

**PE1367/J**

Public Petitions Committee  
T3.40  
The Scottish Parliament  
EDINBURGH,  
EH99 1SP

25th November 2010

Dear Sir/ Madam,

RE - Banning of use of Mosquito Device, Public Petition PE1367

The Equality and Human Rights Commission (the Commission) was established by statute in the Equality Act 2006 and came into being on 1 October 2007. The Commission champions equality and human rights for all, working to eliminate discrimination, reduce inequality, protect human rights and make sure that everyone has a fair chance to participate in society. We promote equality across the seven protected grounds – age, disability, gender, race, religion and belief, sexual orientation and gender reassignment.

The Commission welcomes the opportunity to respond to the issues raised in this petition. At this point I must however stress that the Commission has looked at the issue of the use of mosquito devices recently, but because the Board has not had the opportunity to discuss this matter fully we have no fully defined position on the issue. I have however discussed some of our concerns regarding the use of mosquito devices in this response which I hope will assist in your deliberations at the Petitions Committee. I note that you asked the Scottish Commissioner for Children & Young People to comment but would also suggest that you raise this matter with the Scottish Human Rights Commission who have an interest in devolved Human Rights matters, the EHRC's role is limited to considerations of reserved Human Rights issues.

I do not propose to answer each of the questions one by one but trust that this commentary will cover the points they raise.

On the issue of harm we have reviewed a number of documents which make reference to the potential harm that such devices can cause to young children, infants and people with disabilities. We note that there is no consensus on this issue but that the Health & Safety Executive has concluded that whilst there may be some short term subjective effects there is little likelihood of this causing long term harm.

In framing this response I have looked at two different sets of rights and responsibilities in place in Scotland – the Equality Act 2010 and the Human Rights Act.

In terms of equality law, protection from age discrimination under the Equality Act, in relation to the provision of goods, facilities and services will not come into force until

2012. When the protection does come into force, people over the age of 18 will be protected. This may have some bearing for people aged between 18 -24 with respect to the deploying of mosquito devices if they can show that, due to their age, the use of the devices puts them at a disadvantage when, for example, shopping and those using mosquitoes cannot show their use to be a proportionate means of achieving a legitimate aim. I explain this justification in more detail below.

The Public Sector Duties, which will be introduced into law in April 2011, will place further obligations on public bodies to eliminate discrimination, advance equality and foster good relations in the discharging of their functions or in the services that they provide. This duty extends to all people including children and young people, except in relation to the provision of education and children's home. Any public authority covered by this duty will therefore have to assess the equality impact of any decision they make to use a mosquito device and act to mitigate any negative impact.

The Human Rights Act 1998 (HRA) is also relevant to this discussion and I have looked specifically at Articles 3, 8, and 11, in this regard.

Article 3 – “torture or inhuman or degrading treatment”. We do not believe that the mosquito meets the threshold of severity to engage this article.

Article 8 – “respect for private and family life”. Whilst it could be argued that mosquito devices could impact on home life, the HRA provides protection in relation to the actings (or failure to act) of public bodies. As there is little evidence of public bodies adopting mosquito devices themselves, a challenge under this article seems unlikely.

Article 11 – “peaceful assembly and freedom of association”. We do feel that that there is an argument that Article 11 could be engaged in respect of young people congregating on highways or areas to which there is general public access.

Whilst the law is instructive on these issues there is no case law that we are aware of that directly relates to the issue of public bodies, private companies or individuals using mosquito devices. However, the use of such devices would require to be proportionate. I hope that the following juxtaposition of scenarios concerning proportionality might assist the Committee.

The Commission believes that the issue of proportionality needs to be considered when decisions are being taken about the use of mosquito devices to deter crime or disorder by young people in any given area. We feel that it could be deemed proportionate to install a mosquito device in, for example, a school which has been subjected to vandalism by young people who have been captured on CCTV previously. However it would only be proportionate to trigger such a device at times when there is no justifiable reasons for young people being on the premises (say for example after 8 pm at night or at the weekends). The intent of the installation would therefore be for the legitimate prevention of crime by a group who have been clearly identified as posing a threat to the property concerned.

However the installation of a mosquito device in a shopping centre, and in operation all day, with the express purpose of discouraging young people to use the facility, would in

our opinion be disproportionate as it operates on the assumption that all young people need to be discouraged as they pose some form of threat or nuisance to the general public. I note that the British Retail Consortium supports the use of mosquito devices in such premises on the grounds that young people can be “insolent” to staff, but cannot agree that effectively banning them from ever entering such premises could be considered to be proportionate.

Proportionality needs to be considered in terms of the overall intention of the policy and its impact. In the shopping centre scenario above I feel that this step would be disproportionate because it is indiscriminate. Whilst I accept that there will be young people (and older people) who can cause nuisance and distress to others in such a public environment, the deploying a mosquito could prevent all people under the age of 25 from using such premises. As well as deterring young people intent on causing distress it would also inadvertently prevent young shop workers, youth workers and indeed police officers aged under 25 from using the premises for their legitimate purposes.

Prepared by: Chris Oswald, Head of Policy and Parliamentary Affairs