Dear Mr Macfie

PROSTITUTION (PUBLIC PLACES) (SCOTLAND) BILL

I refer to your correspondence dated 27 September 2006 in connection with the above subject, which has been considered by members of the General Policing Business Area, and can now offer the following by way of comment.

Members agree that the Bill in question clearly indicates current law in Scotland focuses on those who sell sex on the street, not those who purchase, and in general terms seeks to redress the existing imbalance whereby the seller is solely liable under the current legislation.

Experience in Strathclyde, where the main focus of street prostitution is in the city Centre and East End of Glasgow, has shown that over the past five years there has been a significant increase in the volume of soliciting throughout the day, particularly in residential communities in the East End of the City. Communities such as this require legislative assistance to improve their overall quality of life, upon which prostitution is undoubtedly having a major negative impact.

After reviewing the implications of enforcing the provisions of the Bill as it presently stands, ACPOS would wish to highlight a number of practical concerns, which have been raised by practitioners in this area.
The proposed legislation creates an offence, which enables the nuisance caused by those seeking to purchase prostitution services to be tackled, whether they are “kerb crawling” from vehicles or operating on foot. This offence is only complete once a purchaser has solicited the sexual services of a person selling sex. However, this does not include persons driving slowly in an area or parked without soliciting taking place, as intent cannot be proven. The legislation further states that the loitering offence does not apply to persons who are within motor vehicles (not public transport) since it is considered it may not be possible to “loiter” within such vehicles. Whilst it is understood this is intended to protect innocent parties passing through relevant areas, it does not allow the police to prove or demonstrate the nuisance caused by such behaviour without same having been independently witnessed. Even then, it is suggested this may be difficult to prove, as the occupant of a vehicle may be able to suggest, albeit falsely, that they are there for legitimate reasons. Such vehicles increase the fear of crime of the local residents and this act alone may create nuisance.

Since “kerb crawling” has been identified as a major source of discontent in communities affected by prostitution, the Bill is therefore unlikely to satisfy the needs and demands of the community. It is felt this should be reconsidered and suggested that a definition of ‘loitering’ is added to the Bill, along the lines of ‘when a person on foot or otherwise proceeds slowly or proceeds with many stops or remains in a public place for no obvious reason’. This would allow persons, whether on foot, in a motor vehicle or any other mode of transport e.g. pedal cycle, who are committing an act specified in subsection 1(4) of the Bill to be appropriately dealt with.

It is perhaps worthy to note the approach taken in England and Wales includes the stipulation that it is an offence for a person to solicit from a motor vehicle persistently or in such a manner as to cause annoyance to the person being solicited or nuisance to the neighbourhood. This legislation is more practical in that evidence is gained of persons who persistently attend within the relevant areas in order to solicit the services of a prostitute. The police are required to compile evidence of the nature of this persistence, thus preventing innocent parties being charged with such an offence. It also allows police to address behaviour of those individuals who attend these locations as a voyeur and who have no intention of soliciting the services of a prostitute. These individuals obviously create the same nuisance as those intent on purchasing the services of a prostitute. This legislation does draw a distinction between the actions of the purchaser and seller in that the purchaser’s behaviour requires to be persistent, however, it would be easier to enforce.

There are clear issues for policing in terms of evidence gathering and level of proof, and therefore enforcement challenges. The offence is based on an assessment as to whether the soliciting or loitering behaviour is likely to cause alarm, offence or nuisance to a reasonable person. Whilst it may be reasonable to assume a prostitute's dress, manner and action may be tantamount to causing a nuisance, the location, albeit public, may be such that it is within an industrial area, and, out-with normal business hours, it could be argued that any residents in the area are unlikely to be affected by the conduct of the accused.

