



# PlayAction Policy Brief

## Comment on Legal Opinion re use of Mosquito 'Anti-Teen' Device

The following contains a Legal Opinion given by Hewitsons, Solicitors, to **Compound Security Systems Limited** concerning the Human Rights Act implications of the **Mosquito Sound System**, promoted by the company as a means to encourage the dispersal of young people. **The Hewitsons' Opinion is given in black type.**

Also appended, after each paragraph of the Opinion, is a series of comments on behalf of Fair Play for Children by its National Secretary. **These Fair Play comments are given in blue type.**

Fair Play for Children regards the Mosquito Device as Oppressive, discriminatory against young people, encourages a form of vigilanteism against children and is totally indiscriminate as to the age of children and young people. We feel it is an obnoxious concept, that it preys upon prejudice and anti-youth hysteria for profit. It has no place in a society based on the rule of law and respect for the rights of others.

**In the view of Fair Play for Children, the device should be banned, and we are hoping that some form of legal action will be possible to stop its use. We deplore its use by Crime Reduction Partnerships as inconsistent with their plain duty to act in a fair and just manner, respecting and creating respect for the rule of law. Its use will tend to exacerbate relationships between the young and authority, and other members in the community.**

### **Measures that people can take:**

- **Sign the OnLine Petition to the Prime Minister** at <http://petitions.pm.gov.uk/ANTITEENDEVICE/> [Children, Young People, Parents, Grandparents, Professionals, Councillors – everyone!]
- **Organise a Boycott of Shops using the Mosquito Device** – organise peaceful protest – for example, two people standing outside a Shop fitted with the Device handing out leaflets – contact Fair Play on this
- **Complain to your Member of Parliament / Councillors** – go to <http://www.theyworkforyou.com/> which informs you how to email your MP and local Councillors
- **Complain to your Chief Constable and the Chief Executive of your Council** if a Local Crime Reduction Partnership in your area is using this Device
- **Write to your local Newspaper and Radio/TV stations**
- **Email Childrens Rights Alliance for England** to express your opposition: [cwillow@crae.org.uk](mailto:cwillow@crae.org.uk)
- **Email the Children's Commissioner for England:** he already has made a

strong condemnation: [info.request@11MILLION.org.uk](mailto:info.request@11MILLION.org.uk)

- **If your Child is affected by use of such a device:** contact a solicitor to get advice on action you can take

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To whom it may concern

Dear Sirs

### **Mosquito Sound System**

The Mosquito Sound System ("the Device") is manufactured by Compound Security Systems Limited ("the Company"). We have been asked to give a preliminary opinion as to whether the use of the Device by shops and other premises and by local police forces to discourage teenagers from loitering is in breach of the Human Rights Act 1998.

1. We have reviewed the test reports on the Device sent to us by the Company. To the best of our knowledge and belief no medical evidence exists that an individual's exposure to the sound emitted by the Device is likely to cause actual physical harm. The Device has been tested by the National Physical Laboratory which has stated that the volume of the Device is not enough to damage hearing. There are currently no regulations controlling the exposure of members of the public to sounds of any particular frequency. We would therefore propose that, within the framework of existing legislation, the Device should be considered merely as an irritant.

This notion that it is an 'irritant' – it is aimed at one group deliberately, based on their age alone, it does not discriminate as to their being unruly or law abiding. In *W v Richmond-on-Thames* the High Court Judge made it clear that he allowed *W's* case because of his right to proceed about his lawful business without arbitrary interference. And he cited English Common Law, not the Convention, in so doing. Article 14 is clear – examples of discrimination are given but it covers all discrimination. This is an unqualified Right (as opposed to qualified rights balanced against other considerations as e.g. in Article 8.)

Furthermore, the Company has stated that the Device does not breach the requirements of the Control of Noise at Work Regulations 2005. In any event, these regulations do not apply to members of the public exposed to noise from their non-work activities or to low level noise which is a nuisance but which carries no risk of hearing loss.

Being a deliberate nuisance is clearly anti-social – and actionable under ASBO regulations which are used with unruly young people who interfere with the rights of others. People who take the law into their own hands to curb other people they do not like – that is the essence of this device. That is surely anti-social. Whilst most publicity about ASBOs focuses on the young, adults have been threatened with them for harassing children at play.

