeping legislation should be amended so that women can work more safely together. In 2006, the Home Office acknowledged: ". . . the present definition of brothel ran counter to advice that, in the interests of safety, women should not sell sex alone." [1]

We strongly oppose the clauses criminalising clients, on the basis of women's safety. Criminalising clients does not stop prostitution, nor does it stop the criminalisation of women. It drives prostitution further underground, making it more dangerous and stigmatising for women.

Any benefit from decriminalising loitering and soliciting will be cancelled if clients are criminalised. Women will have to go underground if clients are underground. Kerb-crawling legislation has already made it more dangerous for prostitute women and men. In Scotland, since kerb-crawling legislation was introduced in October 2007, the number of assaults on sex workers have

soared. [Attacks reported to one project almost doubled in one year from 66 to 126.](#)

Many of the claims that have been made about the impact of the 1999 Swedish law which criminalised clients are false and have no evidential basis.

1. **The Swedish law has not resulted in a reduction in sex trafficking**

Fiona Mactaggart MP claimed that criminalising clients “has been shown to reduce sex trafficking ever since it was first adopted in Sweden in 1999”. There is no evidence cited to support this claim.

The Global Alliance Against Traffic in Women “strongly opposes introducing criminal penalties against the clients of sex workers.” Their 2011 research found that “criminalising sex workers’ clients does not reduce sex work or trafficking. Instead, it infringes on sex workers’ rights and obstructs anti-trafficking efforts.”

False claims about trafficking have been used before to justify a crackdown on prostitution. In the run up to the Policing and Crime Act which increased the criminalisation of prostitution, Mactaggart claimed that “80% of women in prostitution are controlled by traffickers”. [2]

This figure has been comprehensively discredited. [3]

In reality anti-trafficking legislation is primarily being used to target immigrant sex workers for raids and deportations. During well publicised raids on Soho flats last year, done in the name of freeing victims of trafficking, 250 police broke down doors and dragged handcuffed immigrant women in their underwear onto the streets. No trafficking was found and most flats were eventually re-opened. But at what cost to women’s safety and dignity, and to the public purse? The Joint Committee on Human Rights report on Human Trafficking confirms that “victims may often find themselves treated as

immigration offenders and face enforcement actions such as detention and removals. [4]

Considering that “internationally only 22% of human trafficking is for sexual exploitation” [5] creating fair working conditions and ending abuses in low-wage labour industries will do far more to end trafficking in persons and protect the human rights of workers in vulnerable situations.

Existing laws already criminalise those who coerce anyone into the sex industry. Why extend them to consenting sex?

2. **The Swedish law has not reduced prostitution**

Claims that street prostitution has “halved between 1999 and 2008” [6] are disputed by Rose Alliance, the sex worker organisation in Sweden, which says that numbers have since gone back up. [7] [Research by the National Bureau of Investigation found no reduction in indoor prostitution.](#) It estimated that in 2009 there were 90 Thai massage parlours in Stockholm. At the turn of 2011/2012, the number had risen to about 250 and throughout the country about 450.”

In Norway where a similar law was introduced, Pro-Sentret, Oslo’s official help centre for sex workers, published their 2012 annual report with evidence that the numbers of sex workers had not decreased and that the levels of violence against sex workers had not been affected by the law either.

Evidence from the End Demand campaign that the number of men saying they buy sexual services has decreased from 14% in 1996 to 7.9% in 2008 is not reliable. How can these figures be trusted? Since buying sexual services was not criminal in 1996 there was less reason for men to lie than in 2008. These figures are countered by the Swedish National Board of Health and

Welfare which concluded that it was “difficult to discern any clear trend of development . . . of prostitution” up or down.[8]

More recent research found that sex workers had been displaced or had moved indoors: “. . . declines in levels of street sex work appear to signal a displacement of public sex work, with sex workers selling sex indoors as opposed to from the street to avoid authoritative detection and involvement.”[9] And sex workers themselves report: “You hide on the internet, it’s not visible anymore. . . . There are people everywhere, but you don’t see them. It’s all hidden. ‘Cause we don’t wanna get caught.” [10]

What is happening to women? Welfare has been cut so that “a quarter of single mothers in Sweden now live in poverty, compared to 10% seven years ago.” In our experience welfare cuts result in increased prostitution. What has happened to women since the criminalisation of clients has made harder to work in prostitution while their economic safety has been reduced? Have they been driven underground? Are they safer or better paid? Are they more able to get other jobs? Why are these questions not being asked?

