

Young People, Regulation and Risk:
A Case Study of the Mosquito Teenage Deterrent
(MTD) in the UK

Thesis submitted in accordance with the requirements of the University of Liverpool for the degree of Doctor in Philosophy by Jonathan Maher.

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ABSTRACT

The development and marketing of the Mosquito Teenage Deterrent (MTD) emerged during a period where young people as a social group have been subject to various regulatory processes and systems that are both formal and passive. In this thesis, the MTD has been used as a case study to investigate how different stakeholder groups have approached this technology and how the development and distribution of the MTD within the UK has been affected by discourses of regulation and risk, policy and practice. Despite the intentions of opposition groups to invoke legal challenges to the use of the MTD on the grounds that it breaches the human rights of children and young people, this has not happened. In fact the use of MTDs is less than anticipated and public authority demand for the devices (as well as all sales) started to decline from 2007. The analysis conducted in this thesis demonstrates that regulation was manifested in multiple and connected ways, by law and through constructions of risk, and that this was largely influenced by the dominant social construction of young people held by the public authorities. Children and young people are shown to be regularly viewed as a group that was potentially dangerous and therefore needing to be regulated, but also a group that was potentially vulnerable and needing regulation. The thesis elucidates that the MTD was being used to control children and young people's access to space by acting as a temporary intervention until permanent measures can be put in place.

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GLOSSARY OF TERMS AND ABBREVIATIONS

ASB: Anti-Social Behaviour.

Section 153A(1)(a) and (b) of the 2003 Anti-Social Behaviour Act define ASB as any conduct ‘which is capable of causing nuisance or annoyance to any person’ and which affects ‘directly or indirectly’ another household.

ASBO: Anti-Social Behaviour Order.

The ASBO was introduced in Section 1(1)(a) and (b) of the 1998 Crime and Disorder Act as an order that can be issued to any person, 10 years of age or older, that has acted ... ‘in a manner that has caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household.’ The orders have a minimum duration of 2 years, and a maximum penalty of 5 year custodial sentence for breaching the terms of the order.

CDRP: Crime and Disorder Reduction Partnership.

All police forces participate in crime reduction partnership arrangements with local authorities, the private sector and voluntary organisations within their areas. This is a requirement of section 17 of the 1998 Crime and Disorder Act.

CSS: Compound Security Systems Ltd.

The company that manufactures the MTD (see below).

ECHR: European Convention on Human Rights.

An international convention which established the ECtHR (see below) to interpret and collectively enforce the individual human rights and fundamental freedoms for civilians contained within the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms which is more widely referred to as the European Convention on Human Rights or ECHR.

ECtHR: European Court of Human Rights.

The international court that arbitrates alleged transgressions of the ECHR and whose rulings are legal and binding to all signatories of the ECHR.

FOI: Freedom of Information.

Section 1 of the 2000 Freedom of Information Act created a 'general right of access to information held by public authorities.' The Act requires public authorities to respond in writing to confirm whether it holds the information requested and to disclose information within 20 working days, subject to exemptions.

MTD: Mosquito Teenage Deterrent.

See the background to the MTD chapter for a description and explanation of the MTD and its significance.

UNCRC: United Nations Convention on the Rights of the Child.

A 1989 United Nations human rights treaty which recognises the unique developmental needs of children and sets forth civil, political, economic, social, health and cultural rights. This treaty is the most widely adopted human rights treaty in the world ratified by all members of the UN General Assembly except for two: The United States of America and Somalia. The UK ratified the UNCRC in full in 2008.

CHAPTER 1: INTRODUCTION TO THE THESIS

This thesis investigates the impact of an electronic device that emits high-pitch sounds that only young people can hear. This technological device, known as the Mosquito Teenage Deterrent (MTD), has been marketed in the UK as a tool to target young people that are loitering in public spaces and promises to remove them from the surrounding area through the production of annoying and prolonged high-pitched sounds. Since its inception the MTD has caused controversy in the UK, with young people, youth advocacy groups and civil rights groups demanding that the devices be banned due to their affects upon young people and children. Featuring fairly prominently for several years on various media platforms, the devices have stirred lively national and local conversations about the values of society, its treatment of young people and specifically, human rights.

Some of the methods undertaken and data collected for this thesis cannot now be repeated or replicated because information about the MTD no longer exists or cannot be gathered. For example a number of public authorities did not collect and record information about MTDs dependably. Nevertheless this thesis uses a case study approach that provides a valuable snapshot at one point in time for how this device, which affects children and young people, was used in the UK. It provides some important insights and conclusions about the way that children and young people are constructed and how this technology was deployed, developed and resisted.

To gain a full understanding of the context and circumstances in which the MTD has been used in the UK, a case study methodology has been adopted in this investigation. The study has therefore sought to determine how numerous and widespread the MTD is in the UK; how the devices have been operated by UK public authorities and the role the MTD has played in crime and disorder partnership plans. This study has also analysed and considered how the devices correspond to the UK's legal obligations to human rights that have been the source of much uncertainty. Indeed, the MTD, in light of its characteristics, has revealed itself to be a useful indicator to better understand how conceptualisations of risk in relation to children and young people are modelled through crime and anti-social behaviour prevention policies and the impact of these models upon these groups. It also provides an excellent opportunity to evaluate the value and effectiveness of human rights law in the UK for children and young people since the devices have never been banned.

OUTLINE OF THE THESIS

The background to the MTD is outlined in chapter 2. This includes an overview of the device known as the MTD and how it was developed and marketed in the UK, describing the devices impact upon children and young people. Chapter 2 also provides a like-for-like comparison of the sales performance of the company that sells MTDs internationally with its UK equivalent in order to show that the use of this technology is more widespread in this country than elsewhere. After introducing the company that invented and is the sole manufacturer of the MTD, Compound Security Systems (CSS), chapter 2 considers the construction of childhood as a concept and how it relates to wider regulatory challenges that have relevance to the MTD and its continued deployment in terms of the construction of space.

Chapter 3 follows this background to the MTD by providing a wider context to the legal, social and political conditions that existed within the UK during the period in which the MTD was developed and marketed. It highlights the portrayal of children and young people in the UK media and government policy in the areas of criminal justice and the Anti-social Behaviour Order (ASBO) where they are depicted as potentially dangerous perpetrators of crime and vulnerable victims of crime. It is somewhat contradictory that children and young people are simultaneously viewed as a group that requires regulation because they are potentially dangerous, yet also require regulation because they are vulnerable. The concepts of regulation and risk theme this literature review chapter and provide the theoretical dimension to this case study of the MTD and its development in the UK. This has involved regulation as law which has been analysed with respect to the impact that human rights regulation, for example, has had on the development of the MTD in the UK. In addition the governmentality perspective of risk has been deployed as a theoretical lens to interpret the use of MTDs by various stakeholders such as the public authorities that have been revealed to be the main purchasers of these devices.

Chapter 4 entails a critical discussion of the utility of human rights which has been one of the key debates that has surrounded the use of MTDs. This chapter draws on the academic literature from the sociology of human rights and investigates an alternative approach to the use of human rights as a rule based doctrine aiming to further standards in civic, social, economic and political life. This chapter reveals how sometimes confused and uncertain human rights standards appear to be relative to the MTD due to the different interpretations and decisions of human rights emanating from regulators of human rights and authorities that have a responsibility to uphold human rights. This includes the variable understandings produced by institutions in the UK with Scotland as a separate case, European bodies such as the European Union (EU), the Council of Europe (CoE) and international bodies such as the United Nations Convention on the Rights of the Child (UNCRC). The different human rights

standards applied by the various regulators of different human rights instruments and the variable levels of enforcement have produced a tiered approach to human rights standards in the UK with regulators focusing on the authority of the European Convention on Human Rights (ECHR) and neglecting other human rights instruments. This chapter will also consider the impacts of social inequalities, power and politics on the application of human rights in practice in the UK and the problems this poses for children and young people in particular.

The methodology selected in chapter 5 was that of a case study so that a number of areas of interest about the MTD could be examined. This chapter was structured to follow the typology for case study developed by Thomas (2011) to describe and explain the various stages of the research process systematically. This included an investigation into the role of the main stakeholders for the devices: the manufacturer of the devices, the youth advocacy groups that opposed the MTDs and the public authorities. Using a mixed methods approach an analysis was undertaken to understand the status of the MTD in the UK and in law. The empirical methods selected, how data was collected and analysed and the ethical implications are justified and discussed in this chapter.

Chapter 6 of this thesis considers how regulation in law has been used by young people and youth advocacy groups to oppose the use of the MTD through a legal analysis. In the first part of this chapter the potential effects of the MTD to children and young people in the UK is applied to Article 3 of the 1950 European Convention on Human Rights (ECHR) which prohibits torture, inhuman and degrading treatment. The application of the 1989 United Nations Convention on the Rights of the Child (UNCRC) to the MTD in relation to the UN Committee on the Rights of the Child's general comments regarding corporal punishment is also considered. The second part of this chapter considers the means and strategies that both Liberty and the Children's Commissioner for England have used in their attempts to resist and reduce the use of MTDs in the UK. This has involved not only the use of the law and human rights but targeting the MTD at a local level by individual public authorities through public pressure and negotiation.

Chapter 7 considers the role of the public authorities in the purchase of MTDs and examines the annual financial accounts of the manufacturer of these devices. In the first part of this chapter, it is shown that a quarter of the public authorities contacted in this study have purchased a MTD with the vast majority of these devices acquired prior to 2008. The MTD is not as widespread as anticipated in the UK with evidence that human rights concerns about the devices may have had some success in reducing use of the devices. In the second part of this chapter, the role of the MTD in crime control strategies produced by Crime and Disorder Reduction Partnerships (CDRPs) is considered from two periods, 2005-8 and 2011-14. It is suggested that although the rate of purchasing MTDs may have

declined, CDRPs still target young people as a key group for reducing ASB with many CDRPs favouring alternatives to MTDs that achieve similar objectives, to limit young people's access to space.

Chapter 8 shows that the way in which MTDs have been used by the public authorities has changed. Documents produced by public authorities in the form of mosquito protocols had suggested that public authorities initially intended to target groups of young people with MTDs, rather than targeting young people in general. However, analysis of the devices since approximately 2008 suggests that these devices operate as part of a broader strategy aimed at excluding young people permanently from various spaces and locations. The public authorities accomplished this through long-term deployment of MTDs in some locations or more commonly as a short-term measure until permanent situational and environmental measures could be put into place to prevent or limit young people's access to these spaces.

Chapter 9 concludes the thesis with a review of the evidence and research questions. The main findings of the study and their implications for children and young people in the UK are then discussed.

PERSONAL AND ACADEMIC JOURNEY

From 2004-2007 I completed an undergraduate degree in environmental sciences and I loved it. I have always had a passion for wildlife, biodiversity and conservation and enjoyed immensely studying the wide range of ecological processes, mutual relationships between organisms and the evolutionary strategies that are critical to the sustainment and vitality of the natural world. However, there were also aspects of the programme that challenged me to broaden my thinking and to consider the essential role for human management of the environment and the consequences that policy, particularly bad policy, could have not only on the natural world but on human communities also. The *tragedy of the commons*, for example, a famous essay by Garrett Hardin has long been a classic text for stimulating discussion and confronting students about the plethora of risks that can result from a community that fails to manage an environmental resource for the interests of all (this is not to draw a political conclusion that public ownership of land necessarily results in better environmental management than private ownership). The prospect of gaining a better awareness for policy and a competency for better skills and analysis for critiquing policy led me to subsequently enrol on a new programme in a completely different area of academic inquiry which at times I found completely bewildering, the social sciences. At this point I did not envisage that I would one day further specialise in what was still a completely foreign subject to me.

On my first visit to the sociology department at the University of Liverpool which was offering a MA in Research Methodology, I was given a book, the philosophies of social science, from the programme director to help me with my disciplinary transition. The book was of very little use, although it was no less confusing than the initial few weeks proved where concepts and theories were introduced that I struggled to comprehend and connect to anything that was of practical usefulness. When I was given a tour of the department, however, on my first visit, I was struck by how friendly the academic staff were and I was encouraged to join the social gatherings that the staff and postgraduates convened each Friday evening. This helped me to feel a part of the department, to ask questions and to witness some sometimes fierce arguments on a range of different intellectual and political topics. In persevering I started to find my feet in the module on social policy after an inspiring presentation that showed how lives had been positively transformed by policies enacted through historic pieces of legislation such as the National Assistance Act 1948. One of the first essays I wrote for this module examined the policy underpinning Anti-Social Behaviour Orders (ASBOs). The treatment of young people in the UK was a theme I returned to in the Masters dissertation on one of the controversial, well-publicised issues of the time, the MTD.

On reflection this project has been a testing journey intellectually as well as personally. Grappling with new concepts, perspectives, techniques and methodologies in both law and the social sciences has proven very challenging. As did losing 3 family members in quick succession that also required me to provide care in the family home.

The main motivation I had for pursuing this unfunded PhD project occurred in February, 2009, when I co-presented at a seminar at the University of Liverpool for the Centre for the Child, the Family and the Law. Some of the other speakers at this event were young people from Liverpool and Corby including members of the group responsible for opposing the use of MTDs that subsequently inspired a national campaign against the devices. This seminar generated a lot of interest in the findings from my Masters dissertation and I received several e-mails from interested students and young people about the MTD, contacts that remained with me throughout the project. It was the passion of the young people at the seminar speaking about the unfairness of the devices and questioning whether they represented good value for money for their communities that encouraged me to consider these matters more closely.