2. As the transmission of the sound produced by the Device is directional and as high frequency wavelengths do not travel through solid objects, we do not consider that it is likely that the Device will cause a nuisance to neighbours of its users.

There are reports already of people buying these devices to install in their own premises to keep young people away. If a young person plays music to annoy and distress others, they soon get a police or local authority visit. It is a nonsense to suggest that it is permissible to install such a device in your garden, for example, in order to deter children next door from playing in theirs. This device smacks of adult bullying – the device not only affects young people but small children and babies.

The other issue is, what lesson does it teach the young? That adults can harass them and bully them with the sanction of the law, take matters into their own hands?

3. We have considered the implications of the Human Rights Act 1998 on the use of the Device. As stated above, we do not consider, on the basis of evidence made available to us, that the sound emitted by the device is harmful or likely to cause a nuisance. The only people to be affected by the Device are those in its close proximity and they are free to move on.

If a young person made a nuisance of themselves deliberately by playing their kind of music in the street in order to make e.g. elderly people 'move on', we know what would happen. They are also free to stay where they are so long as they behave. Being in a group which is law-abiding is not an offence. It is the job of the police to enforce laws, including that of the young not to be harassed by 'electronic vigilantism'. A nuisance is surely someone acting in such a way as causes irritation, distress or annoyance to others. This device is a nuisance.

4. In general, the Human Rights Act 1998 only applies where rights are being breached by a public body rather than by a private individual, so shopkeepers using the Device should not be directly subject to its requirements. However, a public authority may still be liable where it has failed to protect individuals from other individuals, in particular from breaches of Article 3 (see below).

This is clearly self-contradictory. Also see Article 14 (non-discrimination). And to deliberate breaches of the right of assembly (Article 11). It is for a court to decide where the balance of rights lies, not a shopkeeper.

5. The Human Rights Act 1998 is intended to balance one individual's rights against another's. This means that the rights of the storekeepers to pursue their trade must be taken into account as well as the rights of individuals affected by the sound of the Device. Furthermore, the wider interests of the community as a whole may be taken into account when considering the impact of any activity. Studies of the use of the Device have shown that members of the general public are more

likely to come into areas where the Device is employed than they would if there were teenagers loitering there.

This is a distortion of the Act and of the European Convention. The Convention is there to protect the rights of all within its convention area. Some rights are indeed 'qualified', that is they contain provision to balance rights. Others (Article 3, 6, 14 for example) are 'unqualified' – they do not have to balance the rights of others – e.g. Article 6.1 right to an impartial tribunal if accused of crime or where one's rights and obligations are being determined. You have that right regardless of the rights of others.

This whole Mosquito idea allows individuals and even Crime Reduction Partnerships to abrogate completely this provision because by switching on the device, it is saying all those affected deserve to have it inflicted on them and those who do so have a right to do so. These studies mentioned – one is quite sure that many children and young people would say that it would be great if they had a right to chase away adults who complain they are playing too near their homes. Sauce for the goose ...

6. Article 3 of the European Court of Human Rights (incorporated into the Human Rights Act 1998) protects an individual from inhuman or degrading treatment or punishment. We have carried out preliminary searches on the case law which suggests that ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim, etc. Case law suggests that in the case of interrogation of detainees, the level of noise is calculated to isolate detainees from communication; this is considerably more traumatic than the sound emitted by the Device. In any case, detainees cannot walk away from the sound whereas people near the device can. Furthermore, our preliminary searches have found no instances where exposure to a particular pitch of a sound, rather than its volume, constitutes degrading treatment.

'Degrading' – to know that the only reason this device which makes you move is allowed to be used is because you are young. To know that others approve because they know it affects only you and those of your age group. That is degrading treatment. What on earth is all this about detainees? A red herring. Those out to cash-in on a situation such as these manufacturers, one can understand that (but disapprove of such a blatantly provocative incitement), but solicitors giving such advice beggars belief. They should NEVER condone what is in effect taking the law into one's own hands, and allow others to profit from this. Banana Republic law.

