

CITY OF EDINBURGH COUNCIL

Item No 3

REGULATORY COMMITTEE

31 MARCH 2022

DEPUTATION REQUESTS

Subject	Deputation
3.1 In relation to Item 7.1 on the agenda	Women's Support Project
3.2 In relation to Item 7.1 on the agenda	Not Buying It
3.3 In relation to Item 7.1 on the agenda	Men at Work CIC
3.4 In relation to Item 7.1 on the agenda	Equally Safe Edinburgh Committee (written submission attached)
3.5 In relation to Item 7.1 on the agenda	Survivors United
3.6 In relation to Item 7.1 on the agenda	United Voices of the World (written submission attached)
3.7 In relation to Item 7.1 on the agenda	Burke and Hare
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3.12 In relation to Item 7.1 on the agenda	East London Strippers Collective (late request)
3.13 In relation to Item 7.1 on the agenda	Western Bar (late request)



Edinburgh, 28 March 2022

To the members of the Regulatory Committee of the City of Edinburgh Council:

**RE: Regulatory Committee Meeting, 31 March 2022,
item 7.1: Air Weapons and Licensing (Scotland) Act 2015 –
Sexual Entertainment Venues – Proposed Resolution, Policy and Conditions – Update**

Thank you, councillors, for accepting a deputation from the Equally Safe Edinburgh Committee on the matter of the licensing of Sexual Entertainment Venues. The Equally Safe Committee is an inter-agency partnership of statutory and voluntary organisations committed to ensuring the implementation of [Equally Safe: Scotland's strategy for preventing and eradicating Violence Against Women and Girls](#) (VAWG).

Equally Safe provides a national definition of gender-based violence, endorsed by COSLA and the Scottish Government. Alongside domestic abuse, rape and sexual assault, child sexual abuse, and so-called honour-based violence, this definition also includes commercial sexual exploitation: specifically lap-dancing, stripping, pornography, and prostitution. There is a clear expectation on local authorities from the Scottish Government and COSLA to action these priorities to prevent and eliminate gender-based violence at a local level. To that end, the council co-funds, hosts and co-ordinates the Equally Safe Committee which exists to ensure that Equally Safe is effectively implemented in Edinburgh.

However, today this committee is also debating the licensing of sexual entertainment venues.

We understand that consultations on this matter took place prior to lockdown and that there is an argument that the decisions today might be made on the basis of the views of the extremely small number of women engaged in commercial sexual exploitation that attended a single focus group.

As members of the Equally Safe Committee, we feel we would be doing the women of Edinburgh an injustice if we did not represent the other side of this argument—that of women who have exited commercial sexual exploitation and who have been/are being supported by the various organisations and services represented in our committee due to the traumatic events they experienced during their involvement.

As highlighted in our consultation response, there is no such thing as making sexual entertainment venues 'safe'. According to the Scottish Government's and COSLA's own definition, regulation would only serve to legitimise an already exploitative industry that, in performers' own words, does not provide employment rights or safe practices. Performers at sexual entertainment venues are self-employed. During lockdown they were left at risk of destitution with no right to furlough. We also

know that there is a link between sexual exploitation in a club and selling sex with arrangements being made in the clubs for sex to take place nearby.

In our consultation response, we highlighted that the existence of sexual entertainment venues conveys a message that the objectification of women is culturally acceptable. Most concerning is the evidence that this approach is perceived as giving men license to trick or coerce women into sexual activity. Research conducted in 2009 demonstrated that men who purchase such services overwhelmingly believe that *'when women say 'no' they really mean 'yes'*¹. We further highlighted that the existence of sexual entertainment venues in a city are discriminatory towards women who feel at best unwelcome, and at worst unsafe in the vicinity, with many experiencing harassment and abuse by the men frequenting such establishments.