This introduction and motivation section has provided a brief overview of this thesis on the MTD, providing a short summary of the context, the problems the thesis intends to address and their significance, and the response for how this investigation has addressed those problems. It has also covered some biographical and personal insights from my own academic journey to the social sciences

and the moments that motivated me to undertake this self-funded project. The next chapter provides a full case history of the MTD.

CHAPTER 2: BACKGROUND TO THE MTD

This chapter provides a detailed background and commentary about the device known as the Mosquito Teenage Deterrent (MTD) that has been developed and marketed from 2005 by the company Compound Security Systems Ltd (CSS) in the UK. It describes the devices impact upon children and young people and how it is assessed currently by institutions that more widely regulate sound and health and safety. As well as considering the different reactions to this technology in other European countries that have treated its use differently, there is also a useful graphical like-for-like comparison of the sales performance of the company that sells MTDs internationally with its UK equivalent company. This demonstrates how use of the MTD is more widespread in this country than elsewhere. It reflects a significantly different regulatory attitude to children and young people in public space in the UK, a consequence of the way that children and young people are constructed more generally in the UK.

A BRIEF CONTEXT

Developed by a small business in Wales, the MTD was launched by Compound Security Systems (CSS) for sale in approximately 2006. This was preceded by a small trial of the devices at a local convenience store to gauge the devices effectiveness. The store selected, it is claimed, was routinely hassled by groups of young people that used to congregate outside the store during the day and evening. Their presence was claimed to be intimidating to customers and to staff (CSS, 2006b). Furthermore, calls to the local police to intervene in these matters often went unheeded. The devices therefore offered the company's staff a new, direct means of resolving a potential problem themselves without the possibility of confrontation. CSS reported that this trial had been a tremendous success, that staff at the store were very pleased with the device and its effects, and that staff had not encountered any problems when using the devices (CSS, 2006b). When contacted about the trial, however, CSS were unable to provide any detailed information including how often and how long the device had been used for (CSS, personal communication, June 8th 2008).

In the period following its product launch, CSS continued developing newer and more advanced models of the MTD with improved specifications, functionality and controls including a protective titanium case to protect the devices from vandalism once erected. This culminated in an MTD MK4 by June, 2008. It was during this time that the MTD and CSS received a great deal of publicity from national and international media with the manufacturer reporting a surge in sales for the devices and estimating that as many as 3500 devices had been sold in the UK by June, 2008. In addition, it also

emerged at this time that the major purchasers of MTDs were not in fact shops and convenience stores, but UK police forces and local authorities. The manufacturer in fact estimated that as much as 60% of its total sales had been directly due to purchases from public authorities. Indeed, the City of Liverpool in particular had become an instrumental partner for CSS with Merseyside Police awarding the MTD first prize in its innovation competition in 2006 and assisted CSS with the development of a new version of the MTD known as a Mobile Mosquito Vehicle (MMV). Merseyside Police with the help of Liverpool City Council also purchased a total of 44 MTDs within a period of just 18 months from December 2006 to June 2008.

Young people have largely reacted to the MTD with dismay and concern. Opposition to the devices has been apparent in a number of different countries with critics pressuring legislators and politicians, in some cases successfully, to ban the devices because of their discriminatory and physical effects on children and young people. In 2008, for example, the MTD was banned in Belgium. In the same year in the UK a national campaign was set-up to achieve the same aim and was widely supported by various non-governmental organisations (NGOs) committed to children's welfare and the defence of civil rights led by the Children's Commissioner for England and Liberty. The campaign alleged that the MTD violated fundamental human rights of children and young people in the UK and that the devices would only be effective at moving anti-social behaviour (ASB) from one location to another. The UK government has nevertheless stated consistently that it will not ban the devices even though the human rights case against the MTD has gathered pace (Walsh, 2007; UNCRC, 2008; Wach, 2010). A national campaign that was launched through a petition process in Scotland and which attracted overwhelming support from Scotland Youth Parliament members was also rejected by the Scottish government after it decided that it would not ban the devices.

BACKGROUND FOR THE PROJECT

Initially, this project had set out to solely investigate the human rights implications of the MTD in the UK. This issue has emerged as a major discussion point in the UK media and clearly remains relevant and unresolved up to the present day with recent use of the MTD by one couple in Suffolk, for example, which had been acquired to prevent children from playing too loudly in the street causing unrest with neighbours and the local council (Telegraph, 2015). The implications of the use of these devices has been evident from the outset, although human rights law and the UK's obligations to them has an uncertain future following a series of statements from prominent politicians that have questioned the UK's continued commitment to its human rights obligations. Despite human rights operating as a central argument by youth advocacy and civil rights organisations against the use of

MTDs, the UK government, as well as the devolved administration in Scotland, has decided that it would not ban the devices unlike some of its European counterparts. Labour's Alan Johnson who was Home Secretary for the UK government during the time that the MTD rose to prominence in the national conversation. He replied to a question about whether he would ban MTDs by stating that, *"such devices can be helpful ... where people feel that a congregation of rowdy young people is adversely affecting their quality of life. ... I am committed to using any device ... which bring[s] about the improvement in behaviour that we all seek"* (Hansard, HC Deb 8 February 2010, vol 505, col 620). He also stated that he rejected that the MTD amounted to cruel and unusual punishment, one of the human rights arguments made by opponents to the devices which is returned to in chapters 4 and 6 of this thesis. Since these remarks were made similar commitments have also been undertaken by subsequent UK governments including the coalition government of Liberal Democrats and Conservatives that replaced Labour in May 2010, and now Conservative administrations. Maggie Atkinson, Children's Commissioner for England from 2010 to 2015, like her predecessor involved with a national campaign against the use of these devices, strongly rejected these claims.

"The Mosquito does not prevent anti-social behaviour; it just moves the problem down the road. Children and young people have told us that it is used to deter them from gathering in public areas, even if they are not making trouble" (BBC, 2010).

In addition to human rights, the study had also intended to include resistance to the MTD as a key concept with a plan to directly involve young people as participants to this end. This is because resistance by young people to the MTD had appeared to be a rapidly evolving issue for young people during the Masters dissertation that was undertaken some 12 months prior to this PhD project. In that research (Maher, 2008), young people on the social media website, Facebook, had formed a quite extensive discussion page about the MTD. The comments from this page were subsequently analysed to understand young people's experiences with this device, but also for their reflection on anti-social behaviour (ASB) more generally. This analysis provided the following conclusions, some of which remain relevant to the situation that still exists for young people. The main theme that was representative of most comment was one of misdiagnosis. These comments perceived the invention and use of the MTD as a simple manifestation of ignorance about the causes of ASB by young people which they attributed mostly to boredom due to the lack of available resources, facilities and opportunities for young people to engage in locally with their peers. Hanging around on street corners and outside shopping precincts was therefore felt to be the only reasonable response to this gap in service provision. It was further suggested that because the bulk of ASB was committed by a small

minority of individuals, the MTD was completely the wrong solution and would instead target law-abiding young people that were simply going about their business normally. Nevertheless another group of comments did suggest that the devices may have a positive impact for young people because of the lack of protection they felt they had, particularly from authorities. Other highly represented views coalesced around the unacceptable discriminatory nature of the devices which were considered a contravention of their human rights, and expressions of serious concern about the short and long-term effects of the MTD upon them and their hearing particularly for individuals that may be even more sensitive to sound. Finally, many young people felt that the MTD was likely to provoke as many incidents of ASB as it was likely to deter.

In spite of these previous findings and preliminary data from the numbers and uses of the MTD being less than anticipated, resistance to the devices by young people was not considered a sufficiently broad concept to capture the realities for the MTD in the UK. The most significant struggles that were connected with the devices were at a local level, involving the decisions of the public authorities that having purchased the devices had to decide how they would use them. It was to this context that the project turned its focus to understand the public authority policies with consideration of the role of the organisations opposing MTD to influence it, such as the Children's Commissioner for England, Liberty, the civil rights group, and a few influential young people's representatives and groups. The project therefore evolved to consider the themes of regulation and risk that were so clearly emblematic of the status and uses of the MTD by the public authorities and what this was able to tell us about society and its public policy towards children, young people and their access to space. Moreover, in following the MTD, it has become an indicator for how useful human rights concerns for children and young people in the UK for affecting change since the devices legal future has never been questioned at a UK level in contrast to other countries. Accordingly, the following research questions were felt to be most relevant:

- a. What is the relationship between young people and notions of regulation and risk?**
- b. How have different stakeholder groups interpreted and approached the MTD as a technology?**
- c. How have notions of regulation and risk been deployed and mobilised in the context of the MTD?**

There were three kinds of public authorities that have been examined in this thesis. There are the police authorities, local authorities such as town, district and municipal councils, and multi-agency bodies known as Crime and Disorder Reduction Partnerships (CDRPs) which comprise of a number of discrete public authorities within a defined geographical area. All of these public authorities have a

responsibility to uphold the 1998 Human Rights Act (HRA). Furthermore, the local authorities also have a duty of care to children and young people. This is a legal standard and requires, in its most elementary form, that local authorities in contact with children and young people protect them reasonably from foreseeable harm and act justly, fairly and reasonably in their dealings with them [Donoghue v Stevenson 1932 AC 562]. This standard does not apply to the police or to the CDRPs.

The core group of public authorities included in the CDRP are the police authority, local authorities, foundation trusts, probation and prison services, and fire and rescue. They are required by statute to co-ordinate and combine their efforts to do "all that it reasonably can to prevent crime and disorder in its area" (Crime and Disorder Act, 1998, §17). This definition was subsequently amended in §19 of the 2006 Police and Justice Act to include "preventing the misuse of drugs, alcohol and other substances, anti-social behaviour and behaviour adversely affecting the environment." To deliver their objectives CDRPs are required to produce policies in response to a crime audit which forms the basis of their tri-annual strategies.

All of the public authorities that have been analysed in this research are based in England only because of the devolved administrations in Wales, Scotland and Northern Ireland and the differential policy and legal frameworks. This has included preliminary data from the use of MTDs by individual public authorities (the police and local authorities) in England, and a more detailed analysis of the role that these devices are intended to fulfil alongside other regulatory measures in crime control strategies for the governance of young people by CDRPs in England. It does discuss the decision of the Scottish government not to ban the devices also.

This chapter will now outline the background to the MTD, which is the main subject of this case study. In doing so, it will consider the important definitions of children and young people and space that form the boundaries of the inquiry. In the first instance the development and characteristics of the MTD will be outlined and how their deployment compares between the UK and other countries. Next, how children and young people are socially constructed and defined in policy and law will be discussed and factors relevant to access to space by children and young people identified.

BACKGROUND TO THE MOSQUITO (MTD)

Developed by a small business in Wales, the Mosquito (MTD) was created in 2005 by inventor Howard Stapleton. The concept for such a device was apparently motivated by an incident involving his 15 year old daughter who was too afraid to go into a local convenience store near to the family home in Merthyr Tydfil, Wales, to buy a pint of milk because of an intimidating gang of 6-8 youths that were

congregated outside of the store. Apparently when visiting the store the next morning to complain to the shop owner about his youth problem, the store owner challenged Mr Stapleton, in the security business, to develop a solution to the problem.

Mr Stapleton's inspirational idea, according to some interviews he gave to the written press, was the result of something that he remembered from when he was 12 and visiting a factory run by his father in London. At this factory noises were produced that Mr Stapleton had found unbearable but that the adult workers simply did not recognise. It was this noise that Mr Stapleton then spent the next few months perfecting while developing a prototype device in which his four children were used as guinea pigs to test its impact.

"I got it so that only my kids hated it and my fiancée and I were completely unperturbed" (Telegraph, 2006).

Upon completing his prototype, Mr Stapleton contacted a chain of convenience stores, Spar, who agreed to install a single device for a trial period on the outside of one of their convenience stores in Barry, south Wales. The store owner Richard Gough claims that the store had been plagued with significant problems from youths that were smashing windows and abusing staff verbally and physically. *"On the low end of the scale, it would be intimidating for customers... On the high end, they'd be in the shop fighting, stealing and assaulting the staff"* he told the New York Times (2005). He also suggested that the use of the MTD had made an immediate impact and within 2 weeks the problem with youths had gone away entirely. Since then the MTD had only needed to be used sparingly when youths returned to congregate outside the store again.

"Initially, the young people gathered as normal ... repeatedly coming inside the store with their fingers in their ears 'begging me to turn it off.' ... "I told them it was to keep birds away because of the bird flu epidemic" (New York Times, 2005).

In the period following the product launch, Howard Stapleton, a director at CSS, continued developing newer and more advanced models of the MTD with improved specifications, functionality and controls including a protective titanium case to protect the devices from vandalism once erected. This culminated in an MTD MK4 by June, 2008.

WHY MTDs?

In recent years a number of new technologies have been developed and unveiled to combat the problem of anti-social behaviour (ASB), specifically targeting young people. These technologies not only claim to be effective, but promise a range of benefits and significant cost-savings over traditional forms of policing and the administration and enforcement costs of various civil and criminal control measures such as the anti-social behaviour order (ASBO). For example, one technology that has been used by some public authorities on high streets and local estates to deter groups of young people from gathering has been the use of so called 'acne lamps' (BBC, 2009). These fluorescent pink spotlights are so powerful that they draw attention to spots and unflattering skin blemishes by making them stand out and embarrassing.