Evidence would require to be provided that the acts of soliciting or loitering were beyond all reasonable doubt for the purposes of prostitution or obtaining the services of a prostitute. However, the Bill provides no definition of ‘solicits’ or ‘loiters’ which leads to questions in relation to what would constitute soliciting or loitering and how these would be evidenced.
For the purposes of Section 46 of the Civic Government (Scotland) Act 1982 the individual must be identified as a ‘known prostitute’ and in order to prove this there has to be some form of history. At present, persons suspected of prostitution are given two independent cautions prior to being charged with the offence. On being cautioned a ‘Prostitution Caution Report’ is submitted by the cautioning officer and recorded on his/her SCRO record. When two cautions have been administered the individual can be charged on each occasion thereafter. It is unclear in the Bill whether the prosecution is required to prove that the person charged is a ‘known prostitute’ i.e. possessed that capacity prior to, and independently of her conduct on, the occasion charged (Bryceland v Allan 1985). The use of the caution is also an opportunity for police to signpost prostitutes to other services, rather than criminalizing at the first stage.

It is unlikely that a prostitute or person attempting to obtain the services of a person engaged in prostitution would provide a statement under caution to the police as it would criminalise them. It is also unlikely the police or a witness will have overheard a conversation between prostitute and client; therefore sufficient evidence may be difficult to obtain in terms of soliciting. The Bill is complainer led but where a pro-active approach by police is taken, and in the absence of statements from members of the public, it is questionable whether police observations would be realistically sufficient to secure conviction?

ACPOS has consulted with the Procurator Fiscal Service in Glasgow in relation to the burden of proof required regarding the new offence. The view they have expressed is that the offence in relation to the selling of sex remains relatively unchanged. However, the evidence required to prove the offence in relation to purchasers may be problematic. CCTV footage was obtained of transactions in the Glasgow area and shown to the Procurator Fiscal. The incidents displayed were of the everyday transactions between prostitutes and purchasers on foot and in vehicles. The opinion of the Procurator Fiscal is that the witnessing of the approach, and subsequent departure of the purchaser with a known prostitute, would be insufficient to substantiate proceedings in relation to this offence. Police officers would require to overhear the discussions between the purchaser and seller to confirm that a relevant transaction has taken place. This presents difficulties, as it would be unlikely that a purchaser would solicit the services in proximity to the Police. In fact, the mere presence of the police would in most cases cause purchasers to leave the area. Whilst the Police presence may reduce the harm and nuisance caused to communities by the purchasers at a particular time, it is not a sustainable position in the longer term. It could be suggested that if the legislation is difficult to enforce and few prosecutions are obtained, then only a marginal effect will be achieved as the legislation may prove to be an ineffective deterrent.

With regard to the cost implications referred to in the Financial Memorandum, and whilst it is acknowledged the Police are ‘already involved in the policing of street prostitution’, it would be wrong to say the only additional costs would be those relating to the reporting and prosecuting of purchasers under the new legislation.

In dealing with such cases, the following require to be taken into consideration

- Initial police attendance at an incident
- Number of officers involved
- Obtaining witness statements
- Detention of any offenders
• Processing of custodies
• Interviewing of custodies
• Arrest and further processing
• Fingerprinting and photographing
• Preparation of report to Procurator Fiscal
• Court Attendance(s)

Notwithstanding, there are also multiple variations associated with estimating the costs involved in carrying out the work required and as such the estimation contained within the Memorandum of 6 hours of police time per case, at a cost of £150 per case or £15,000 per annum is not an accurate reflection of the costs involved. In addition, the extrapolation of a single force’s costs is likely to distort the final outcome.

In light of the foregoing, and given the significant amount of variables involved, an estimation of the likely costs is difficult and a scoping exercise would be required to provide an accurate reflection of actual costs. It is possible, also, that the title of the Act will present further difficulties in relation to the rehabilitation of women involved in prostitution. The current offence, if viewed by an employer on a list of previous convictions, can be relatively anonymous in its presence due to the lack of stipulation of the offence in its title. The new act will be instantly recognisable to all as an offence in relation to prostitution. In the event of a woman exiting prostitution and wishing to re-enter the labour market or education, this may restrict the opportunities available to her.

I trust that the foregoing is of assistance to you.

Yours sincerely,

Harry Bunch
Acting General Secretary