Edinburgh is committed to Equally Safe. Allowing the existence of sexual entertainment venues would contradict this commitment and would effectively convey the message that the city is permitting and endorsing violence against women. For the protection of women and girls, in line with the national strategy and the City of Edinburgh Council's own commitments, we ask the committee to:

- Agree to license but set the maximum number of licenses for sexual entertainment venues available in Edinburgh at zero and
- Introduce a clause in the licensing policy clearly stating that any applications for Sexual Entertainment Venues to be at a distance of at least 750 metres from schools, health services and services for vulnerable people (including homelessness, mental health and women's services) to ensure that future applications take this factor into consideration.

Scotland and Edinburgh specifically is making leaps in implementing Equally Safe through comprehensive gender-based violence prevention programmes in schools ([Equally Safe At School](#)) and workplaces ([Equally Safe At Work](#)). We cannot therefore in good conscience provide a licensed avenue for this exploitation to continue to happen, contradicting the values and progress we are making towards gender equality. Some local authorities have taken the brave step to introduce a nil cap policy, such as [Aberdeenshire](#) and [Perth and Kinross](#). Although neither had sexual entertainment venues operating in the area at the time the resolution was passed, we hope that Edinburgh will take the brave step and pave the way for other local authorities to follow.

Signed

Linda Rodgers

CEO, Edinburgh Women's Aid

And Vice Chair of the Equally Safe Edinburgh Committee

¹ Farley, M.; Bindel, J.; and Golding, J.M. (2009): Men who buy sex: Who they buy and what they know. Eaves, London. Available at: <https://lastradainternational.org/lisidocs/Mensex.pdf> accessed on 28 March 2022

United Voices of the World

30 March 2022

Statement regarding potential adoption of nil cap policy

Danielle Worden and Tess Hermann, on behalf of United Voices of the World

1. UVW does not oppose the adoption of a SEV licensing scheme. Any scheme should seek to centre workers by, for instance, promoting 'worker status', union recognition, and collective bargaining. We warn against a scheme that, due to the cost and difficulties of compliance, gives a limited number of SEVs a monopoly over the industry and restricts the choice of workers over where and under what condition to work.
2. However, UVW strongly objects to the adoption of a 'nil-cap' policy. Our sex worker branch and other Edinburgh-based dancers will have comprehensively explained to the Council the harm that would be caused to SEV workers by a nil-cap policy.
3. UVW's focus is the unlawfulness of such a policy. On 25 January 2022 we wrote to the Council explaining it would constitute indirect gender discrimination and violate the public sector equality duty ("PSED"), contrary to the Equality Act 2010 ("EqA"). The Council failed to respond. If a nil-cap policy is adopted, UVW is committed to pursuing a judicial review challenge of the policy.
4. Not only would the policy violate the EqA, it would also be unlawful due to procedural irregularities. These range from: the lack of transparency regarding the consultation process and evidence relied upon on, the failure to consult with the union; and to the participation of Councillor Mandy Watt in a 2019 vote relating to the process, who, in likely breach of the Code of Conduct, publicly discussed her voting intentions and failed to declare her conflicting employment by the Edinburgh Rape Crisis Centre.
5. We urge the Council to consider why anti-strip club campaigners and politicians are so insistent on repeating the fallacy that strip clubs cause or correlate with VAWG. We believe that it is either due to subscription to outdated feminist theory, or is a form of political posturing aimed at scoring brownie points for 'combatting VAWG' without actually doing anything to address its root causes. The Council is reminded that neither rationale is a 'legitimate aim' under the EqA.

A. INDIRECT GENDER DISCRIMINATION

6. Nil-cap policies violate section 4 and section 19 of the EqA. The relevant provisions are:
 - (a) Section 4 EqA sets out an exhaustive list of protected characteristics, encompassing "sex."
 - (b) Section 19 EqA prohibits indirect discrimination. This occurs where a provision, criterion or practice ("PCP"):

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(i) places those with a protected characteristic at a particular disadvantage compared to those who do not share the characteristic; and

(ii) the PCP is not a proportionate means of achieving legitimate aim.

i. **The protected characteristic, PCP, and disadvantage**

7. A PCP that disadvantages strippers automatically disadvantages women. As the Council has recognised, almost all strippers identify as women. There is no requirement for the PCP to explicitly target women: it is enough for a PCP to have a “disparate and adverse impact on women” (*Allonby v Accrington and Rossendale College* [2001] IRLR 364).

