



## In Focus

### Advertising of Prostitution (Prohibition) Bill [HL] HL Bill 15 of 2015–16

#### Key Provisions

The [Advertising of Prostitution \(Prohibition\) Bill \[HL\]](#) is a private member's bill introduced by Lord McColl of Dulwich (Conservative). The Bill received its first reading in the House of Lords on 2 June 2015, and is scheduled to be read a second time on 23 October 2015. On the purpose of his Bill, Lord McColl has stated that:

The fact is it is illegal in this country to organise prostitution yet perfectly legal to advertise it and this makes no sense. By simply leaving things as they are we are only encouraging a consumerist approach to sex in society where people are mere commodities. It is a grim reality, but true nevertheless that many adverts for sexual services in newspapers and online are a front for exploitation and coercion. [...] We should be seeking to defend and help such people and introducing an advertising ban would be one way of doing so. My Bill seeks to address this issue by banning the advertising of sexual services both in print media and online.<sup>1</sup>

The Bill would make it an offence to publish, or distribute, advertisement of a brothel or the services of a prostitute (clause 1). As to what would constitute such an advertisement, the Bill proposes that “any advertisement which a reasonable person would consider to be an advertisement relating to prostitution shall be presumed to be such an advertisement unless it is shown not to be” (clause 1 (3)). It would be a defence under the proposed legislation to show that the publication or distribution of an advertisement had happened in the normal course of business, and that the accused “did not know and had no reason to suspect” that the advertisement related to a brothel or to the services of a prostitute (clause 3). The Bill also sets out the specific liability of individuals within a body corporate (clause 4), and proposes that a person guilty of the offence should be held liable on summary conviction, or conviction on indictment, to a fine as set out by the Secretary of State in delegated legislation (clause 2).

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#### Background

As highlighted in guidance published by the Crown Prosecution Service (CPS), it is currently only an offence to place advertisements relating to prostitution in a “telephone box”.<sup>2</sup> This offence was created by section 46 (1) of the Criminal Justice and Police Act 2001, and covers any telephone which is located in a public place and made available for use by the public. However, the CPS guidelines also state that “there are specific restrictions preventing the use of section 46 where the advertisement is placed in a place to which children under 16 are not permitted to have access, whether by law or otherwise, or in

any premises which are wholly or mainly used for residential purposes”.<sup>3</sup> As with the proposed Bill, the CPS state that any advertisement which a reasonable person would consider to be an advertisement relating to prostitution shall be presumed to be such an advertisement unless it is shown not to be. In addition, the CPS states that the Newspaper Society published guidance assisting and advising newspapers “not to publish advertisements for illegal establishments and activities such as brothels or venues where sexual services are offered illegally”.<sup>4</sup> However, the Newspaper Society has now merged with the Newspaper Publishers Association to form the News Media Association, and it is unclear whether this guidance still stands. The CPS also states that:

Some police forces have local policies in place for enforcement against prostitution services advertised in the local press. Here, police are advising local newspapers that if advertisements appear for brothels, even under the guise of massage parlours and saunas, the newspaper itself may be liable to prosecution for money laundering offences under the Proceeds of Crime Act 2002.<sup>5</sup>

Further to this, the CPS sets out its general approach to offences connected to prostitution in its annual report on violence against women and girls.<sup>6</sup> Its 2014–15 report stated:

The overall approach to prostitution has changed over the last few years, aiming at responding without a criminal justice response, underlined with safeguarding policies and focusing on those who control prostitution [...] The approach emphasises that anyone abused and exploited through prostitution needs help and support for health and welfare in order to exit prostitution. In addition there are recommendations to adopt a partnership approach with local authorities and other statutory and non-statutory organisations to find routes out of prostitution rather than charge.<sup>7</sup>

As such, the CPS notes that the current offence of advertising prostitution (through carding in public places) is often dealt with without CPS involvement, and is instead handled through the issue of cautions by the police. This, the organisation warns, will also reduce the number of prostitution-related offences recorded in the CPS data, which, for 2014–15, was set out as follows:

In 2014–15 there were 83 prosecutions started for controlling prostitution compared to 58 in the previous year. The number of kerb crawling prosecutions that were commenced fell slightly from 237 offences prosecuted in 2013-14 to 227 in 2014-15. Brothel keeping offences rose. Prosecutions started for offences of advertising prostitution (through carding in public places) fell from 91 in 2013-14 to 37. Offence data is not available by gender of defendant or victim.<sup>8</sup>

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## Comment

The Advertising of Prostitution (Prohibition) Bill has been welcomed by Care (Christian Action Research & Education), who argued that the Bill’s proposals were vital to address the inconsistency of the current legal framework, and to safeguard against the exploitation of vulnerable people.<sup>9</sup> In contrast, Catherine Hakim, writing a report for the Institute of Economic Affairs, argues that legislation criminalising the sex industry increases risks for those involved and ignores the economic opportunities the industry may present:

The commercial sex industry is impervious to prohibitions and cannot be eliminated. Countries that criminalise buyers (such as Sweden) simply push demand abroad to countries with a more sex-positive culture. Policies that criminalise sellers directly, or criminalise third parties who supply them with services, simply push the sex industry underground, increasing risks for sex

workers. The sex industry is estimated to be worth over four billion pounds to the British economy. It should be completely decriminalised.<sup>10</sup>

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## Further Information

- Home Office, [A Review of Effective Practice in Responding to Prostitution](#), October 2011
- Crown Prosecution Service, [Violence against Women and Girls Crime Report 2014–2015](#), September 2015
- BBC News, '[Should It Be Illegal to Pay for Sex in the UK](#)', 6 May 2015
- Care (Christian Action Research & Education), '[Time to Ban Prostitution Adverts](#)', 5 June 2015
- Institute for Economic Affairs, [Supply and Desire: Sexuality and the Sex Industry](#), August 2015
- Belinda Brooks-Gordon, *The Price of Sex: Prostitution, Policy and Society*, 2006 (available from the House of Lords Library)

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<sup>1</sup> Care (Christian Action Research & Education), '[Time to Ban Prostitution Adverts](#)', 5 June 2015.

<sup>2</sup> Crown Prosecution Service, '[Legal Guidance: Prostitution and Exploitation of Prostitution](#)', accessed 13 October 2015.

<sup>3</sup> *ibid.*

<sup>4</sup> *ibid.*

<sup>5</sup> *ibid.*

<sup>6</sup> Crown Prosecution Service, [Violence against Women and Girls Crime Report 2014–2015](#), September 2015, p 91.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*, p 90.

<sup>9</sup> Care (Christian Action Research & Education), '[Time to Ban Prostitution Adverts](#)', 5 June 2015.

<sup>10</sup> Institute for Economic Affairs, [Supply and Desire: Sexuality and the Sex Industry](#), August 2015, p 7.

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