

PE1169/D

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Fergus Cochrane

Clerk

Public Petitions Committee

Scottish Parliament

Edinburgh

EH99 1SP



27 November 2008

Dear Mr Cochrane

Petition PE 1169

Thank you for the Committee's letter of 25 June 2008 about Petition PE 1169 which calls for the introduction and enforcement of measures concerning the screen sleeving of magazines and newspapers containing sexually graphic covers and the placement position of these within shops. I apologise for the delay in responding.

While there is no official distinction between a magazine and a newspaper - it being a matter of what they are printed on – while it is not entirely clear from the petition or the debate on it, we presume that it is “adult titles” and so called “Lads Mags” which are being referred to. We certainly understand how some of these publications may be offensive to some and share the concern that children should not be exposed to unsuitable material.

There is currently no legal definition in Scots law of what is meant by “pornography” - the distinction is largely down to individual taste. There are however substantial legal and voluntary controls on the sale of sexually explicit material. The law in this area is contained in both common law and statute and is framed in terms of obscenity and indecency. Material that is obscene or indecent is heavily regulated under the law.

Under section 51 of the Civic Government (Scotland) Act 1982 any person who displays obscene material in public is guilty of an offence. The term “obscene” is not defined in the Act, however it has been said that the courts will apply the test which has been used at common law namely whether the material is calculated to deprave or corrupt persons open to depraving or corrupting influences.

Similarly, the Indecent Displays (Controls) Act 1981 prevents anyone, especially children, having uncontrolled access to such displays. The Act does not define “indecent” and it is for the courts to decide in each case whether the material in question is indecent or not.

At the most extreme end there is material which we believe should neither be published nor possessed. As the Committee will be aware the Scottish Government will bring forward proposals in the Criminal Justice and Licensing (Scotland) Bill to protect the public from exposure to extreme pornographic material. An outline of these proposals is set out in the

publication “*Revitalising Justice – Proposals to Modernise and Improve The Criminal Justice System*”. Copies of the publication are available from SPICe or can be accessed via

<http://www.scotland.gov.uk/Publications/2008/09/24132838/0>

In relation to the display of “adult titles” we are aware that the National Federation of Retail Newsagents (NFRN) has a voluntary code of practice which it supplies to its members which recommends that these titles:

- should be displayed on the top shelf only and out of reach of children;
- should not be sold to any person under the age of 18 years;
- should be acquired from bona fida trade channels (on the basis that they will have been vetted by suppliers’ lawyers for compliance with legislation) and
- that care and sensitivity should be exercised over the display of these titles with explicit front covers.

The NFRN guidelines also take account of “Lads Mags”. Whilst making it clear that these are not “top shelf” titles it urges its members to be sensitive to the concerns of consumers and recommends that these titles are:

- not displayed at children’s eye level or below, to ensure that they are not in the direct sight and reach of children;
- are not displayed adjacent to displays of children’s titles and comics and
- where display space restraints preclude the above, that titles with front covers that may cause concern are part- overlapped with other titles so as to minimise the potential for offence to parents with children.

These guidelines are also supported by the Periodical Publishers Association and others, including the Association of News Retailers and the British Retail Consortium.

In relation to the specific issues which were raised during the discussion on the petition:

1. Regulation of the sale of newspapers and magazines containing sexual content in connection with proposals to create a Scottish offence of possession of extreme pornographic material.

As made clear above, extreme pornographic material is very different in character from that which is legal to display or sell to the public. The material that will be covered by the proposed offence includes pornographic material depicting:

- Life-threatening acts and violence that would appear likely to cause severe injury;
- Rape and other non- consensual penetrative sexual activity, whether violent or otherwise; and
- Bestiality or necrophilia.

For material which is legal to display, the voluntary code of practice that the industry has in place has operated for many years and we are unaware of evidence that there are substantial numbers of newsagents who ignore this code. In the absence of persuasive evidence that there is a widespread problem we think that the implementing a new regulatory regime would not be a proportionate response.

PE1169/D

2. *Whether the Government will commission as a study to find out whether children are not adversely affected by exposure to this material.*

The Scottish Government has no plans to commission a study at this time.

3. *Whether the Government will require the publishers and or the retailers to sleeve the magazines.*

The Scottish Government has no plans to do so at present.

4. *Specific action the Government is taking to address the issue.*

For extreme material, which is already illegal to publish or display, the Scottish Government is taking steps to legislate to ban possession in order to further protect the public from exposure to such material. If any magazines or newspapers being publicly displayed are considered by members of the public to be obscene then this should be reported to the police for investigation. It is ultimately for the police and the procurators fiscal to decide what action should be taken in individual cases.

I hope this is helpful.

Gery McLaughlin
Criminal Law and Licensing Division