Among the most publicised of these technologies is the MTD, a device that has been marketed as the ultimate technological solution to repelling and dispersing the presence of unwanted youths. It is described on its manufacturer's website as "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.... [A]nti-social behaviour has become the biggest threat to private property over the last decade and there has been no effective deterrent until now" (CSS, 2006a).

In August, 2008, the inventors and sole manufacturer of the MTD, Compound Security Systems (CSS), stated they had sold approximately 3,500 MTDs in the UK since they were made available for purchase in January, 2006 (Maher, 2008). A new version of this device became available towards the end of 2008: the MK4 'anti-loitering device' retailing at £495 per unit from the CSS company website (see CSS, 2013a and figure 1, below). The CSS website claims that the devices have two frequency settings, a high pitch range (17 kHz) that can only be heard by children and young people and a lower frequency range (8 kHz) which can be heard by most people. The device also has a maximum volume output of 108 dB and can be operated manually, remotely and activated automatically by a variety of commercially available sensors and timers. A stainless steel cage can also be purchased to surround the devices to prevent possible damage from vandalism. A similar, apparently less powerful MTD product was also developed called a mini-mosquito with half the working range of the MK4 costing £350 (CSS, 2013b). However, this mini-mosquito product is no longer available to purchase from the company website and appears to have been withdrawn. CSS does, nevertheless, sell security products other than MTDs and some of these products including MTDs are sold internationally to Europe, Australia and North America.

Designed to produce high-pitched irritating sounds, likened to the buzz of the insect that shares its namesake, the MTD is designed to be inaudible to any person above the age of 25. The phenomenon that makes this possible is a natural and progressive deterioration of the ability to hear high-pitched sounds which occurs with increasing age in humans, known as presbycusis (Harries et al., 2005). Nonetheless it is important to make the distinction that the high-pitch sounds produced by MTDs are not related to loud or deafening noises. A test report from the National Physical Laboratory (NPL, 2005) has suggested that the MTD is not capable of damaging the hearing of children or young people when it is operated and installed correctly, providing it is not in proximal contact with children and young people.

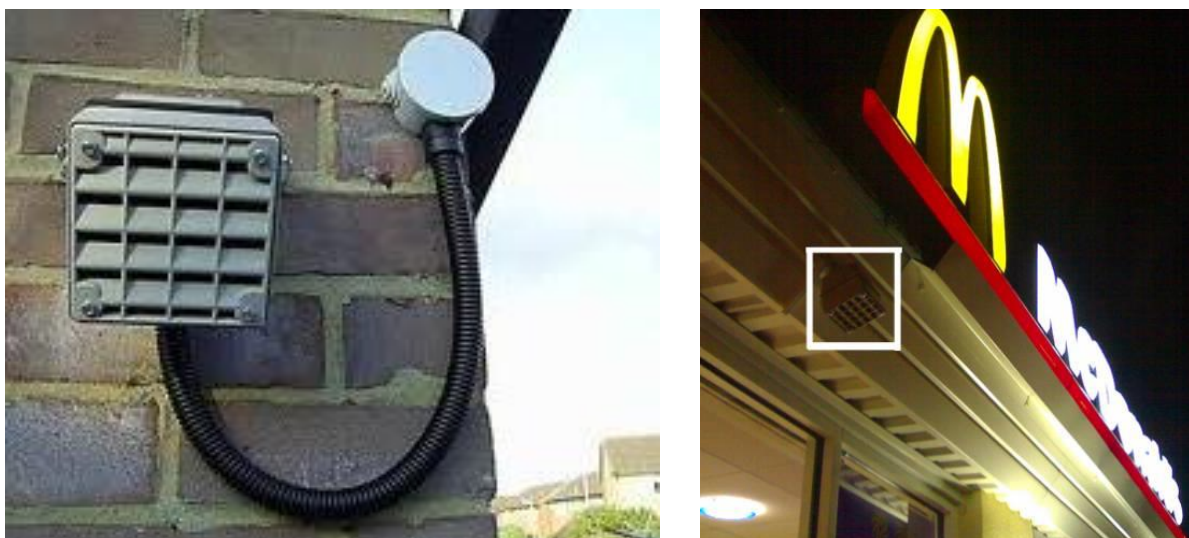


Figure 1. The MTD installed on a residential property (left) and on the premises of a fast-food business (right).

In the UK, on behalf of the Health and Safety Executive (HSE, 2001), the Institute of Sound and Vibration Research has also conducted research into the effects of exposure to very-high frequency and ultrasonic sound to human health and suggested that the effects are uncertain. They commented that little progress had actually been made on exposure limits to very high frequency sound since the 1960s but that recommended limits were based on two aims, to avoid subjective effects and to avoid hearing damage. However, “[n]one of the recommended limits have a fully-developed Exposure Level [sic], combining noise level and duration on a daily basis” (HSE, 2001, p.1). Furthermore, “In sensitive individuals, adverse subjective effects might be expected to appear shortly after the start of a very high frequency noise exposure” (HSE, 2001, p.1). Despite these conclusions, the HSE report only takes account of adult exposure levels and cannot be taken as conclusive in establishing whether MTDs are

safe for children. In 2007, the German Federal Institute for Occupational Safety and Health (BAUA, 2007) published a report on MTDs. The report highlighted potential risks to very young children who may not be able to remove themselves from the vicinity of the noise produced by the device and concluded that at the frequency levels emitted, there may be an onset of physical symptoms such as dizziness, headache, nausea and impairment. Chapter 6 discusses the possible 'weaponsiation' of sound in relation to the MTD.

Additional concerns have also been raised by interest groups such as the National Autistic Society (NAS, 2011) and also the Northern Ireland Commissioner for Children and Young People (NICCY, 2008).

"Some time ago the National Autistic Society voiced concern over the distressing effects such devices may have for people with autism and we contacted the product makers to raise this issue. The NAS Helpline has received calls from people who have been adversely affected by the Mosquito system and who are worried by the distress it may cause to people with the condition" (NAS, 2011, p.1)

"There are also concerns that difficulties (e.g. fits, seizures, aggression and frustration from not being able to articulate what is being experienced) may arise for persons with learning disabilities and epilepsy of all ages from exposure to these devices" (NICCY, 2008, p.1).

The aim of MTDs is that the very high-frequency noise that they produce will prove to be so irritating and uncomfortable to nearby children and young people that as a consequence they will move away from and keep away from its area of operation.

"Every day we receive calls from people wanting to buy a Mosquito Anti-loitering Device. People like you who are fed up with groups of kids damaging their property, hanging around in rowdy groups, smoking and drinking, playing music and generally preventing you from enjoying your home or business... The Mosquito device is the only product on the market that has the teeth to bit [sic] back at these kids. The Mosquito alarm works not by being loud and painful, but by being UNBELIEVABLY annoying to the point where the kids CANNOT stay in the area being covered by the mosquito sound."

CSS, 2013a.

In the context of public concern about young people, CSS developed the MTD to exploit the commercial opportunities that existed in the UK at that time by focusing on the problem of ASB. The MTD was conceived to be an innovative, simple and non-confrontational form of technology, for home or business owners, which could be activated discreetly in order to move young people away from their vicinity. Despite maintaining that the device is safe for children and young people, however, CSS

have also suggested that MTDs require regulation themselves, so that they are used properly. The inventor of the devices (and director of the company), Howard Stapleton, in response to critics of the devices, even went so far as to create an online petition on the then official website of the UK Prime Minister <<http://petitions.number10.gov.uk/MosquitoUse/>> accessed April 12 2010. This website no longer serves as the main portal for the UK governments e-petitions and is defunct. The petition was created on March 1st 2010 and read as follows:

“The Mosquito device has saved 100’s thousands of pounds [sic] and transformed the lives of many blighted by Teen ASB. But there are no laws governing there [sic] use. They can be as big a problem as they set out to cure, please sign the petition asking for legislation to ensure if these devices are used that they are used properly and fairly.”

Mosquito Use petition, Number10 website (accessed on April 12 2010).

Furthermore CSS also claim that they provide to all of their customers, a copy of a “code of practice for the management, installation and operation of youth crowd dispersal systems,” developed in May 2007 with the assistance of the British Security Industry Association (BSIA, 2007). This document states that its aim “is to meet the minimum standards required for the safe operation and deployment of such equipment [the MTD] in a manner that does not cause unnecessary noise pollution in the immediate vicinity of the installation” (BSIA, 2007, p.3). Consequently, it outlines a variety of steps for how owners of the devices can comply with existing regulations around noise and health and safety. The document also outlines that continuous activation of the MTD must never be allowed to exceed a total of 20 minutes and requires a rest period of the same amount of time.

CSS has stated that its main customer for MTDs were public authorities estimating that 60-70% of the 3,500 units sold in the UK to have been purchased by public authorities (personal communication, June 10 2008). As of May, 2006, for example, the London, Metropolitan Police had purchased 33 MTDs (BBC, 2006). Using the 2000 Freedom of Information Act (FOI), a request sent to Merseyside Police revealed that public authorities in Liverpool had amassed a total of 44 devices within just 18 months (from December 2006 to June 2008). Furthermore, Merseyside Police were also piloting another new use of this technology, a Mobile Mosquito Vehicle to be “used around Liverpool in local ‘hotspots’ where there are ASB issues” (Merseyside Police, personal communication, August 11 2008). Plymouth City Council had also purchased 22 devices with all devices congregated around 3 buildings: a community centre, a nursery and a primary school (the Herald, 2008; Tibbetts, 2008; West Briton, 2009).

PUBLIC OR PRIVATELY OWNED MTDs?

Public authorities are the only viable and verifiable means for providing up-to-date and accurate information regarding the usage of MTDs within the UK. Private owners of the devices are under no obligation to notify a public authority (or anybody else for that matter) about their intended use of this device and can purchase the devices directly from the manufacturer. Consequently all of the MTDs referred to in this study relate only to those that have been purchased by or used by a public authority, although some public authorities did purchase MTDs for use by private companies. Hillingdon Borough Council, for example, arranged the purchase of 8 devices for private companies between 2006 and 2007 (personal communication, July 30, 2014).

CSS did nevertheless go to great lengths to claim that they were acting with great care and corporate responsibility in how they were selling MTDs. They suggested that they would only ever sell the devices to public authorities or private businesses and specifically ruled out ever selling the devices individually for residential use, unless it was supported by an accompanying letter by the police (CSS, personal communication, June 9, 2008). They had claimed:

“We could easily have had the Mosquito manufactured in China and sold it through the internet, Ebay, B&Q etc, for £99 to anyone who wanted one. We would have made millions. We decided not to because we did not want people abusing the device. After all, we don’t hate kids. We all have our own” (CSS, personal communication, June 10th 2008).

However, it has been possible to buy MTDs directly from CSS through the internet auction website, EBay since 2013, suggesting that the company has reconsidered its position.

THE RELATIONSHIP BETWEEN MTDs DEPLOYMENT IN THE UK AND OTHER COUNTRIES

While the focus in this thesis is on the use of MTDs in the UK, with some separate data sets of England and Liverpool, it is important to analyse the use of the MTD by the UK compared to other countries. At an international level, opposition to MTDs has been significant within some European states and some, such as Belgium, banning the devices. The Belgian House of Representatives passed a resolution to prohibit the sale and use of devices similar to MTDs within the country in 2008 (La Chambre des

Représentants de Belgique, 2008). The legal status of the devices is also tenuous in France. In April, 2008, a tribunal in France ordered the removal of the MTD from residential property on the grounds of public safety. The owner of the device was fined €2000. At the European level, however, the most significant opposition to MTDs has come from the Council of Europe (which is not affiliated with the European Union).¹ Following an investigation by the Committee on Culture, Science and Education (Wach, 2010) on the compatibility of MTDs with human rights law and international conventions (ECHR, 1950; UNCRC, 1989), it was suggested that the devices were incompatible with these rights and that the devices should be prohibited from being sold or marketed in Europe. The report does nevertheless suggest that MTD violations of human rights law are soft rather than extreme violations (Wach, 2010, at para. 17), and that the European Commission, the executive branch of the European Union, had already allowed member states to make their own decisions about MTDs individually (Wach, 2010, at para. 16). Opposition has also come in the form of the European Youth Forum (EYF, 2008, p.2) which consists of 40 national youth councils and 57 international youth NGOs which issued an urgent resolution in May, 2008, to “smack the Mosquito!”

Although CSS is the lone UK manufacturer of MTDs, the company exports its products through suppliers operating in various countries. CSS, however, separates its UK and international business through an international trading company although both companies are registered at the same address with the same directors. This international arm of the business was known as ‘Compound Security Systems (International)’ or CSSI until the company was renamed in October, 2014 as ‘Compound Security Specialists.’

Through the analysis of CSSI’s annual financial accounts which are available from the UK government’s Company House website (see chapter 5, section 2, part III), it is possible to compare the sales performance of CSSI with its sister company, CSS (see figure 2, below). The results show that the international sales income of CSSI is negligible when compared to the UK sales income received by CSS. In fact, so much so, CSSI was declared a dormant company in 2011 with its operations suspended for a year. Both CSS and CSSI follow a similar trajectory nevertheless in that they reach their respective peaks and troughs in consecutive or the same financial year. After reaching its peak sales income in the second financial year of trading (the year of the global financial crisis), 2007-2008, the sales income of the international business (CSSI) slumped and has never recovered in 5 years since. The sales

¹ The Council of Europe (CoE) is not part of the European Union (EU) and thus has no sovereign powers over EU member states. However, the institutional interpretations of the CoE do carry considerable weight because among its institutions is the European Court of Human Rights which enforces the 1950 European Convention on Human Rights to which all members of the EU are signatory to. The Parliamentary Assembly and the Committee of Ministers are also statutory CoE institutions.

income of the domestic seller of MTDs, therefore (CSS) has consistently out-performed the international sales of the devices (CSSI) in all years.