3. Since the criminalisation of clients the treatment of sex workers in Sweden has worsened (Please see Appendix for examples)

4. Evidence from sex workers has been ignored

Evidence from sex workers in Sweden and Northern Ireland has been ignored. A law criminalising clients has been introduced despite [research done by Queen’s University Belfast for the Dept. of Justice](#) which found that 90% of sex workers opposed the law and 61% specifically said it would make it more dangerous.

5. The criminalisation of clients increases women’s vulnerability to violence

Violence against sex workers is cited to justify these clauses. Mactaggart states: “Prostitutes are far more likely than other women to be murdered – usually by their clients – and nearly three-quarters have experienced physical abuse. Most suffer from PTSD.”

We do not dispute that prostitute women suffer high levels of rape and other violence. But criminalisation and police crackdowns increase the danger by forcing women to work in isolation and make it harder to report rape and other violence.[15] The ECP has fought [a number of cases where women reported serious attacks to the police and were themselves prosecuted or threatened with prosecution while their attackers went free. Senior police officers have admitted](#) that: “[police] operations to tackle [prostitution] are “counterproductive” and likely to put the lives of women at risk.”

Criminalisation of clients will further undermine sex workers’ safety. A recent Vancouver study[12] found that “criminalisation and policing strategies that target clients . . . profoundly impacted the safety strategies sex workers employed. Sex workers continued to mistrust police, had to rush screening clients and were displaced to outlying areas with increased risks of violence, including being forced to engage in unprotected sex.”

The claim that ‘most [sex workers] suffer from PTSD’ came from research by Melissa Farley. [Her research has been discredited because of “methodological flaws” and her evidence in the Bedford v Canada constitutional challenge was “assigned less weight” because of “contradictions and unsubstantiated assertions” by Justice Himel.](#)

6. The Safety First Coalition formed after the murder of five women in Ipswich opposes the criminalisation of clients

Safety First includes the Royal College of Nursing, Women Against Rape, the Hampshire Women's Institute, the National Association of Probation Officers, anti-poverty campaigners, church people, residents of red light areas, members of the medical and legal professions, prison reformers, sex worker and drugs rehabilitation projects. Their main concern is health and safety. They say: "Prostitution is a survival strategy to deal with poverty, debt, rape, low wages, homelessness, unemployment... Most sex workers are mothers or young people; often they are both. Many have been in care or have had their children taken from them. . . . Criminalising consenting sex – targeting sex workers, clients or both – pushes prostitution underground. It deters women from reporting violence and exploitation and forces women into isolated, less well lit areas."

7. Claims that "prostitution is an extreme form of exploitation" are counterproductive and ignore the economic reality that many women face

[Exploitation is rife in many industries, including the agricultural, domestic and service industries, particularly at a time of increasing poverty, lowering wages and insecure employment.](#) Yet no-one would sensibly suggest that domestic work or fruit picking be banned. Efforts to address exploitation in these industries have focussed on empowering workers to insist on their rights. Why the double standard? The illegality associated with prostitution makes it harder for sex workers to resist exploitation and violence.

Unemployment, benefit cuts and sanctions, lowering wages, increased homelessness, and debt are forcing more women, particularly mothers, into prostitution. For example, police [in Doncaster](#) and [Sheffield](#) have documented a 61% and 166% increase respectively in women working on the street.

Why is it that the best that a feminist MP like Fiona Mactaggart can come up with is to increase criminalisation? Are women less degraded when we have to skip meals, beg or stay with a violent partner to keep a roof over our heads?

