United Voices of the World

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Statement regarding potential adoption of nil cap policy

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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 We believe that it is either due to subscription to outdated feminist theory, or is a form of political posturing aimed at scoring brownie points for 'combatting VAWG' without actually doing anything to address its root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) Section19 EqA prohibits indirect discrimination. This occurs where a provision, criterion or practice ("PCP"):

(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 workfree 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

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 burdenof 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) <u>Proportionality</u>

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 (H*omer 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. <u>Breach of public sector equality duty</u>

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 "promoteunderstanding".

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.