8. A policy banning SEVs would thus plainly disadvantage strippers and, in turn, women. The key disadvantage is preventing strippers from working in an occupation, city, and venue of their choice. This disadvantage poses a serious threat to their livelihoods, safety, and health of over 100 individuals, including strippers and other staff employed by SEVs.

ii. **Lack of justification**

9. Indirect discrimination can be justified only insofar if it is (a) connected to a “legitimate aim” and (b) the policy is proportionately connected to this legitimate aim.

(a) **The legitimate aim**

10. “Legitimate aim” is not defined within the EqA. However, it must equate to a “real need” (*R (Elias) v Secretary of State for Defence* [2006] EWCA Civ 1293). Crucially, the aim itself must not be discriminatory, and the aim must be “sufficiently important” to justify the discrimination (*Akerman-Livingstone v Aster Communities Ltd* [2015] UKSC 15).

11. A higher standard is applied when the PCP will interfere with a “fundamental right” (*de Freitas v Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69). The introduction of the PCP would interfere with the right to work free of discrimination under the EqA and protected by international law (Discrimination (Employment and Occupation) Convention, 1958 (No. 111))

12. It is wholly unclear what the “legitimate aim” of the PCP would be. Supporters of the policy sometimes claim that the aim is reducing VAWG. However, it is not hyperbolic to state that there is **absolutely no evidence** that the existence of SEVs correlates with an increase in VAWG, either in a specific geographical area or in general. There is evidently also no evidence of causation.

13. Alleged ‘evidence’, such as the Lilith Report referred to in the evidence pack, has been wholly discredited. We note that ‘Equally Safe’ does not cite a single source to support its conclusions in its written statement.

14. To the contrary, *evidence* shows SEVs are amongst the safest venues for female workers within the night-time economy. Under SEV licensing schemes, licences are renewed

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annually and typically impose strict CCTV and security requirements, alongside other stringent conditions such as non-contact rules between strippers and customers. CCTV is regularly reviewed by the police and councils to ensure compliance. All strippers undergo identity checks and must demonstrate their right to work. None of the existing SEVs are recorded by the police as source of concern for crime or trafficking.

15. The PCP would force most strippers into unemployment and potentially poverty. Most strippers work in SEVs out of economic necessity and transitioning into other work would, for many, be difficult. This is due to stigma, the gendered impact of tax and benefit cuts, the city's housing crisis, the gendered burden of childcare and education, and the impact of COVID-19 on the job market. Edinburgh has one of the highest rates of people claiming out-of-work benefits, with female applicants far outnumbering men. Rising inflation and energy prices make the likely impact of closing SEVs on affected workers more severe. The proposed creation of a single job vacancy is offensively inadequate. Limiting the employment opportunities of strippers will thus expose women to a heightened risk of poverty, which evidence shows makes someone more vulnerable to VAWG.
16. Furthermore nil-cap supporters do not appear to support closures of nightclubs, where VAWG overwhelmingly occurs. Several workers have confirmed that, if a nil-cap is adopted, they are most likely to find formal employment at night clubs or bars. Given the high rate of sexual harassment and violence directed at female workers in these venues, this also suggests supporters of the policy are not genuinely concerned with eliminating VAWG.
17. Strippers have repeatedly emphasised that nil-cap policies would mean many would instead work at unregulated venues and private parties which do not benefit from established security and safety measures. Iceland, which has banned strip clubs, has several unregulated strip clubs and has one of the highest VAWG rates in Europe. As the flourishing drug industry shows, simply making something illegal does not eliminate demand for the service or the economic need of those who provide the services. It simply makes it more dangerous.
18. Furthermore, in areas that have already implemented a nil-cap policy such as Chester, Exeter, and Swansea, there has been a rise in violent crime and assault, and no decline in VAWG. This is likely due in part to that those areas no longer benefit from CCTV and security staff outside of SEVs. In Chester for instance, there were 58 violent crimes in the year prior to the SEV Platinum Lace closing. In the year after closure this rose to 63, rising to 127 in the following year.
19. The existence of a "legitimate aim" must be shown by evidence (*R v Secretary of State for Employment, ex p Equal Opportunities Commission* [1994] IRLR 176). Strippers and those that oppose the PCP have highlighted this lack of evidence to the Council on countless occasions. If the Council decides to implement the policy regardless, this indicates an ulterior aim behind the PCP.
20. We remind the Council that discriminatory aims, such as discriminating against strippers out of aversion to the sex industry, are illegitimate and unlawful.

