

PE1367/I

Fergus D Cochrane
Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP

24th November 2010

Dear Fergus,

PE1367: Ban Mosquito Devices Now

I am grateful for the opportunity to submit my views on the petition in the name of Andrew Deans MSYP on behalf of the Scottish Youth Parliament.

In my view, the existence and unregulated use of a device designed specifically for the purpose of ‘repelling’ children and young people is a cause for concern and this renewed call for action is timely, and I support it.

A report to the Council of Europe’s Parliamentary Assembly estimates that there are 3,500 Mosquito devices in use in the UK¹. We have no reliable estimate of how wide-spread their use is in Scotland. However, anecdotal evidence suggests that private businesses, particularly in the retail sector, and some Local Authorities have purchased the device.

Children and young people’s rights

In my view, the deployment of the Mosquito infringes a number of rights enshrined in the United Nations Convention on the Rights of the Child (UNCRC). These include: the principle of non-discrimination (article 2); the principle that the best interest of the child must be a primary consideration in all decisions affecting them (article 3); the right to freedom of assembly and association (article 15); the right to protection from violence, abuse and injury (article 19), and the right to play, leisure and recreation (article 31).

The UN Committee on the Rights of the Child, recently expressed concerns regarding the ‘general climate of intolerance and negative public attitudes towards children, especially adolescents’ observed in the UK². It then goes on to recommend: ‘that the State Party reconsider the ASBOs as well as other measures such as the mosquito devices insofar as they may violate the rights of children to

¹ Piotr Wach (Rapporteur to the Committee on Culture, Science and Education, Council of Europe Parliamentary Assembly), *Prohibiting the Marketing and Use of the ‘Mosquito’ Youth Dispersal Device* (Doc.12186, 22nd March 2010), para 2; available on <http://assembly.coe.int/Documents/WorkingDocs/Doc10/EDOC12186.htm>.

² UN Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties Under Article 44 of the Convention: Concluding Observations United Kingdom of Great Britain and Northern Ireland*, CRC/C/GBR/CO/4 (3rd October 2008), para 24. Available online on <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>.

freedom of movement and peaceful assembly, the enjoyment of which is essential for children's development and may only be subject to very limited restrictions³

In its response to the report, Scottish Government made a commitment to tackling negative perceptions of children and young people, and to 'consider[ing] next steps on the mosquito once examination by officials is complete during summer 2009'⁴.

The case for a ban

In my view, the message sent by the deployment of the device is that children and young people are unwelcome and deserve to be 'repelled'. The use of the device will serve to further entrench the negative and intolerant attitudes towards children and young people in public spaces, which has been raised as a significant problem for children and young people in the UK.

A study undertaken by the German Federal Institute for Occupational Safety and Health concluded that the device particularly affects infants and young children. The report notes that children will be unable to withdraw from exposure to the Mosquito, because accompanying adults may not hear the noise that distresses their children. It further suggests that the noise emitted by the Mosquito may have impacts on children beyond their hearing, potentially causing nausea, dizziness, pain and affecting children' sense of balance. In conclusion, the Institute was unable to exclude risks to health and safety in the use of such devices⁵. The Minister who commissioned the study concluded that such devices should therefore not be used in localities where children are present⁶.

I note that submissions from the Scottish Retail Consortium and the Scottish Grocers Federation support the use of Mosquito devices and refer to the pressures on retailers in the current financial climate. While I fully acknowledge that those pressures are real, it is not acceptable to put the freedoms, health and well-being of our children and young people at risk by infringing on their rights in this manner.

At present, services and opportunities for children and young people are vulnerable to cuts. Our focus should be on ensuring that children and young people have access to what they need to thrive, develop and grow up into healthy, achieving and well-rounded adults. Places for play, leisure and meeting with friends for all children and young people are essential to their development. This also requires the effective management of public spaces, which takes account of all users, including children and young people. In my view, the use of Mosquito devices is a potentially harmful, and certainly a discriminatory tool which is completely inappropriate.

³ Ibid, para 35.

⁴ Scottish Government (2009), *Do the Right Thing: A Response by the Scottish Government to the 2008 Concluding Observations from the UN Committee on the Rights of the Child*, Action Areas 4 and 8; Available online on <http://www.scotland.gov.uk/Resource/Doc/282927/0085645.pdf>.

⁵ Bundesanstalt für Arbeitsschutz und Arbeitsmedizin (Federal Institute for Occupational Safety and Health), 'Einsatz von Ultraschall-Störgeräusch-Sendern nicht ganz unbedenklich', Press Release dated 14th December 2007. Available online on http://www.baua.de/cln_135/de/Presse/Pressemitteilungen/2007/12/pm079-07.html?nn=681254.

⁶ Niedersächsisches Ministerium für Soziales, Frauen, Familie, Gesundheit und Integration (Department for Social Affairs, Women, Families, Health and Integration of (the German state of) Lower Saxony), Press Release dated 14th December 2007. Available on http://www.ms.niedersachsen.de/live/live.php?navigation_id=4972&article_id=13705&psmand=17.

Banning the Mosquito and similar devices

I am aware that the regulation of the sale of goods is a reserved matter. However, there are actions that can be taken.

Firstly, I would urge the Scottish Government to work with the UK Government to achieve a ban on sales of the Mosquito and any similar devices. The recent unanimous adoption by the Council of Europe's Parliamentary Assembly of a draft recommendation⁷ calling on its 47 member states to ban the use of Mosquito devices should give the UK and Scottish Governments additional confidence that such a ban can be achieved in accordance with European law. I understand that other European countries, such as Belgium, are looking at progressing a ban.

Secondly, I would ask the Scottish Government to consider whether the new Public Sector Equality Duty, which comes into force on 1st April 2011 and covers age (including under-18s) as a protected characteristic, could be an additional lever to ensure that public sector organisations and their private sector partners and suppliers do not use the Mosquito. The new duty may be equally relevant in relation to children and young people whose disabilities may make them more vulnerable to the impacts of the devices.

Finally, I would ask the Scottish Government to consider the position of the Mosquito and any similar devices in terms of environmental legislation and the law relating to noise nuisances in the Antisocial Behaviour (Scotland) Act 2004.

This is a matter that potentially affects all children and young people, and one where government needs to take responsibility and do the right thing to safeguard their health and well-being, to respect their dignity and to protect their rights.

Please feel free to get in touch with my office if I can be of further assistance.

With best wishes,

Tam Baillie
Scotland's Commissioner for Children and Young People

⁷ This was based on the report by Piotr Wach referred to in FN1. The record of the debate in the CoE Parliamentary Assembly is available on <http://assembly.coe.int/Main.asp?link=/Documents/Records/2010/E/1006251000E.htm>.