.7. Article 11 of ECHR provides a right to assemble with other people in a peaceful way. However, such assembly must be without violence or threat of violence. This is a qualified right which may be withdrawn to protect the rights and freedoms of others including the property owners where people are assembled. Having carried out preliminary searches we do not consider that this right includes the right of teenagers to congregate for no specific purpose, and therefore this right is not being infringed by the use of the Device. The Device is not preventing people from assembling, but rather discouraging them from loitering in any particular place. Young people who can hear the sound emitted by the Device are not restrained but

are free to move elsewhere.

We have seen struggle over the centuries so people can assemble freely and not be harassed by others so that they move on or disperse. This advice seems to say that anyone can now usurp the powers of the police and courts with impunity so they can enforce their will on others who happen in the most part to be young. Ridiculous and dangerous nonsense. Who gives a shopkeeper the right to 'discourage' anyone? On his own premises he can refuse right of entry. It stops outside. Can this firm of lawyers tell us the advice they would give to a shopkeeper if groups of young people went around urging people to boycott them because of the use of such a device against them? [We are doing just that incidentally.] This device rests solely on the ability of people to use it to annoy and distress others purely on grounds of ability to hear it.

In any case, Article 11's qualification is that any curbing of this Right must be necessary and lawful – again, nor for a shop-keeper or even the police to decide.

This device also works to a use of high frequency which the intended target can hear but not others who are older. **The age at which hearing loss of high frequencies develops varyingly with individuals.** So there may be some teenagers whose hearing loss (which can be affected by a wide range of factors, environmental, health, genetic, behavioural) would mean it did not affect them, but some adults will have acute hearing until a much later age and be affected. [This writer knows of situations where an adult of 30 could hear such sounds and beyond because he had acute hearing to an unusually high frequency.] So the device is being marketed irresponsibly and without accurate information? Surely a matter of misleading purchasers? Trades description? Scenario – young thug not affected really does loiter and cause nuisance, but older person with acute hearing distressed.

**But it is the effect on small children and babies which condemns the whole notion.** If it is aimed at ability to hear high frequencies, it MUST affect them more than older children and young people. They could be the unintended victims – or maybe intended where there are hostile adults who already cause more than a little harassment of children at play. People who drive their cars on a public green to chase children off because it abuts their gardens, people who regularly call the police to get children removed from near their homes and who waste hours of police time. What stops them from buying this device ....

And what are a child's rights in such a situation? If a child stoked up a smelly substance in his garden to annoy Mr Nimby in his, what would happen? "He's old and I don't like old people near my garden?" How do we explain to that child that he can't do that when Mr Nimby runs a Mosquito in his garden to stop him playing in his? It seems to me to be anti-social and highly irresponsible for this to be condoned, and for the Government to be so wishy-washy and not to condemn it. This smacks more of fear of offending the modern descendents of "hang 'em and flog 'em" (including the tabloid press too often, who seem to berate lack of respect for the Law and yet thunder on about 'liberal do-gooders' when people are reminded

of the basis for the Rule of Law) than for its insistence that we all act within the Rule of Law. (For an example of Nimby thinking read "Children's rights? What about the rights of those who live in fear of young thugs?" **Daily Mail. 17 March 2008**)

8. While Article 14 of the ECHR prevents discrimination against individuals and groups on various grounds, the grounds do not specifically include discrimination on the grounds of age. It is possible for the courts to find discrimination on grounds other than those specifically cited; we have performed preliminary searches but have found nothing to suggest that groups of young people have the characteristics of a group that can be discriminated against.

That could be tested. Article 14 is not meant to be aimed at specific groups, it talks in terms of grounds which apply to individuals. The Convention protects the rights of individuals, not those of any group. If the young person was also disabled, what then would be the advice? Or of a particular religion? It would still affect them.

9. We do not believe that any human rights are breached the use of the Device. We believe that any claim that proper use of the Device contravenes human rights principles would be weak and vexatious. Notwithstanding this, interference with the rights granted under the Human Rights Act 1998 is permissible if it has its basis in law and is done to secure a permissible aim and is necessary in a democratic society. Our preliminary searches have found nothing to suggest that use of the Device is unlawful; its use is intended to secure a permissible aim (prevention of crime, protection of public order) and its use is not excessive but rather is carefully designed to meet the objective in question.

