

PE1367/O

Safer Communities Directorate

Drugs and Community Safety
Division

T: 0131-244 4640

E:

Fergus D Cochrane
Clerk to the Committee
Public Petitions Committee
TG.01
The Scottish Parliament
EDINBURGH
EH99 1SP

Your ref: Petition PE1367
Our ref: F3881154
3 August 2011

Dear Mr Cochrane

Thank you for your letter of 25 March 2011 following the Public Petitions Committee's consideration of Petition PE1367 at its meeting on 8 March 2011, where the then Minister for Community Safety Fergus Ewing MSP gave evidence to the Committee. Your letter sought further views from the Scottish Government on a number of points and I shall address each of these in turn.

As was outlined in previous correspondence, in March 2009 the Scottish Government and COSLA jointly published *Promoting Positive Outcomes*, their Framework for tackling antisocial behaviour. This followed a thorough review of national antisocial behaviour policy and recognises that prevention and early and effective intervention and diversion should be at its heart. We consider that the mosquito device is not consistent with that approach and is also not consistent with our desire to create strong supportive communities where people take responsibility for their own actions and how they affect others. I should also emphasize that this Scottish Government has not expressed support for these devices in the past.

The further questions posed by the Committee are reproduced in bold:

Further to the oral evidence from the Minister for Community Safety on 8 March 2011 can you update the Committee on what further actions have been taken by the Scottish Government since that meeting on banning these devices (e.g. issues around regulation on the use of the devices)?

Since the Minister for Community Safety attended the Committee on 8 March 2011 actions have been taken across a number of areas which are outlined below.

Have any discussions taken place with the UK Government since that meeting and, if so, what was the outcome?

Officials have had discussions with Home Office colleagues on our respective approaches to tackling antisocial behaviour. The use of the mosquito device was included in that discussion. These discussions took place on 2 August 2011 and an update will follow.

Can you clarify where competency on such a ban lies?

Before any decision can be taken on whether or not to ban or regulate devices such as these, there would require to be justification based on evidence of the effects of the device, and for example whether it was injurious to health. Such evidence would likely need to be taken from a variety of sources. As the Minister commented during his evidence on 8 March 2011, if the purpose of any ban or regulation was due to such effects on health, and there was sufficient evidence, then it would be possible to consider afresh various issues which arise in relation to the devolved competence to impose such a ban.

I refer to the three points made by SCCYP in his letter of 10 February 2011 to the Committee (reproduced below). What is your written response to these i.e. will you take the actions suggested:

1. To work with the UK Government, who have control over regulation of goods, to achieve a ban

As noted above, officials met with counterparts from the Home Office to discuss our respective approaches to tackling antisocial behaviour. These discussions took place on 2 August 2011 and an update will follow.

2. To review whether public sector organisations have responsibility under the Public Sector Equality Duty to prevent the use of the Mosquito, in relation to it discriminating against children and young people, particularly those with disabilities. [this point came up in discussion between Anne McLaughlin and the Minister]

The public sector equality duty in the Equality Act 2010 came into force in April 2011. It requires a public authority to have due regard to the need to eliminate unlawful discrimination, harassment and victimisation, to advance equality of opportunity and to foster good relations.

Enforcement is a matter for the courts and for the Equality and Human Rights Commission. Scottish Ministers do not have a role in reviewing whether public sector organisations have responsibility under the duty to prevent the use of the Mosquito. It is for public authorities themselves to determine what they need to do to comply with the legislation.

3. To review whether the Mosquito constitutes a noise nuisance under the Antisocial Behaviour (Scotland) Act 2004.

The noise provisions in the Antisocial Behaviour (Scotland) Act 2004 only apply to domestic properties. The relevant provisions in this regard can be found in the Environmental Protection Act 1990 (EPA).

The term of nuisance is not defined in the Act, but there is case law to the effect that a court, when determining whether noise constitutes a nuisance for the purposes of the Act, must have regard to the common law on nuisance. The common law of nuisance applies to any form of unreasonable interference by others, and given that a wide variety of noise sources have been held to constitute a nuisance it is possible that noise from a mosquito is capable of being a statutory nuisance. On the other hand, the common law protects only the enjoyment of occupied land from such interferences, and extending that principle would mean that the EPA only covered nuisance caused to young persons in their homes. So the EPA might in practice only be of use where the noise is heard outside the home in a garden or similar area.

These devices are by their very nature intended to cause annoyance, and to persuade people to move out of their range. In our view, noise from a mosquito could be capable of being a statutory nuisance, but whether there is in fact such a nuisance will need to be determined on a case-by-case basis taking into account the particular facts and circumstances of that case. It would, for example, be easier for a Local Authority that wished to remove a device to persuade a court that there is an actionable statutory nuisance where a mosquito is being operated continuously rather than sporadically. It follows however that it can reasonably be argued that local authorities have a duty to investigate where a complaint is made about the use of a mosquito by a person living within its area (section 79(1)).

Further Points arising from 8 March 2011:

In order to be helpful, the Minister recognised the Committee's substantial efforts which had resulted in extremely useful evidence. The Minister noted that several organisations did not respond to the Committee's request for information and suggested that evidence from these bodies would be helpful. For ease of reference these organisations are: National Autistic Society, the Royal National Institute for Deaf People, the Association of Scottish Community Councils, the Federation of Small Businesses, and COSLA. The Minister also suggested that views from the device's manufacturer, Compound Security Systems, from Merthyr Tydfil in south Wales would be helpful.

I hope that this reply is helpful.

Yours sincerely

JOHN BROWNLIE
Community Safety Unit