(b) Proportionality

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21. In the unlikely event that a court found there was a “legitimate” aim behind the PCP, the PCP would be wholly disproportionate. Per the Supreme Court (*Akerman-Livingstone*), proportionality requires:
- (a) A rational connection between the aim and the discrimination;
 - (b) That the PCP is no more than “necessary” to achieve the aim; and
 - (c) That the PCP strikes a fair balance between the need to accomplish the aim and the disadvantage caused.
22. If the alleged aim is reduction of VAWG, requirement (a) is clearly not satisfied as there absolutely no evidence of a “rational connection” between this aim and the potential PCP. To the contrary, an overwhelming body of evidence exists showing the harm caused by nil-cap policies to strippers and, in turn, women.
23. Furthermore, requirement (b) is not satisfied. A nil-cap policy is a draconian measure that is unequivocally not “necessary” to achieve the reduction of VAWG. The Council has not provided evidence showing it has considered alternative measures that could achieve its purported aim (*Homer v Chief Constable of West Yorkshire Police* [2012] UKSC 15), or showing it has taken steps to account for and minimise the disadvantage the PCP would cause to individuals affected (*Mrs A Hayes and others v Qantas Cabin Crew (UK) Ltd*: 3347009/2016). The 2021 Consultation showed that only 20% of consultees support a nil-cap policy.
24. Requirement (c) is also not satisfied. There is also no evidence showing that the Council is seeking to strike a fair balance between its purported aim and the severe disadvantage that would be caused to strippers. The Council has entirely failed to consult with the union to discuss SEV policy.
25. The need for evidence showing an attempt at a “fair balance” is greater when the disadvantage caused is “serious” (*Elias*): the disadvantage caused by the PCP would be extremely serious by removing the livelihoods of a large group of individuals. In assessing proportionality, a large amount of people potentially disadvantaged by the PCP will be held against the defendant by a court, and over 100 individuals would be affected in this case. (*University of Manchester v Jones* [1993] ICR 474).
26. In the circumstances, it is clear that (i) there is no objective justification for the PCP, and (ii) that the PCP is disproportionate. The PCP would thus amount to indirect discrimination under section 19 of the EqA.

B. Breach of public sector equality duty

27. The Council’s duty not to discriminate is accompanied by the PSED, found in section 1 and 149 of the EqA. Section 1(1) requires that decisions have “due regard” to the need “to reduce the inequalities of outcome which result from socio-economic disadvantage”. Sub-section 149(1) requires that the Council must have “due regard” to the need “eliminate discrimination, harassment, victimisation”. Finally, section 149(1) requires the Council to “tackle prejudice” and “promote understanding”.

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28. Per *Brown v Secretary of State for Work and Pensions* [2008] EWHC 3158, the Council is must consider the above duties and the impact on those with protected characteristics *before* the time the decision is made. This must occur with “substance”, “rigour”, and in a manner that means “consideration will influence the final decision.” The complete failure of the Council to consult with and listen to strippers shows this has not occurred. A nil-cap policy would worsen socio-economic inequality. Support for such policies stems from intolerance, stigma, and prejudice.