8. An unholy alliance with homophobic religious fundamentalists

The sex purchase amendment is being presented as a "gender equality" measure yet in reality it has been an "unlikely union of evangelical Christians with feminist campaigners" who have pushed for the criminalisation of clients. The All-Party Parliamentary Group on Prostitution and the Global Sex Trade, which recommended a change in the law in March, [chose as its secretariat the homophobic charity CARE.](#) Lord Morrow who introduced the N Ireland Human Trafficking and Exploitation Act has a long history of opposing LGBTQ rights.[13]

9. Racist implementation

Prostitution is criminal in the US. This has not reduced it nor made it safer for women. But there is evidence that laws criminalising clients are being implemented in a discriminatory way. The First Offender Prostitution Program in San Francisco, known commonly as the John School, by its own admission, disproportionately targets Hispanic men and those living in low-income neighbourhoods.

10. The successful New Zealand model has been ignored

New Zealand decriminalised in 2003 with verifiable improvements in sex workers health and safety. Prostitution was removed from the criminal law, allowing people to work together collectively, and to distinguish between violence and consenting sex. It reinforced offences against compelling anyone into prostitution, stating a specific right for sex workers to refuse any client. [A comprehensive five year review found: no increase in prostitution, and that sex workers were more able to report violence and leave prostitution if they choose.](#)

[Canada's Supreme Court threw out the prostitution laws for violating women's right to safety.](#) Why are these examples being ignored?

11. The public support decriminalisation of prostitution on grounds of safety

Support for decriminalisation comes from many quarters, including UNAIDS which stated: "States should move away from criminalising sex work or activities associated with it. Decriminalisation of sex work should include removing criminal penalties for purchase and sale of sex, management of sex workers and brothels, and other activities related to sex work." [14] The Lancet [recently promoted decriminalisation on grounds of health.](#)

[The Royal College of Nursing consistently voted by over 90% of its membership in favour of decriminalisation on the grounds of health and safety.](#) Other support comes from: the American Jewish World Service; Communication Workers Union; GMB; Green Party; Liberal Democrats; Magistrates Association (which has policy on the decriminalisation of under 18 year olds).

[A 2014 survey found that over half the population of the UK is opposed to the criminalisation of prostitution.](#)

12. The criminalisation of clients has been rejected [in Scotland](#) and [in France](#).

The [English Collective of Prostitutes](#) is a network of women who work or have worked in different areas of the sex industry – both on the streets and indoors. Since 1975, we have been campaigning for decriminalisation and safety of sex workers.

English Collective of Prostitutes
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APPENDIX

Accounts from sex workers in Sweden about the impact of the 1999 law which criminalised clients:

"We are still criminalised if we work together in premises, we risk eviction by landlords, condemnation by social workers and even losing custody of our kids because we are seen as 'bad girls' unwilling to change. This law should be abolished not exported to other countries." Carina Edlund, Rose Alliance, Sweden, spoke in the UK Parliament March 2014.

2013 research by Dr. Jay Levy gathered testimony from sex workers and concluded that ". . . though the sexköpslagen (Sweden's sex purchase law) has been portrayed as legislation that protects sex workers from legal repercussion, sex workers report losing child custody due to their sex work, domestic harassments by police and social services, and difficulties with tax and immigration authorities. These all serve to reduce the likelihood of sex workers seeking state-sponsored assistance."

This same research found “In addition to increased difficulties in street work, some clients buying sex online are more reluctant to give sex workers any identifying information, fearing police detection. For sex workers who need money more urgently, accepting these untraceable clients leaves them all the more vulnerable to abuse. Having been forced to take anonymous clients following the sexköpslagen, one respondent had lost count of the number of times she had been raped and assaulted by men who were thus untraceable. She had not been raped in the context of her sex selling before 1999.”