The difference between the sales figures of the two companies are also suggestive of something more fundamental in how the UK conceptualises its children and young people compared to other countries. Clearly, in other countries the MTD is not considered a positive intervention for regulating the behaviour of children and young people. Public anxieties about young people in relation to risk, fear and crime, however, are well established in the UK (Pearson, 1983; 2011; Pilcher, 1996; Scraton, 1997; Muncie, 1999a; 1999b; Davies, 2011), with media and political portrayals of youth often depicting them as a direct threat to adult authority and in need of stringent regulation (Muncie, 1999a; Goode and Ben-Yehuda, 1994; Critcher, 2003; Valentine, 2004; Burney, 2005). Nevertheless definitions for children and young people are not simple or straightforward with children developing and learning skills and competencies at different rates.

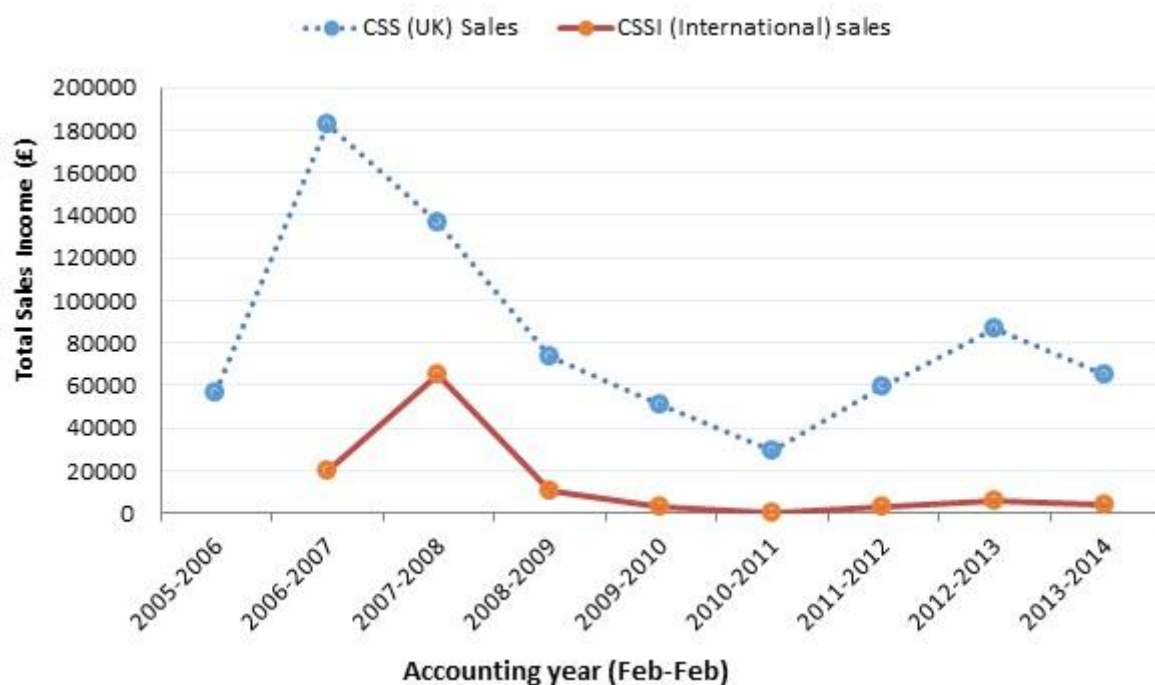


Figure 2: Comparison of Sales Income between CSS and CSSI

DEFINING CHILDREN AND YOUNG PEOPLE

Childhood is in many ways a socially constructed concept. Although there is some basis for considering childhood as distinct from adulthood in biology, it is human beings that determine what attributes and characteristics define childhood and separate it from adulthood. Studies from the history of childhood,

reveal that constructions of childhood have grown and disappeared rapidly according to changing social conditions and cultural traditions that exist in a particular place at a particular time (Heywood, 2001). For example, during the industrial revolution (c.a. 1760) many children aged five or younger worked long and severe 16-hour-days in appalling workplace conditions (Horn, 1995; Cunningham, 2005). This was legally possible because there was no regulation on the minimum age of workers or the number of hours that could be worked until the nineteenth century. Moreover, children were viewed as an abundant source of cheap labour that could be disciplined harshly. In spite of the significant risks for children in the work place thus, the poverty and destitution experienced by so many families during this time meant that the exploitation of children was likely unavoidable (Thompson, 1965; Horn, 1995; Cunningham, 2005; Humphries, 2010). It is now widely accepted that constructions of childhood are continuously modified and reconstructed through a complex interlinking of social, economic and political priorities (Goldson, 1997a).

Childhood is not a universal phenomenon with understandings of what a child is and what a childhood should be varying significantly across time and space (Heywood, 2001). The most common assumption across all notions of childhood is recognition that age is a defining factor (Archard, 1993). This is generally used as a key determinate for when childhood begins and ends. It is often used, for example, to indicate in law when a person is considered mentally competent to make decisions, accept responsibilities and to have acquired skills on a range of issues from sexual consent and marriage, to voting in elections, contracts of employment or driving a car. Embedded within conceptions of childhood are idealised visions and expectations of how childhood should be imagined; what children should be like and what children should not be like. These constructions of childhood influence how a society interacts with its children and young people in families and other social institutions including public authorities and adults in general. Regulation is the vehicle through which these imaginations of childhood are controlled and maintained. Children and young people are nevertheless co-constructors of childhood in their own right (Jenks, 1982; James and Prout, 1997; James et al., 1998), and by challenging and negotiating with figures of authority (about what is appropriate and what is not appropriate) they are able to establish new boundaries of trust and regulation (Scott et al., 1998; Valentine, 2004).

While there have been periods in the UK when one construction of childhood has become dominant, especially when influenced by religious teachings, there has been little in the way of a standardised construction of childhood until contemporary times (Archard, 1993; Heywood, 2001). The main reason for this is the almost worldwide adoption of a key human rights instrument, the 1989 United Nations Convention on the Rights of the Child (UNCRC). This treaty is the most widely adopted human rights

treaty in the world ratified by all members of the UN General Assembly except for two: The United States of America and Somalia. However, on January 20 2015, Somalia ratified the UNCRC and will formally adopt it, subject to exemptions, when the government of Somalia deposits the instrument of ratification at UN Headquarters in New York. The UK meanwhile ratified the UNCRC in 1991 but entered a general reservation in relation to the entry, stay in and departure from the UK of those children subject to immigration control and the acquisition of citizenship. The UK withdrew this reservation to the UNCRC in 2008. The UNCRC outlines the social, cultural, civil, political and economic rights of children that state-parties are to respect and ensure to all children within their jurisdiction. It is therefore the legal and politically defining instrument for the developmental needs of children and young people up to age 18 and will inform the definition for children used throughout this case study.

CHILDREN AND SPACE

For children, the use of space is caught up in two fragmented constructions of risk in the UK. Private spaces tend to be regarded as secure environments for children, meanwhile public space is viewed as potentially dangerous. Conceptualising space as either public or private is actually problematic because many spaces actually contain elements of both (Killian, 1998); nevertheless parents associate private spaces with safety because they are viewed as closed environments managed through processes of access and exclusion (Sibley, 1995a; Killian, 1998). Constructions of public space, meanwhile, are reinforced with negative images and stories from media coverage that warn of the dangers of public space to children such as the threat posed by abduction from strangers (Sibley, 1995a; 1995b; Furedi, 2002; Barnes, 2007). As fear of public space has become etched into the minds of many parents, numerous consequences for children have flowed as a result. Street play by children, for example, is one of the most noteworthy activities to have declined significantly in recent decades (Hillman et al., 1990; Thomas and Thompson, 2004; Valentine, 2004; Beunderman, 2010). Two studies, albeit dated, suggest that just 21% of children admit to playing out in the street or in the area around their home every day, compared with 71% of adults when they were children (Playday, 2007; Living Streets, 2009).

A survey of the views of parents has revealed that a majority identify public space as a potential hotspot for bullying, gangs, juvenile crime, drug abuse, sexual assault and HIV infection (Pain, 1994; Valentine, 2004). As a result parents attempt to minimise the time that children spend outside, alone, denying them the possibility to explore their local areas, forbidding them to interact with other people, to use public transport, or to go out at night without supervision (Thomas and Thompson,

2004; Worpole and Knox, 2007; Living Streets, 2009). In contrast, commercial play spaces have enjoyed an unprecedented expansion in the UK as they are marketed as fun, safe, padded enclosures. Significantly, however, the rapid growth of children's leisure facilities has not been the result of children's attraction to these private play areas but that of their parents. Private play areas permit children to play in the way that their parents would like for them to play in a safe environment with parents able to provide continuous and unobstructed supervision of their activities (McKendrick et al., 2000).

Public space is also portrayed as a space that belongs to adults and is unsuitable for children. There are three suggested reasons for this. That adults fear children: the perception of children in public spaces is that they are up-to-no-good if they are unaccompanied by an adult (Barnes, 2007). Secondly, children fear adults, particularly men as children are instructed to avoid contact with strangers and naughty men that will kidnap them (Valentine, 2004; Barnes, 2007). Thirdly, in urban areas, the regulation of public space and children's use of public space has taken on additional importance for the state. Through government policies designed to promote the rejuvenation of depressed urban areas through processes of regeneration, local authorities have sought to design-out children from public space in favour of commerce and the gentrification of deprived areas (Raco, 2003; Rogers and Coaffee, 2005; Hancock, 2006a). Because children represent the very bottom of a user hierarchy of public space, consultations on how to improve public space often prioritise the needs and desires of other highly preferred social groups (Hancock, 2006b; Beunderman et al., 2007; Travlou et al., 2008). When the views of children are sought through consultations, research has shown that these engagements with children are sometimes used as a mask to achieve the displacement of children through the relocation of provisions to other areas away from the main centre which are likely to be less frequented by adults (Rogers, 2006). These kinds of exclusionary strategies are supported through CDRP schemes in the UK, where a collective of local bodies and organisations work together to prevent both the occurrence and the fear of crime. The enactment of aggressive bye-laws to prohibit children's activities from specific areas (Rogers and Coaffee, 2005; Rogers, 2006), alongside the use of stringent police powers such as stop and search, acceptable behaviour contracts, ASBOs, dispersal zones and curfew orders facilitate the displacement and exclusion of children from public space (Johnstone, 2004; Burney, 2005; Squires, 2008; Crawford, 2009).

One final consideration is children's mobility in space which is another feature of the regulation of children and limits their ability to use, experience and develop feelings towards their local areas. Children's independent mobility over time has been well studied (Hillman et al., 1990; O'Brien et al., 2000; Shaw et al., 2013). In 1971, 86% of seven-year-old children were unaccompanied by an adult on

their journey to school. By 1990, however, only 35% were making this journey unaccompanied by an adult. By 2010, this had dropped further to 25%. This is the result of parents intending to keep their children under surveillance for the purposes of safety and control, with modern technology such as the use of mobile phones extending this surveillance further (Lyon, 2001; 2003; Fotel and Thomsen, 2004). Studies of adult surveillance of children's mobility also highlights the role of chauffeuring children around in cars for travel to and from various leisure facilities, to their friend's houses and to school (Fotel and Thomsen, 2004; Pont et al., 2009).

CONCLUSION

The MTD is an electronic device that produces high-pitch sounds that are intended to affect people under the age of 25 only. The devices do, however, impinge some groups of children and young people more than others, although the long-term impacts of the devices is uncertain. Marketed as a fast and effective method for displacing unwanted gatherings of young people committing ASB, the MTD has been sold in greater numbers in the UK than all of its international markets combined. The main purchasers of the devices in the UK are the public authorities. Consequently, the MTD is a useful case study indicative of how the UK treats children and young people in comparison to other countries.

The legal status of the MTD in some other European countries is fragile after a French court ordered the removal of a MTD on public safety grounds and the devices have been formally banned in Belgium. There has also been opposition to the devices by Council of Europe institutions for young people and at the parliamentary assembly with the devices considered non-compliant with human rights standards for children and young people (Wach, 2010). In the UK, the manufacturer of the devices, CSS, has suggested that formal regulation of the devices is desirable. CSS supply customers purchasing a MTD with guidelines for the management, installation and operation of the MTD, so that owners of the devices are made aware of UK laws and regulations with regard to noise, health and safety.

The relationship between young people and notions of regulation and risk has been considered in this chapter. It has been shown that social constructions of children and young people are shaped by various socio-economic and political factors that are sometimes specific to a particular time and place. These social constructions of children and young people are often informed by notions of risk and are closely linked to how these groups have been regulated historically. This is also evident in how children and young people are regulated today with regards to space. Notions of risk and public space in particular have led to a significant reduction in children's independent mobility and free play in public

space compared with previous generations (Hillman et al., 1990; O'Brien et al., 2000; Shaw et al., 2013).