**The protection of the Rule of Law is a basic requirement of any democracy.**  
To allow anyone to hinder the rights of any other law-abiding person of any age and to employ a device knowingly to achieve this is such a clear breach of that rule that any case must succeed. The Convention makes it clear that it is a statutory body which must rule to limit the rights of one group to balance the rights of others. And it must ALWAYS be 'necessary'. That is NOT for a shop-keeper, or even a Crime Reduction Partnership, to decide, it is for those accountable to elected representatives and the courts and within our laws. This device is manufactured with every encouragement to those who seek to take matters into their own hands – and not even where young people are breaching any law. Just because they are 'loitering'. An emotive and pejorative expression. Are old people 'loitering' when they stand and gossip? If a device was projected that it scared away people who are not white, or male, or who are over 50 ....? **The Mosquito is in effect promoted as an incitement, as a means to harass those who can hear it. What on earth justifies that Opinion? It goes against every aspect of our Common and Statute Law never mind the Convention.**

10. We would stress that the above opinions are given in the absence of any similar devices with which comparisons with the Device could be drawn. Accordingly, these opinions may change in the light of expert scrutiny of the relevant issues, new case law, an evolving regulatory framework or new scientific evidence. Accordingly, this letter is intended as guidance only and we accept no liability for reliance on any of the opinions expressed in this letter. The recipient is advised to take his own legal advice on these issues.

Yours faithfully

Hewitsons

FURTHER COMMENT:

**"Compound Security Systems Ltd, through extensive R&D has produced the MOSQUITO MK II unit that uses complex high frequency sound to chase away those annoying teenagers!!!"** That is on their web site as at 20<sup>th</sup> June 2008!

This device is marketed on the Company's web site as "The **Mosquito™ Teenage Deterrent** is the solution to the eternal problem of unwanted gatherings of youths and teenagers in shopping malls, around shops and anywhere else they are causing problems." The Company advises the following in response to a Question: "I am not a teenager, will the **Mosquito™** annoy me? This is very unlikely and research has shown that the majority of people over the age of 25, have lost the ability to hear at this frequency range. It should be borne in mind, however, that the unit usually has the desired effect – moving the crowds away – within just a few minutes, at which time the unit can be turned off. So even if you are able to hear the noise to some degree, you would not have to put up with it for long."

#### **"What about dogs?"**

"Although dogs have very acute hearing and are easily able to hear at this frequency, extensive testing shows that it does not appear to bother them."

If that does not "say it all" then what does?

On another matter:

"16<sup>th</sup> May 2006

During the month of May, CSS Ltd. have had several enquiries from various market sectors asking if there is any likelihood of detrimental effects from the use of the Mosquito to users of hearing aids. As with all other questions we have been asked since launching the Mosquito, we have taken this question very seriously and have made a point of researching the area and speaking with various manufacturers of digital hearing devices also. The following findings will be added to in the near future, however, this should be sufficient to allay any qualms you or your customers may have in this area. The primary function of most contemporary hearing aids is to enhance speech signals. As speech does not extend above 8 kHz, neither does the frequency response of hearing aids to any significant degree. Below is a typical frequency response from a market leading model hearing aid. The response starts to fall at about 6 kHz. The Mosquito operates at 17.8 KHz which is more than double the frequency. In short, there will be no amplification of the sound output of the Mosquito by contemporary digital hearing aids."

So if someone now develops a device which especially affects hearing aids because old people use them more, to discourage them from using a shop or standing at a bus stop ....?

The device, its manufacturers and those using it seem to me condemned by the very statements used to market it. What this debate and this advice demonstrates is a very unhealthy attitude towards the young in Britain today – and the authorities and legal profession, and the media, should be questioning their role in condoning and even encouraging it, either directly or by refusing to speak out against it. The implications for relationships between the young and their communities is a matter

for profound concern.

**Jan Cosgrove**

**National Secretary, Fair Play for Children.**

31st July 2008