

PE1367/DD

Ms. Anne Peat
Clerk to the Public Petitions Committee
The Scottish Parliament
Edinburgh
EH99 1SP



2nd May 2012

Dear Ms. Peat,

Petitioner Response to Submissions Received in Relation to Petition PE1367

I welcome the opportunity to make a submission once again on this petition, in response to the latest information from both COSLA and the Scottish Government.

The response from COSLA is both welcome and useful, though it poses problems if the best route to a ban of the Mosquito devices were to be through local byelaws or local authority action. The fact that the problem of the use of the Mosquito might not been seen by local authorities to fit the criteria for a byelaw in the first place is somewhat disappointing for the many reasons I have outlined in various written and oral submissions over the past year and a half.

However, several points suggest to me that a series of local byelaws would not be a sensible route to go down. Byelaws would need to be created in each of the areas of Scotland with Mosquito devices, which is problematic as nobody knows what those areas are and the vast majority of decision-makers would be unaware if they were near a device due to being unable to hear it. Additionally, the relevant tests of nuisance, fear and alarm might not be met, and crucially the byelaws would not cover private property such as shopping centres where many of these devices might be in use.

A full local authority area ban may be a power more suited to the problem at hand, but given COSLA's reservations regarding the Scottish Government's support for such a measure, this is something which I feel might need to be discussed further, in particular with the Scottish Government themselves.

The Scottish Government, although showing a couple of glimmers of progress in their latest submission, still fail to attach the importance to this issue that the Scottish Youth Parliament feels it should have. The reiteration once more that the use of the Mosquito device is inconsistent with the Scottish Government's approach to antisocial behaviour and desire to support supportive communities is obviously welcome, but if this is the case the Scottish Government ought to take action.

Once again, in the first paragraph of their response to the final question posed to them by the committee, the Scottish Government set out some of the steps they

might take towards a ban. They would need to collect evidence justifying the decision from “a variety of sources”. The questions I would pose, in that case, are what these sources are and why has this process has not already been started?

If the answer is the continuing argument over devolved competency, the question is why, in a year and a half, the Scottish Government have not discovered the answer to that question or, at least based on the evidence available to us, made much of an effort to do so. The Scottish Government need to take the first step: work out whether the Scottish Parliament has the power to ban these devices on a) health grounds, b) any other grounds, including human rights or regulation of products. Once that question is answered, we will be in a much better position to consider how a ban might be achieved, and what justification would be required. I urge the Committee to promote this course of action to the Scottish Government.

While I would be interested to hear the results of the discussion between the Scottish Government and ACPOS surrounding the application of Section 54 of the Civic Government (Scotland) Act 1982, I believe very strongly that this should not be seen as the answer. It should not be the duty of individuals to protect themselves from breaches of their human rights through legislation and the courts. This is particularly important for children and young people directly affected by the Mosquito device given that a significant proportion would be unaware of how to pursue action based on the Act. It is the duty of the Scottish Government to protect us and protect our rights to freedom of movement, freedom from discrimination and our right not to be subjected to inhuman and degrading treatment.

The solution to this problem lies in a Scotland, UK or Europe-wide ban. Scotland should be leading the way in protecting its young people and upholding their ECHR and UNCRC rights. That means taking the issue seriously and doing everything within our power to ensure that no child or young person is subjected to the Mosquito device.

Yours sincerely,

Andrew Deans MSYP