Despite academic interest into the role of MTDs with several articles raising the possibility of serious legal concerns and the impact of MTDs upon young people and their use of space (e.g. Walsh, 2008; Akiyama, 2010; Little, 2014), there remains little understanding about the social and political contexts for the implementation and management of these devices. Because the UK is the main country that has embraced MTDs in order to regulate young people's presence and activity within space, it provides an excellent opportunity to explore whether the deployment of this technology has affected the human rights of children and young people. Some commentators have suggested there has been a serious erosion of young people's human rights in the UK (Stephen, 2009) and an erosion of civil liberties in general (Bechler, 2010; Ewing, 2010).

The MTD is also an ideal subject for a case study to explore and clarify the regulatory processes that govern the operation and transparency of their use within the UK and how this has been affected by a changing socio-economic, political and legal context. The development and marketing of the MTD emerged during a period where young people as a social group have been increasingly subject to regulatory processes and systems. In the next chapter, the MTD will be located within this context. Young people that do not conform to such a system are subject to punitive and exclusionary forms of social control.

CHAPTER 3: REGULATION AND RISK – A REVIEW

This chapter provides a wider context to the legal, social and political conditions within the UK during which time the MTD was developed and marketed. It considers the way in which different visions of children and young people are revealed in media, law and social policy and how these social constructions manifest in the regulation of children and young people in the UK. The themes of regulation and risk that were identified as valuable concepts for understanding the way that the MTD has been deployed within the UK also help to understand the way that children and young people are managed in the UK. This governance of children and young people in the UK has been extensively criticised over recent years on a wide range of policy platforms. UNICEF, for example, provide a detailed analysis of child wellbeing across a range of developed countries that has consistently shown that the way children live and develop in the UK sets them at a significant disadvantage to their peers in other developed countries. With an extensive list of indicators of children's well-being including poverty, health, educational attainment, as well as more subjective levels of wellbeing, the UK consistently ranks lowly in their international league tables (UNICEF, 2007; 2013; 2016). This is particularly embarrassing because many of the countries ranked higher than the UK have significantly smaller economies and fewer resources to spend on children and young people. Once, when the UK was ranked lowest overall (e.g. UNICEF, 2007), it is clearly indicated that there is a major problem with the way that UK public policy relates and involves children and young people in the UK. The use of the MTD by public authorities similarly raises fundamental questions about how children and young people are conceptualised in relation to public space, regulation and risk. It is unclear what the consequences of excluding or penalising young people in this way from utilising public space may be and whether this is in fact desirable.

In the previous chapter two forms of regulation were identified that underpin this case study. These are regulation in law and risk-regulation of children and young people. This chapter reviews these manifestations of regulation and how they operate in the UK around the lives of children and young people. The two main theoretical paradigms within which regulation can be understood are the traditional approach that defines regulation as the development and enforcement of rules by an authority. The law, for example, promotes the human rights of children and young people as defined through the domestic 1998 Human Rights Act (HRA), the 1950 European Convention on Human Rights (ECHR) and the influential but not legally binding 1989 United Nations Convention on the Rights of the Child (UNCRC). The second definition of regulation which emerged in the 1990s is related to the concept of risk and has gained influence quickly following the rapid rise of the risk industry and social science interest in this concept. This second definition of regulation is aimed at limiting or preventing

the risk of something undesirable from occurring. This is regulation as an attempt to control risk (Hood et al., 2001, p.3; Hutter, 2006), and is better known as risk-regulation within the social science literature. Risk-regulation denotes an intervention by the state or a third party to control risk and reduce it to a socially acceptable level (Klinke and Renn, 2002). In this chapter it is shown that both regulation in law and risk-regulation reinforce a social construction of young people known as risk-anxiety (Scott et al., 1998). This is a dual construction of young people that views them as a dangerous group often portrayed very negatively through news media and government policy around criminal justice, but also as a group vulnerable to exploitation and harm that requires protection.

REGULATION OF YOUNG PEOPLE

In addition to the trends that have affected young people with regard to space and independent mobility that were covered in chapter 2, another trend has been the development of greater regulation of young people by the state. One of the major interventions of the New Labour government (1997-2010) that affected young people was the Anti-Social Behaviour Order (ASBO) which was introduced by the 1998 Crime and Disorder Act §1. This ASBO was modelled on a civil injunction but was given significantly enhanced legal and criminal powers. The purpose of the ASBO was to prevent individuals from repeatedly committing unspecified low-level nuisance or criminal behaviour. These behaviours which were rarely considered to be a priority for local authorities and the police to target were reclassified as key principal aims for all authorities within a community in order to reduce and prevent crime. According to government sources, ASB was a pathway towards future involvement in more serious crimes and criminal careers. Authorities were thus required to intervene early on in this supposed cycle of offending and nip crime in the bud (Muncie, 1999a; Goldson, 2000; 2009; Pitts, 2000). Executives of local authorities who failed to use the newly created ASBOs to make these interventions were threatened by the Home Office with the prospect of losing their jobs (see Burney, 2002).

To act as a deterrent to the perpetration of ASB, the ASBO was moulded into a highly punitive instrument that could impose numerous, severe and lengthy restrictions upon individuals. All of these restrictions imposed would automatically last for a minimum period of two years, regardless of circumstances, with no upper limit with regard to the number of restrictions, type of restrictions or maximum length of time for which restrictions could apply. Meanwhile, the penalty for breaching any of the terms of an ASBO would constitute a criminal offence, punishable by a maximum five-year custodial sentence. For the purposes of defining what range of nuisance behaviours an ASBO would cover, the definition was purposefully left vague to enable local authorities and communities the

discretion to target the local problems they believed were most pressing or problematic to them (Burney, 2005). Consequently, ASB was given the definition of behaviour that has caused or is likely to cause harassment, alarm or distress to persons beyond the perpetrators household (Crime and Disorder Act, 1998).

Despite the intended purpose of the ASBO and the concept of ASB to target nuisance neighbours that civil injunctions of the time had proven inadequate to address (see Burney, 2005), both terms became synonymous for national and local problems associated with young people (Burney, 2005; Squires and Stephen, 2005a; Wisniewska et al., 2006; Squires, 2008; Yates, 2009). A number of studies undertaken to evaluate the effectiveness of ASBOs revealed that the vast majority (approximately 80%) were issued to young people aged between 10 and 25 (Campbell, 2002; Burney, 2005; Home Affairs Committee, 2005; National Audit Office, 2006; Solanki et al., 2006). In particular, young people with learning disabilities were substantially over-represented in these statistics (Campbell, 2002; Burney, 2005, p.111; Fyson and Yates, 2011). In addition, ASBOs which could be secured solely on the basis of hearsay evidence, were often found to have been poorly administered by the judiciary. Some ASBOs have been issued for indefinite periods of time, containing large numbers of unrealistic restrictions many of which were considered vastly disproportionate responses to the behaviours reported which were sometimes trivial if not farcical (Burney, 2005; MacDonald, 2006; National Audit Office, 2006; Solanki et al., 2006; Donoghue, 2007). The definition of ASB itself was also found to have been so ambiguous that it was limited only by a person's imagination as to the range of activities that could be considered anti-social (Burney, 2005; Millie et al., 2005; Squires and Stephen, 2005a; MacDonald, 2006; Donoghue, 2007). Indeed, in some studies just being a young person became an independent predictor for the reporting of ASB within a community (Wood, 2004; Burney, 2005; Millie et al., 2005).

The impact of the ASBO has been far reaching in how it has affected young people and their standing in communities. The ASBO became a fast-track conduit for young people to enter the criminal justice system and often for behaviour that was not in itself criminal (Ashworth et al., 1998; Walsh, 1999; Vaughan, 2000; Brown, 2005; Burney, 2005; MacDonald, 2006; Millie et al., 2005; Squires and Stephen, 2005a; Crawford, 2009). ASBOs also had the effect of fanning public fears of young people. For example, a government initiative of naming and shaming the recipients of ASBOs permitted pictures of the perpetrators to be displayed around their local neighbourhood and published within newspapers. These pictures accompanied a description of the restrictions that had been imposed, the duration of the ASBO, the perpetrators home address and how civilians could go about reporting any breach of the terms specified. The public-political atmosphere surrounding the use of ASBOs gave the distinct impression that ASB was omnipresent and communities were permanently under siege

(Garrett, 2007; Squires, 2008). The ASBO therefore reinforced a culture of intolerance towards young people, ignored their individual needs and forced them to lead their lives in accordance with the wishes of others (Vaughan, 2000; Burney, 2005; Goldsmith, 2005; Millie et al., 2005; Moore and Scourfield, 2005; Squires and Stephen, 2005b; Solanki et al., 2006; Fyson and Yates, 2011).

With regulatory measures to deal with ASB riddled with serious flaws, perhaps new technologies that aim to address these problems, such as the MTD, should be welcomed. However, regulation in the context of young people and the MTD is complex. On the one hand the law regulates young people, yet the deployment of the MTD is also subject to regulations (Walsh, 2008).

CHILDREN'S HUMAN RIGHTS IN LAW

The UK is signatory to numerous international human rights treaties and charters, but the vast majority of these are not incorporated in UK domestic legislation. One exception that is enforceable is the 1950 ECHR (also known as the Convention). The ECHR was first drafted following the Second World War and particularly, the Holocaust, to promote human rights standards across Europe and to settle disputes arising between citizens and member states. The European Court of Human Rights (ECtHR) adjudicates on all such matters related to infringements of Convention rights. In 1998, the Convention rights enshrined within the ECHR were transposed into UK domestic law via the 1998 Human Rights Act (HRA), meaning that infringements of Convention rights would now be tested in the first instance in domestic courts before being remitted to European legislative bodies.

One of the problems with the ECHR, however, is that it was never intended for use by children and young people, nor was it designed with them expressly in mind. As a consequence, children and young people were never given a status that would see them treated separately from adults in terms of their Convention rights. This created a unique problem for them as victims because their needs are unique and the ECHR was lacking in number, specificity, detail and suitability the kinds of provisions that could take into account the special status and development of children. Indeed it has been argued that there are only two provisions, Articles 5 ECHR and 2 of the First Protocol which are directly relevant to the developmental needs of children (Hale, 2006).

A potential remedy to this problem has emerged in the form of another major human rights treaty known as the United Nations Convention on the Rights of the Child (UNCRC, 1989). This treaty is the most widely adopted human rights treaty in the world and outlines a series of substantive provisions of which there are 41 Articles in respect of rights for children up to age 18 and a further two optional protocols. While these substantive provisions generally centre around three themes: protection,

provision and participation, Article 3 of the UNCRC illustrates the treaties overarching aim to promote the status and wellbeing of children in those regards. It reads “in all actions concerning children ... the best interests of the child shall be a primary consideration” (UNCRC, 1989, p.3). Accordingly, with the substantive provisions of the UNCRC being internationally binding from September, 1990, the ECtHR has responded by referring within its judgments specifically to relevant provisions from the UNCRC in cases involving children and young people. These substantive provisions from the UNCRC therefore, have been influential in providing the European Courts with greater flexibility when interpreting Convention rights in respect of children. In effect, the UNCRC has become the equivalent of an interpretive guide for the application of ECHR Convention rights to children and young people.

In one other respect the UNCRC has also been influential upon application of ECHR Convention rights to children and young people and that is through the Committee on the Rights of the Child, which will be referred to throughout this thesis as the Committee. The Committee is the highest international authority for interpretation of the substantive provisions contained within the UNCRC. Their interpretation therefore must be treated with appropriate respect even if the UNCRC provides them with no legal powers of enforcement. The influence of the Committee can be understood through two main processes in which the Committee can publish and disseminate its interpretation of the UNCRC. The first is in the format of general comments which are produced in an ongoing manner and cover a particular thematic issue. This is where the Committee relates one important issue to the most relevant substantive provisions contained within the UNCRC and explains how the Committee understands the content of these provisions. In total from 2001 to 2010, the Committee issued general comments on twelve subjects including the rights of the child to protection from corporal punishment and other cruel or degrading forms of punishment (2006), the rights of children with disabilities (2006), and children’s right in juvenile justice (2007).

The second avenue through which the Committee is able to raise the profile of its interpretations of the UNCRC is achieved through the reporting process on each state’s individual progress towards implementation of children’s and young people’s rights. This occurs periodically every five years after the first report has been submitted. These are known as the concluding observations of the Committee, and they are especially influential upon the ECtHR because they are country specific and define precisely in what areas of the UNCRC a state party is failing to satisfy its obligations in the Committee’s view. In both instances the Committee, through its general comments and concluding observations, has furnished the ECtHR with an additional interpretive tool having assessed the status of children’s rights in each country and given specific and sometimes detailed analysis of what a

particular country should be aspiring towards in respect of children's rights. This is also true of cases involving children in the domestic courts under the HRA.

The implementation of rights in practice, however, for children and young people, can be affected by numerous external factors. The portrayal of young people in the media, for example, can be influential on government policy and the general public's perception of young people as a risky group. In the next section the treatment of young people is considered in the context of criminal justice and the news media.

RISK AND YOUNG PEOPLE

Public anxieties about young people are not new or unique to the UK and are concerns that have been present in the public consciousness for centuries (Muncie, 1999a; 1999b; Pearson, 1983; 2011). A perpetual novelty with roots dating back to Victorian and Edwardian Britain, youths during these periods were also blamed for all manner of contemporary and imagined social problems (Humphries, 1981; Pearson, 1983; 2011; Sindall, 1990; Muncie, 1999a; Davies, 2011). While the public anxieties about youths have changed little from such times, the political response to public concern about youths in relation to crime has changed dramatically since the 1990s (Newburn, 1996; Goldson, 1997b; 2000; 2006; Garland, 2001; Muncie, 2002; Pitts, 2000; 2003).