Dear Regulatory Committee,

As the sex work branch of the wider union United Voices of the World, we strongly oppose the proposed nil-cap. We understand that this is a measure which some individuals believe would protect women, but the facts show otherwise. Cities that have implemented a nil-cap, such as Chester, Exeter and Swansea, saw a rise, not a decrease in violent crime and assault rates after the closures of the strip clubs; likely due in part because those areas no longer benefit from the CCTV and outside security staff of SEVs. In Chester, in the year prior to Platinum Lace closing, there were 58 recorded violent crimes - in 2015, the year of its closure, this rose to 63, in 2017 it rose again to 127.

This move would also endanger the workers, who are also women, worthy of safety and protection. No nil-cap has ever fully stopped stripping from occurring, it has only pushed it into more unsafe spaces such as AirBnBs, hotels and private homes. If the council are concerned with women's safety, then the answer is not to restrict and remove the rights and safe workplaces of the women working in the Edinburgh strip clubs. Not only is their zero evidence of strip clubs causing or directly contributing towards violence against women, but pushing a majority women workforce into unregulated, unsafe, underground workspaces, without the protection of workers rights, will undoubtedly make women more unsafe. A nil-cap does not end violence against women, precisely because it pushes women into far riskier and potentially violent, exploitative spaces. Any policy to improve women's safety cannot exclude those women who are also sex workers, if it does, then that policy is far more about controlling women than it is with their safety.

If the nil-cap is implemented, over 100 workers will be forced into unemployment, or to make the decision between working in unlicensed and unregulated venues without the protection of CCTV and security, putting ourselves at increased risk, or entering a benefits system which has been cut drastically - the majority of those cuts disproportionately impacting women. Based on the council's own statistics, 3.6% of people in Edinburgh are unemployed, and between February 2020 and February 2021 the percentage of people claiming out of work benefits rose by 161%. The increase of claimants was greater in Edinburgh than in Scotland and the UK and also larger for women than men. The idea that the council are planning to implement a nil-cap policy, not only forcing a majority women workforce into unemployment, but further restricting future employment opportunities for constituents within the council bounds, is not only directly at odds with the council's duty of care & preserving public safety, but especially cruel knowing that the women of Edinburgh are disproportionately affected by unemployment.

In the context of rising unemployment rates, the exponential rise in food bank use, the impact of austerity, COVID 19 poverty, the stagnation of wages versus the ever growing cost of living (the cost of renting in Edinburgh has risen by 50% in over a decade, alongside hikes in energy and fuel prices), and the structural inequalities that preclude some people from accessing the employment market; it's laughable that this is the Council's attempt at a solution and begs the question, why push workers out of jobs they do not want to leave, when there are already not enough jobs for them to enter into?

We would also like to remind the committee that It is not their job to make a decision on whether SEVs are morally good or bad. Parliament has already made the decision that SEVs are legal and not inherently harmful. When parliament last looked at SEVs through the DCMS Select Committee, the relevant ACPO officer said they could find no evidence of crime associated with such venues. The false equivalence of strip clubs being places of crime, illegality and danger directly comes from and contributes towards the stigma surrounding sex work - not from evidence, which the council are required to make their decision on.

We also noted that not only have the workers not been consulted, but the latest public consultation regarding the licensing of SEVs only gathered 90 responses. which is not exactly representative of a city with a population of 542,599.

In January 2022, United Sex Workers sent a letter to Edinburgh City Council stating that we believe that the introduction of a nil-cap policy would violate section 4 and section 9 of the Equality Act, because it would prevents strippers - who are predominantly women - from working in an occupation, city and venue of their choice.

I hope the committee considers these arguments thoroughly before making their decision this Thursday.

Kind regards,

United Sex Workers