It also found that the law had led to an increase in police harassment of sex workers: “Where it is illegal to provide premises for prostitution, landlords are obliged to evict sex workers, or face prosecution themselves. Police have been known to inform landlords that their tenant(s) sell sex, thus forcing the eviction. Sex workers working together for safety, as well as anybody cohabiting with a sex worker, can also be targeted, prosecuted for pimping one another or sharing in the income of prostitution, respectively. Police have furthermore been known to report sex workers to hotels and venues, with the sex workers then barred from returning. . . . police have also harassed sex workers directly at home. One respondent was visited by police on three occasions, who threatened her with police involvement and pursuit of her clients.”

[Previous research presented in 2011](#) found a similar story with sex workers feeling “hunted by the police” Many reported that they resent being treated as incapacitated persons whose actions are tolerated.’

[1] The Times 18 January 2006.

[2] The figure derives from a report (*Sex in the City*, the Poppy Project, 2004) which found that 80% of women working in

“brothels, saunas and massage parlours” in London were “non British nationals” and concluded (without evidence) that “a large proportion of them are likely to have been trafficked into the country”. This research was condemned as having “serious methodological limitations by Prof. Julia O’Connell Davidson (A Question of Consent? Sexual Slavery and Sex Work in the UK, 2009).

[3] [Prostitution and trafficking – the anatomy of a moral panic](#), 20 Oct 2009

[4] Twenty-sixth Report of Session, 2005-6, Vol. 1

[5] ILO, 2012

[6] Speech in Parliament introducing the amendment on 4 September 2014[8]

[7] *Claims about the Swedish model – and what’s really going on*, Rose Alliance, 2012

[8] The National Board of Health and Welfare, 2008.

[9] *Swedish Abolitionism as Violence Against Women*, Dr.Jay Levy, 2013.

[10] *ibid*

[11] *Silence on Violence*, Andrew Boff, March 2012

[12] *Criminalisation of clients: reproducing vulnerabilities for violence and poor health among street-based sex workers in Canada—a qualitative study*, BMJ Open 2014

[13] He is one of three Democratic Unionist Party (DUP) Lords. The DUP In 1977, Ian Paisley, Lord Morrow’s close friend, launched the *Save Ulster From Sodomy* campaign to prevent the decriminalisation of homosexuality. In 2007, Lord Morrow tabled an amendment to scrap laws banning businesses from discriminating against gay people.

[14] UNAIDS Advisory Group on HIV and Sex Work, 2009

Out for Xmas: everything you need to know about the regulation of online smut

Taming the Beast, by Jane Fae, a comprehensive overview of the legal and technical measures taken in the UK to combat online pornography, should now be out in time for Christmas.

Over the last decade or so, politicians, media and public have woken up to the fact that the internet allows individuals to access a range and volume of pornographic material well beyond what was once available in an age of print and cellulose film.

At the same time, they have had to acknowledge that traditional approaches to controlling access to this material have proven legally ineffective. That same decade, therefore, has seen a two-pronged attempt to stuff the internet genie back into its virtual bottle. First, through an unprecedented passing of new and ground-breaking laws – at times, seemingly, a new law every year: and second, through the implementation of technical solutions, including moderation, filtering and blocking to achieve through brute technological force what may not always be achievable through law.

This book is a first attempt to document both these processes. It is not quite an academic textbook. It does, however, set out clearly the main pathways taken by legislators and public servants in attempting to deal with the issue of online porn. It provides a basic roadmap – from the history of obscenity, to a list of bodily fluids permitted on Facebook - from which those interested in to carry out their own more detailed exploration of the territory can branch out on their own.

In terms of narrative, the book brings us to the end of 2014, at which point the government's central legislative measure – the law on possession of extreme porn – has been rudely challenged through judicial

review. It is also the point at which the public have begun to question the validity of filtering as a generic approach.

Pricing is still subject to discussion with the printers – but a copy is likely to set you back £16 plus postage.

Contact Jane Fae (jane@ozimek.co.uk) for further details

Important admin stuff

For further information on what CAAN stands for, either [take a look at our website](#), or write to us at info@caan.org.uk. Please feel free to forward this newsletter to anyone you feel would be interested.