The re-emergence of authoritarian populism in the youth justice arena marked a radical departure from the conventional criminological wisdom of welfare that had operated throughout much of the twentieth century, underpinned by a substantial body of academic research (Newburn, 1996; Goldson, 1997b; 2005; 2006; 2009; 2010 Muncie, 1999a; Fionda, 2005; Gavin, 2014). During that period young offenders were characterised, by and large, as petty or minor offenders frequently associated with significant material and social hardships (Muncie, 2002). Public policy in the youth justice area has come to symbolise the considerable hardening of public and government opinion towards young people in the UK and is best encapsulated by the new youth justice that was ushered in following the election of a New Labour government 1997-2010 (Goldson, 2000).

These New Labour years have been beset by unprecedented levels of incarceration for children and young people and a rapid expansion of the youth justice system to include civil as well as criminal offences in addition to youngsters that were considered at risk of committing crimes (Goldson, 2009; 2010; Goldson and Muncie, 2006a; 2006b). It reflects a rapid process of 'adulteration' for children and young people, started under the previous Conservative administration, and was accompanied by a raft of policy prescriptions designed to be tough on the causes of crime, to nip crime in the bud, and

to mete out just deserts for offenders (Fionda, 1998; 2005; Muncie, 1999a; 2002; Goldson, 2000; 2005; 2006; 2010). The rapid and seamless shift from welfare to punishment has occurred in a climate where the main political parties have battled to 'out-tough' one another in law and order politics and has been roundly condemned by criminologists (e.g. Newburn, 1996; Muncie, 1999a; 1999b; 2002; Fionda, 2005; Goldson, 2005; 2006; 2008; 2009; 2010; Gavin, 2014) describing it as a process of "demonization and detention, dematerialization and decontextualization, despotism and disqualification" (Goldson, 1997b, p.136-146).

It has been argued through studies of young people in the media, that young people are disproportionately depicted as risky in the context of sensationalised crime stories including sexual assault, violent crime and as victims of crime (Muncie, 1999b; Franklin, 2002; Hughes et al., 2006). This is despite the incidence of such crimes being extremely low. Indeed, an online survey undertaken by Youth Now consisting of 747 participants found that young people themselves felt that they were portrayed by the UK media as "anti-social, a group to be feared, selfish, criminal and uncaring" (Wisniewska et al., 2006, p.17). Other studies involving young people and media content are broadly consistent with these findings (Wayne et al., 2010; Henderson, 2014). A study from May, 2006, analysed news stories in which youths featured as a main news item on six UK daily-television news programmes over a period of one month (Wayne et al., 2008). The findings reveal that 59% of all news stories about youths involved crime. After excluding news stories that featured children as celebrities (28.3% in total), the study revealed just four news stories (1%) had featured either achievements or good citizenly behaviour by young people. In contrast, 72% of news stories focused on violent crime and 18% focused on terrorism. Therefore youths featured as either the perpetrators of crime or as the victims of crime in 82% of these stories. These findings reaffirm the view that young people in the media are "frequently presented as either actively 'deviant' or passively 'at risk', and sometimes as both simultaneously" (Griffin, 1997, p.18).

While consumers of media have the ability to challenge and evaluate the credibility of the information that they are presented with, there are occasions when the media appears to become particularly persuasive and is capable of generating intense public reactions in response to a particular problem or situation. These periods are known as a moral panic and are characterised by times of heightened public concern (Cohen, 1972; Hall et al., 1978; Goode and Ben-Yehuda; 1994; Critcher, 2003; 2006). These periods are often the result of a high-profile incident which subsequently dominates media coverage for several days such as the enormous media publicity which followed the murder of James Bulger by two ten-year-old boys (Franklin and Petley, 1996). A moral panic provokes intense outpourings of emotion and condemnation from the public against a specific group of people that are

cast as folk devils (Cohen, 1972). These folk devils are perceived as serious and growing problems that threaten to undermine the moral fabric of society (Cricher, 2003). Nevertheless, moral panics seldom last longer than a few days with the public and media reaction often considered wildly disproportionate and the event itself, highly exaggerated (Goode and Ben-Yehuda, 1994; Critcher, 2003).

A recurring theme in moral panics is that in a large proportion of cases the role of folk devils has been attributed almost exclusively to youths (Cohen, 1972; Pearson, 1983; Thompson, 1998; Muncie, 1999a; Muncie 1999b; Krinsky, 2008). Therefore, alongside a negative portrayal of youths within media, moral panics add to this public profile with the depiction of youths as serious, violent and motivated offenders linked with a wide variety of social problems (Franklin and Petley, 1996; Franklin, 2002). As Cohen (2002, p.1-2) observed:

“One of the most recurrent types of moral panic in Britain since the war has been associated with the emergence of various forms of youth culture (originally almost exclusively working class, but often recently middle class or student based) whose behaviour is deviant or delinquent. To a lesser or greater degree, these cultures have been associated with violence. The Teddy Boys, the Mods and Rockers, the Hells Angels, the skin heads and the hippies have all been phenomena of this kind.”

Moral panics, however, also cover other concerns about youth in general and childhood particularly, such as them being prone to exploitation and the need for special protection (Krinsky, 2008). Young people therefore trigger what has been defined as ‘risk-anxiety’ (Scott et al., 1998). Risk-anxiety arises when a phenomenon exhibits two signals simultaneously: that they are potentially dangerous to others, yet also potentially in danger from others. It has been argued that one of the consequences of risk-anxiety for children and young people has been the legitimisation of adult authority and control over them. Children and young people, therefore are perceived to need discipline in order to prevent them from causing harm to others while also needing continuous supervision to ensure that they remain protected. Consequently, risk-anxiety reproduces the dependency of children and young people upon adults. It is argued that being increasingly regulated temporally, spatially and socially, which prevents children and young people from encountering situations, increases the vulnerability of children and young people when they encounter unfamiliar situations. This is because they have been denied the opportunities to learn and develop new skills or competencies independent of adults.

“Risk anxiety is primarily expressed as fear for children – worries about their safety and well-being – but also as a fear of children, of what children might do if they are not kept within the boundaries of acceptable childish conduct” (original emphasis).

Scott et al., 1998, p.691.

The concept of risk more generally has been the focus of much debate and analysis in the social sciences. The development of numerous theories and perspectives on risk consider the concept to have a central organising role within late-modern societies. These different theoretical perspectives also imagine different ways of understanding the relationship between the individual and the state.

RISK AND THE SOCIAL SCIENCES

Social science perspectives on risk constitute a broad church that explores the diverse contributions of risk to social life and its integration into the structure of society. In the early 1990s risk emerged as a fast growing body of interdisciplinary research within the social sciences which is often attributed to the impact of Ulrich Beck’s pioneering book, *risk society*, which was translated into English in 1992 (McGuigan, 1999, p.125; Reiner et al., 2003, p.176). This new found perspective of risk was influential in understanding the effects of rapidly changing social structures and conditions upon individual and collective practices in post-industrialist neo-liberal economies. It has since been argued that risk is the central cultural and political concept by which individuals, social groups and institutions are organised, monitored and regulated (Lupton, 1999a). Different interpretations of risk have led to new approaches in many other areas of research including welfare, crime and lifestyles such as has been the influence of risk across the social science disciplines as a whole.

Despite its paradigmatic status within the social sciences, risk remains a contested concept. There is little consensus about what risk is or how it should be studied by the social sciences (Althaus, 2005; Wilkinson, 2010). Furedi (1997, p.17), for example, repudiates any suggestion that any definition of risk can be satisfactory: “no definition ... can exhaust the meaning and usage of the risk concept.” Gabe Mythen (2004) also suggests that catchall definitions of risk tend to concede concrete meaning detracting from the diverse and valuable interpretations of risk as a concept. Yet he also recognises that elastic and vague usage of the term can also lead to it becoming potentially meaningless. This view of risk, nevertheless is perhaps more useful in that it encourages social scientists to empirically explore what risk means to their subjects of study. It is also doubtful that social phenomena are well

suited to general definitions and predictive theories in the same way that is true for the natural sciences (see chapter 4).

As an academic exercise nevertheless there are scholars that have challenged social scientists to reach a general and interdisciplinary definition for risk (Fischhoff et al., 1984; Rosa, 1998; 2003; 2010; Althaus, 2005; Aven and Renn, 2009; 2010). However, the major difficulty of this task has been in reconciling a polarised debate about the nature of risk between two rival ontological and epistemological perspectives. There is the realist (or positivist) perspective historically preferred by natural scientists, and there is the cultural (or constructivist) perspective of risk advocated by some social scientists. Is risk something that exists independently of whether human beings perceive it to be a risk (the realist/positivist perspective)? Or is risk something that requires a human being to attribute it as such (the cultural/constructivist perspective)?

In spite of these abstract discussions, a few distinctive theoretical strands have emerged within the social science literature on risk, each representing a variation on the relationship between the individual and society (Walklate and Mythen, 2010). In the next section these theoretical strands will be summarised for the reason that they are informative for understanding different ways of viewing risk manifested in social life (and also social life manifested through risk). The most well-known theories include the culture of fear, the risk society and governmentality. What the different strands reveal are that risk is an extremely diverse and elastic sociological concept.

THEORETICAL PERSPECTIVES ON RISK

Despite current inhabitants of the UK enjoying unprecedented levels of personal safety and recorded crime continuing to fall, society resonates with communications about human vulnerability and the inability to respond to risks successfully. Numerous risks such as those related to public safety, the environment, economics, health concerns, the breakdown of the family and many more reverberate within the media and public life. The resultant anxiety arising from constant warnings about risk has become self-conditioning and pervasive inducing cultural and political paralysis. Fear, which is often used to engineer a shared sense of unity and consensus around particular issues, especially political, reinforces societies consciousness to its vulnerability and powerlessness (Furedi, 2005, p.132-133). The culture of fear thesis (Furedi, 1997) views risk as a product of social fabrication that is created and then embellished by powerful vested interests in government, media and industry. Furedi (2007, p.5) terms this manipulation of risk and security as cultural scripts reproduced through exchanges between individuals and structures. Producing ever fearful neurotic citizens, the culture of fear is ripe for

commercial exploitation such is the desire of citizens for safety and security. By conditioning citizens to interpret and respond to their lived experiences through a language of fear, society is overwhelmed with feelings of inferiority, pessimism and fatalism which dominates public debate on social and technological progress and reaffirms the political and capitalist order.

“Sadly, shared meaning for most people is confined to fear of being a target rather than being inspired to stand up for a way of life.”

Furedi, 2007, p.98.

Another theory of risk also considers the role of technology and warns of the growing individualised, local and global conditions of risk produced via rapid technological advancement in free market capitalism. Ulrich Beck (1992; 1995; 1998; 1999; 2009), advocate of the risk society thesis, contrasts the extent conditions of risk were implicit to the nationalised industries of the late twentieth century that free-market capitalism replaced. In his analysis, Beck suggests that the scope, make-up and effects of the various risks affecting these two distinctive social epochs changed dramatically from risks that were previously localised, to risks that were now global in their reach crossing state boundaries (Beck, 1992). Whereas localised risks associated with natural disasters and industrial accidents in the late twentieth century could be contained and managed through procedures and institutional actions, products produced through capitalist systems are unpredictable for state authorities and can be global thus defying institutional regulation. Being driven by market forces, the development of scientific and technical knowledge in a free market economy advances at a significantly faster rate than the knowledge of its potential harmful effects. This is because considerable and perhaps permanent damage may have already occurred before it has been possible to determine what regulation is required to prevent harm and to put that regulation into practice. Therefore the capacity for technology to harm escaped democratic regulation long ago (Beck, 1992).

In the risk society thesis the dictum that the market will always provide and resolve societies problems is challenged by the suggestion that it is in fact the rapid growth of economic, scientific and technological systems that are responsible for causing the risks to society that it is presently confronted with such as global warming, mutually-assured nuclear destruction, global financial crises etc (Beck, 1992; 2009; Lupton, 1999b; Walklate and Mythen, 2010). With this assortment of global risks occupying the public agenda, traditional social institutions that have formed the public's response to controlling and mitigating risks have been rendered redundant and obsolete, unable to alleviate these risks e.g. nation states and trade unions (Giddens, 1998; Beck, 2009).

“[A] shorthand term for modern society or industrial civilization... modernity is vastly more dynamic than any previous type of social order. It is a society... which unlike any preceding culture lives in the future rather than the past.”

Giddens, 1998, p.94.

One other popular theory for risk is governmentality, sometimes referred to as the science of government and is the strategy for controlling, organising and ordering a population. Inspiration for the governmentality tradition is largely attributed to the works of Michel Foucault, although Foucault did not actually write about risk. This aspect of the governmentality thesis, as it has become known, has been developed posthumously by various scholars such as Ewald (1991); Gordon (1991); O’Malley (1992); Rose (1999; 2000); Dean (1999a) and many others. Governmentality emphasises the critical importance of knowledge to governance, and how knowledge shapes the outcomes of a person’s choices by their conduct and behaviour. In particular, governmentality relies heavily on the power of a network of expert knowledges (from the sciences, professions and institutions) to dispense information, evidence and practices. These expert knowledges furnish the public with assumable subject positions of what it is possible to think about various issues and what it is not possible to think about them (Foucault, 1978; 1980; Castel, 1991; Dean, 1999a; Mackey, 1999; O’Malley, 2004). This is a diffuse process where individuals consent to the practical benefits of becoming self-governing in various aspects of their lives in order to achieve a variety of objectives including better health, more security, better education and employment and so on (Gordon, 1991).

The emergence of risk as an influential form of knowledge capable of affecting the choices of citizens, has spurred a great deal of governmentality research into discourses of risk and how they are utilised to promote self-governance and achieve specific objectives. By attributing risks to certain activities, behaviours or even people, risk is capable of categorising social life by reinforcing social norms and even attaching blame to specific marginalised groups that are viewed as risky or at risk (Castel, 1991; Dean, 1999a; O’Malley, 2004; Walklate and Mythen, 2010). This perpetuation of narratives of risk is provided by expert institutions that set the bounds of public knowledge with the establishment of societal ‘truths’ that also discredit political opposition. Discourse from these expert groups, therefore, reproduces power relations diffusely without the need for force and discipline to coerce subjects to abide by rules and norms.

“To analyse government is to analyse those processes that try to shape, sculpt, mobilise and work through the choices, desires, aspirations, needs, wants and lifestyles of individuals and groups.”

Dean, 1999a, p.12.

Although these different theoretical interpretations of risk (of which there are many) can appear somewhat compelling they lack empirical support and have a range of individual and collective limitations (Lupton, 1998; Mythen, 2004; 2014; Wilkinson, 2010). For example, the interpretation of risk that is adopted by each of these grand theories of risk envisages a society dominated by a certain type of citizen that acts and thinks in very discrete and deliberate ways with regards to a particular impression of risk. One critique of such approaches has been to categorise these theoretical models as consisting of neurotic, cosmopolitan or prudential citizens (Walklate and Mythen, 2010; Mythen, 2014). They are therefore theories that have only a limited relevance in a general capacity and are highly unrepresentative of society at large. Nevertheless, they can prove to be useful and can be insightful in more tightly defined contexts such as critical studies that focus on specific aspects of certain industries or organisations which may more broadly share some of these outlooks on risk or help to contribute to them (e.g. Morrison, 2014). This is what has no doubt added to the popularity of some of these theories of risk and some of the interesting theoretical insights and debates that have resulted from defining society and its development through a history of risk.

With regards to the grand theories and the MTD there are some parallels with the way that the status and debates around the MTD have developed. The role of technology within the risk society, for example, has revealed useful insights about regulation, the lack of trust in expert opinions and the potential to harm lagging behind the rapid proliferation of new technology. Beck (1998, p.12) warns that 'we no longer choose to take risks, we have them thrust upon us.' This has some relevance to the MTD with some young people rejecting suggestions that the devices are safe for example. Moreover formal regulation and the potential for harm from the devices remains under investigated despite the legal position for MTDs being open to challenge since its inception in the UK (Walsh, 2008).

The grand theories, however, are no substitute for empirical evidence and investigation. At best they can provide a useful framework for approaching problems of risk in a narrowly defined context. Perhaps the most obvious application of the grand theories in this regard is with governmentality because it promotes a more critical approach to the language and the messages communicated through narratives of risk. This can encompass ideas and policy developed by organisations, businesses and state institutions lending itself to analysis from a wide range of social science methods.

FRAMING THE CASESTUDY WITH GOVERNMENTALITY

The incorporation of governmentality in this case study coincided with the project embracing the investigation of public authorities which emerged following a participant observation of an MTD and its use by one public authority. Governmentality thus provided a useful perspective for linking theory with the information and evidence that had been observed regarding the use of the MTD. As a theoretical framework the governmentality approach facilitated the analysis of data collected from other stakeholder groups providing direction and further opportunities for investigation into how stakeholders utilised the MTDs as part of a much wider context through policies of crime and ASB. Although governmentality tends to be rather less sociological than rival interpretations of risk, its main strength is derived from identifying and drawing together political and particularly ideological approaches to the governance of populations through mechanisms of attaching blame and responsibility to individual for their own circumstances and consequences. This resonated with the UK social construction of children and young people that has been elucidated in this and the previous chapters. It has also been highlighted in other research projects that have used governmentality theories to identify patterns within public policy and practice, for example, to scrutinise new approaches to many programmes such as volunteering, social work and even criminal rehabilitation projects some of which are discussed below.

There is nevertheless a tendency through governmentality approaches that gives credence to a statecraft that is highly disputable. For example, critical approaches to formal education in recent years have prompted concerns about a totally pedagogised society (Bonal and Rambla, 2003) or a public pedagogy (Giroux, 2004) conflating education and civil society with power. This tradition has therefore looked sceptically at developments such as citizenship education that was formalised in the UK national curriculum in 2002 for young people aged 16-18 and have been singled out as a form of pedagogised power to harness attitudes of self-governance, neo-liberalism and entrepreneurialism. However, empirical evidence appears to contradict these assertions (Pykett, 2007; 2009). Indeed it has been suggested that citizenship studies have actually promoted reflexivity among students, teachers and even policymakers to critically question and challenge the political and moral foundations for citizenship education (Pykett, 2009). While this may still be described as some form of cultivating self-governance among students, it cannot be likened to a factory of imparting particular identities and ways of seeing the world upon students that has sometimes been popularly theorised. Therefore there is a pressing need to ensure that the findings of this case study remain consistent with the empirical evidence collected and to be mindful of the influences that grand theories can have upon studies of risk.

The most useful theoretical paradigm through which the case of the MTD can best be understood is governmentality since the role of the public authorities and CDRPs that have been driving sales of these devices is crucial to understand. Therefore, a view of risk is required that seeks to understand why and what the public authorities are in fact doing or trying to do by taking this course of action. This requires a view of risk that takes into account practices of governmentality and the role of technologies of government and responsabilisation. The MTD can have a part to play within these strategies to promote the self-governance of young people by persuading them through force that it is in their own interests to take more responsibility for their own lives and how they spend their time. However, this is not the typical way that the rationality for responsabilisation is structured.

Some programmes developed in order to facilitate induction to processes of responsabilisation for young people have seen the UK government allocate significant amounts of funding, since the 1990s, to a series of educational and volunteering programmes (Rochester et al., 2010). For example, between 2006 and 2011, the New Labour government spent £158 million on volunteering projects alone (Ellis Paine, 2009; cited from Dean, 2013). In addition, the National Citizen Service which was founded in 2005 to create 1 million new volunteering opportunities for young people has seen its budget rise from £13 million in 2010, to £37 million in 2011 and to an estimated £137 million in 2015 due to the Conservative Party's 'big society' agenda (Hillier, 2012; Dean, 2013).

Responsibilising vulnerable young people is also a key target of government. Service providers of child welfare, adolescent mental health and juvenile justice are all expected to contribute to this outcome. Research suggests that children and young people's progress within such institutional settings is often described and measured in terms of compliance and willingness to engage with discourses of responsabilisation (Liebenberg et al., 2015). There are serious consequences for those children and young people that are considered resistant to this process or that are viewed as uncooperative. Children and young people within these settings are therefore viewed as rational actors making deliberate choices and there is little regard given to their maturity or their individual circumstances. One of the interesting applications of governmentality theory, however, when it has such a clear resemblance within public policy and practice, as it does with responsabilisation in this context is that the limitation of the theory is also the limitation of the policy. Co-opting children into the role of prudential citizens to attain a favourable outcome and furthermore expecting them to reprise this role in light of their multiple other problems and difficulties that they will encounter in the future would seem to seriously undermine the efficacy of this policy.

Nevertheless, as a regulatory and disciplinary tool responsabilisation can be utilised to achieve a number of different outcomes. Many applications of responsabilisation focus on attempts to steer

young people towards normalised ways of acting and thinking with the aim that these individuals will become responsabilised citizens. However, there are also other kinds of responsabilisation which may use coercion or punishment to target those individuals that have proven resistant or incapable of following this lifestyle. It is within this role that the MTD may best fit such a strategy. In these circumstances, the only remaining option may be exclusion. As Rose (1999, p.240) has highlighted:

"I suggest that we can crudely distinguish two families of control strategies: those of inclusion and those of exclusion. And, as far as strategies of exclusion are concerned, I suggest a further division. On the one hand there are strategies that seek to incorporate the excluded, through a principle of activity, and to re-attach them to the circuits of civility. On the other, there are strategies which accept the inexorability of exclusion for certain individuals and sectors, and seek to manage this population of anti-citizens through measures which seek to neutralize the danger they pose."

CONCLUSION

A review of regulation and risk in the context of young people in this chapter has further revealed that social constructions of young people are integral to this relationship. The relationship is also dynamic and can change rapidly when narratives of risk and regulation are mobilised through sources such as the media particularly during intense periods described by Cohen (1972) as moral panics. Young people have been frequently cast in the role of folk devils through this process (Pearson, 1983; Thompson, 1998; Cohen, 2002; Krinsky, 2008; Muncie, 1999a; Muncie 1999b). Since the 1990s government youth justice policy has increasingly reflected a zeal for punishment instead of the welfare principles that dominated youth justice in the twentieth century. This change in philosophy has been widely condemned by criminologists who have suggested politics rather than evidence has been responsible for this policy change (Newburn, 1996; Goldson, 1997b; 2000; 2006; Garland, 2001; Muncie, 2002; Pitts, 2000; 2003). The development of ASBOs, for example, which have been overwhelmingly applied to young people with learning disabilities and carry punitive sanctions with no limit on the number of restrictions that can be applied for a minimum period of two-years. These restrictions could limit young people's access to various places and activities, limiting their use of public space to certain times of the day and are sometimes impractical for young people to observe. Breaching the terms of an ASBO is automatically a criminal offence. It has been argued (Squires, 2008) that ASBOs have led to a large expansion of the criminalisation of young people, sometimes for behaviours that were not even considered criminal in the first place. The widespread portrayal of young people with ASBOs has fuelled public concern that young people are out of control in the UK (Garrett, 2007; Squires, 2008).

Regulation by law has the potential to affect the use of the MTD and this is shown in chapters 6 and 7 of this thesis. Through human rights which are enshrined into UK law through the 1998 HRA, young people do have recourse to a legal protections that can challenge public authority's use of MTDs. The HRA and the 1950 ECHR upon which it is modelled guarantee a series of rights that were designed principally for the protection of adults following WWII and the holocaust rather than children and young people. However, due to the almost worldwide ratification of the 1989 UNCRC, the courts have increasingly applied a doctrine that in cases involving children and young people, the rights provided within the HRA or ECHR must be interpreted through the rights and standards that have been recognised and enshrined within the UNCRC.

The main theoretical perspectives of risk that have dominated the social sciences have been considered in this chapter. Governmentality is the most appropriate theoretical lens to explain and analyse the deployment of MTD as public authorities emerged as the main purchasers of MTDs in the UK. Governmentality promotes individualisation and the values of self-governance. Aiming to steer people towards the realisation that they must take control of their own lives (O'Malley, 1992; Rose and Miller, 1992; 2008; Rose, 1999; 2000; Dean, 1999a), 'responsibilisation' is considered the only route for happiness, prosperity, security and good health (Gordon, 1991).

In this chapter I have argued that there are different regulatory paradigms that affect young people, regulation by law and risk-regulation. Both forms of regulation utilise a risk-anxiety view of young people (Scott et al., 1998) evident in how regulation operates in the UK around the lives of children and young people. This ambivalent construction of young people leads to control of their access to space through criminal justice powers and devices such as the MTD. In the next chapter a critical discussion considers the value of human rights in the process of ameliorating the problems for children and young people presented by the MTD. This has been a key debate in various countries involving citizens and authorities at a domestic, European and global level regarding the use of MTDs with different interpretations and conclusions about its relevance with human rights law. This chapter will draw on the theoretical literature from the sociology of human rights and critically examine the utility of human rights as an instrument for delivering its universal goals of equality for all humans in respect of economic, social and political rights. This epistemic or rules based approach for defining universal standards for human rights is at odds with the discreet social contexts that enable human societies to learn and develop solutions to problems. It is also at odds to the way that modern human rights were actually forged since consensus on universal standards was obtained on a fragile basis during a period when the world was dominated by the influence of European countries. The chapter will also consider

the impact of social inequalities, power and politics on the application of human rights in practice in the UK, particularly the problems that this has caused for children and young people.

CHAPTER 4: THE SOCIAL SCIENCES AND HUMAN RIGHTS

Social science disciplines such as sociology have only in the last few decades started to consider the utilisation of human rights in view of deep historical and philosophical scepticism about these kinds of theories. In setting universal standards for human civilizations to guarantee to all, human rights have become a highly codified selection of rules that are intended to apply equally in all circumstances. Despite its powerful moral rhetoric, however, there is serious doubt that the use of these rule-based approaches for delivering universal standards can produce the cumulative successes that are idealised within human rights. Indeed the struggles evident within the social sciences provide a valuable example of how these kinds of aspirational theoretical goals for creating systems and models for delivering predictable and reliable results cannot be achieved with respect to social phenomena. With social scientists engaged in debates about the goals and future for the social sciences within academia, the vision of a social science as phronesis is presented which seeks to improve social conditions within society by adding practical knowledge to inform public understanding and discussion. This approach may be a more useful framework for human rights aims by grounding solutions within their specific contexts.

In the previous two chapters various forms of control for young people have been described including mechanisms of civil and criminal law as well as new technologies. These various disciplinary methods all emerged during a regulatory period where these laws and technologies can be domestically challenged if they are considered non-compliant with human rights law (as was also discussed in the last chapter). However, it is unclear to what extent human rights considerations impart any restraint, protection or opposition to the actions of state parties (such as public authorities and government institutions) and other private interest groups which may be considered excessive. In addition, this chapter will also consider how these assumed legal protections are designed to operate with reference to the academic literature around human rights. It also critically examines the use of these system in practice by considering the problems that exist for disadvantaged and vulnerable individuals/groups that lack significant political representation and access to legal services. The extent to which factors such as power, politics and social inequalities such as education, health and material resources affect the application of human rights is of critical relevance to the MTD and will also provide some useful insight into the connections and contradictions of the various stakeholders and lobby groups that have opposed and supported the use of MTDs.

Human rights have been central to debates about the use of MTDs in the UK and internationally. The two lobby groups that have been advocating for and against the use of this technology, for example, have each sought to operationalise narratives of human rights in relation to arguments about fairness

and justice rather than in reference to legal frameworks and conventions. It is in this much broader public setting that human rights have been contested as each side argues for ownership of this moral terrain. In this chapter, the sociological arguments about the value of human rights as a concept are explored. After a brief introduction to human rights and the differential standards that exist across the world, this chapter will consider how various institutions and stakeholders have approached the use of the MTD in different ways at a UK, European and global level. Finally, this chapter will integrate the problems that can undermine the universal applicability of human rights to vulnerable groups such as children and young people with respect to the MTD, namely, educational and cultural awareness, wealth and access to justice, politics and power. Future chapters will examine the validity of the human rights claims against the use of the MTD and how these legal mechanisms have been combined with other approaches to resist the usage of this technology.

Human rights are loosely defined as a set of protections and entitlements which are possessed by all members of the human community regardless of race, gender, sexual orientation, class, national origin, cultural background or other status (Turner, 1993; Frezzo, 2015). In this sense, human rights are theorised to be equal and universal to all and can encompass civil, political, social and economic rights. The different kinds of protections that human rights provide are most commonly qualified where an authority can legitimately encroach upon human rights protections if a number of tests and conditions have already been met (e.g. for a development planning application). Less commonly, human rights are absolute where any interference will not be permitted (e.g. subjecting somebody to torture).

THE SOCIOLOGY OF HUMAN RIGHTS

Unlike other academic disciplines in the social sciences the issue of human rights has received relatively little sociological scrutiny until as recently as the 1990s. This is despite numerous studies, within the discipline, that have focused on the organisation of social movements in the pursuit of rights. The reason for a “deafening silence about rights in sociology” (Turner, 1993, p.163), however, is not immediately apparent. Some sociologists suggest that a sociology of citizenship has been functioning as a substitute for a sociology of rights due to the historically contested nature of rights and the inevitable questions that arise for morality (Turner, 1993, p.176; Somers and Roberts, 2008). Rights, for example, have been defined separately as rudiments of natural law and as social constructions (Turner, 2006; Gregg, 2012). Classical sociology is also considered by some to have been

wary of rights discourses recognising the value laden (Weber), illusory (Marx) and philosophically speculative (Durkheim) existence of rights as moral entities (Turner, 1993; Somers and Roberts, 2008).

Although there is reluctance among sociologists to address the conceptual problems relating to human rights (Somers and Roberts, 2008), interest in the topic has not declined. Initially, discussion had focused around the potential methodological and theoretical contributions that sociology can offer to the study of human rights through prisms of power and inequality (Byrne, 2012; Frezzo, 2015). This has led some sociologists, for example, to attack the language and reliance upon law in studies of human rights which are sometimes viewed as reducing scrutiny of violations to legal processes and enforcement possibilities (Hagan and Levi, 2007; Woodiwiss, 2009). However, this is to misunderstand the aim of a sociology of human rights argue Deflem and Chicoine (2011).

In recent years, a wider disciplinary ambition within sociology has been to produce a public sociology (Clawson et al., 2007). This was the focus of a keynote address from the President of the American Sociological Association in 2004 which encouraged scholars to engage with prominent issues of public and political concern, such as human rights, in order to bring about change. The aims of public sociology, however, do not sit well within a sociology of human rights. As Deflem and Chicoine (2011) explain, a sociology of human rights committed to legal activism, for example, rather than analysis could render the field absolutist and unsociological. If human rights are deployed as a cause for change, which nobody can really take an opposing stance to, research should have revealed law to be an effective instrument towards the accomplishment of human rights objectives. However, this is seldom the case with human rights, nor is it observed within disciplines associated with the law such as criminology, for example, where discrepancies emerge frequently between the aims of law and its consequences (Deflem and Chicoine, 2011, p.112). It also neglects other dimensions to rights such as the need to consider reciprocal obligations that must exist between people towards one-another for the fulfilment of rights since they require and entail actions from others. Moreover, there is the possibility that activist approaches can overlook abuses of human rights in the pursuance of political objectives.

Although a sociology of human rights encompasses much more than the law, including norms, customs, policies, programs and the institutions that afford protections and entitlements to persons in their home contexts (Frezza, 2015, p.94). Ultimately, the aim of the sociologist is to examine the social practices through which claims are fought for and institutionalised rather than narrowly focusing on the validity of a particular rights claim (Morris, 2006, p.242; Somers and Roberts, 2008). This is because human rights are forged through processes of research, negotiation, debate, dialogue, and struggle (Frezza, 2015, p.94). Understanding the context to human rights violations is vital for

sociological studies that seek to explore and understand the development and implementation of human rights.

HUMAN RIGHTS, POWER AND RISK

Due to a desire that human rights should be true for all times and places or act as some kind of yardstick for measuring a countries progress, human rights have been vaguely defined to meet such designs. These definitions also lack a coherent account of the circumstances in which rights ought to be defended and realised. The flexibility of definitions for human rights is also a major weakness in that it has enabled human rights to become an ideological vehicle through which human rights themselves can be abrogated. It allows the powerful an opportunity to capture the morality of human rights and to use them in a way to manage the weak on behalf of some unarticulated ideal. This is sometimes evident on an international scale whereby wealthy nations commit to military policies of humanitarian intervention, for example, with the stated aim of protecting rights within a country, yet through their actions violate these or other rights and cause further long-term destruction to their future attainment. Indeed there are many critics of human rights that point to a Western or Eurocentric bias that is inherent to them. As human rights were formalised in the aftermath of the Second World War they were framed in response to and in recognition of the Holocaust in Western Europe as the definitive mass murder event of the 20th Century. Meanwhile the victims of other mega atrocities that have been perpetrated worldwide have been forgotten, neglected, or at any rate matter less. Examples include Stalin's purges and the gulag (approx. 20 million dead); Mao Zedong's great leap forward (approx. 20-40 million dead); the partition of India (approx. 10 million dead); the Congo Free State (approx. 8 million dead) etc.

In many respects the concepts of risk and human rights share many similar characteristics and problems in that they are stratified by power. The influence of the strong can readily attribute meaning to these terms and define what it is that they should entail and how they should be applied in respect of the weak and the desperate. For human rights this has been revealed in supposedly neutral NGOs in the Western world from the UK, France and USA by making state aid conditional upon compliance with human rights - the standards of which have been set by the donors themselves (Fox, 2002). Similarly, the vague concept of terrorism has presented powerful nations with a useful tool to serve its own political interests, yet the same concept is never applied to the conduct of powerful nations that threaten other states, or those states that hold in perpetuity over other states the threat of nuclear annihilation.

Notions of human rights and risk have also collided regularly in political discourse presenting new difficulties for the proponents of human rights. This is because notions of risk are often bundled-up with social problems that have required extreme and robust measures by the state in order to deal with them. Such issues tend to reflect badly on advocates for human rights as these problems are characterised as either having a society of risks *or* a society of rights (Murphy and Whitty, 2009). This political dilemma is attributable to the ideals that underpin human rights such as universality and equality for all, a cause that becomes self-defeating in the minds of the public if human rights can be used perversely to protect and serve a perceived social bad. Indeed there is limited evidence that human rights have actually been effective at curbing extremes of state policies and practices in any event (Hathaway, 2002; 2003; Moyn, 2013). One study (Hathaway, 2002) found that ratification of a human rights treaty was actually associated with worse human rights practices as a result.

The politics of risk or rights is far from unbalanced however, rights and risk both readily reduce to political interests. While there is a legal process through which anyone may challenge the legitimacy of a decision or action by a public authority on the grounds of human rights law, the most numerous and widespread administrators of human rights law in the UK are the responsible public authorities themselves (local authorities, police and government institutions). Despite appearances which suggest that human rights are politically unresponsive and inalienable, therefore, this is largely inaccurate. Human rights in the UK already acquiesce to political judgements and public pressure as local authorities, police and government all have levels of political oversight. Human rights then, as much as they tend to be regarded as legal entities predominantly, are very much cultural artefacts whose interpretation, application and enforcement is influenced by the prevailing socio-economic and political conditions of the time.

The political steering of human rights decisions by public authorities is both a useful and an efficient system that enables swift targeting of the most prominent human rights concerns. Indeed there are few if any more practical methods that could improve dispensing human rights by the public authorities. Consider for example the problems confronting a legal analysis of existing human rights case law when the issue at hand involves a new technology which may be difficult to compare to previous cases, and when there are no prior investigations that have examined the technology and its potential effects which can inform it. The main limitation for politically focused decision making by the public authorities is that it inevitably fails to give due consideration to the human rights interests of smaller political groups which are significantly disadvantaged if their interests are even considered at all. For children and young people it is particularly problematic because they do not have voting

rights until aged 18.² This social and political reality is shown in the context of the MTD where the human rights interests of this particular group is directly opposed and may even harmed by political decision making that favours a majority of people that perceive young people in public space as a social problem. A similar issue in which children's interests are similarly neglected can be found in chapter 6 where adults have a higher standard of protection than children and young people in law as corporal punishment is permitted for children.

Risk and human rights are by no means mutually exclusive or incompatible concepts that exist at either end of the political spectrum as is sometimes assumed. They work hand-in-hand when serving political interests to the extent that they can override protections for some groups and even normalise these vulnerable conditions for those groups, sometimes with devastating effects. Hannah Arendt (1951) writing on the condition of rightlessness after WWII, for example, described how different processes of division coalesced to ultimately dehumanise a section of the population. These processes involved the use of the law which was a key driver in legitimising the removal of certain basic privileges from the targeted population together with a strategy of redefining the identities and everyday practices of this group of people by the actions of formal institutions and language. For children and young people in the UK where there is an entrenched historical construction of them around issues of crime and disorder in public space, it is suggestive of why securing human rights protections and entitlements for this group presents such difficulty. Risk and rights are beset by stratifications of power than can abrogate the availability of human rights for many groups. Nevertheless, to ameliorate these political difficulties that disadvantaged groups face in securing human rights protections and entitlements, one option is to try and restore balance via the legal human rights avenues available by challenging public authority decisions in the UK. However, the social inequalities inherent in this system and the material disadvantages that already exist for these vulnerable groups mean that human rights are often placed well out of reach for them.

SOCIAL INEQUALITIES UNDERMINE HUMAN RIGHTS

Social inequalities are regarded to be a significant limitation to pursuing rights related matters for vulnerable groups in the UK and also worldwide (Douzinas, 2013). While the different experiences of human rights in developing countries will always make problems within the developed world appear relatively trivial, there are some related themes that they do have in common. This argument is most

² There have been attempts to improve the political representation for young people in public authorities through the election of Members of Youth Parliament since 1999.

persuasive from the developing world context where there are large populations afflicted with abject poverty. The 'full-belly' thesis as it is known posits that rights in developing countries, particularly the civil and political rights that concern this project, are a luxurious and illusory consideration available only to a wealthy elite. For the majority of people in developing countries civil and political rights may appear to be a low priority or possibly redundant as they struggle to gain access to even the most basic of rights such as access to clean water, shelter and community subsistence which remain unfulfilled and precarious. The universality of human rights, therefore, particularly in relation to civil and political rights are completely undermined by simple material economic considerations.

The full-belly thesis is not without criticism. It is an issue that has been widely discussed for many years with some arguing that conversely, civil and political rights are foundational to reducing social inequalities in both the developed and developing world (Goldstein 1983; Howard-Hassman, 1983). There are UK parallels to the full-belly thesis when this issue is reframed through the issue of access to justice. This reveals the many practical difficulties that members of vulnerable groups face when pursuing human rights related problems. Not only are members of vulnerable groups less aware that they have rights (and what those rights are), but they fundamentally lack the resources, confidence and opportunities to prioritise these rights due to their own unstable and often precarious situations (Balmer et al, 2010). The English and Welsh civil and social justice survey has consistently highlighted the incidence of problems affecting vulnerable groups in general and particularly in relation to social welfare issues e.g. housing, health, debt, employment, welfare benefits etc (Pleasence et al., 2004; Balmer and Pleasence, 2014). Moreover seeking and gaining the appropriate legal advice can be exceedingly difficult, particularly for children and young people that have unique needs, a problem that is all the more salient in the UK as a result of recent legal aid reforms in 2012. Some of the consequences of these changes is that they have disproportionately affected the most deprived children and young people by reducing not only the funding available for legal aid in general, but by making applications more complex and denying aid on the basis of factors such as citizenship status, for example, to child migrants (Children's Society, 2015). The number of professionals available to provide advice for children has also reduced by as much as 30% in a year as a consequence (Children's Society, 2015). Legal issues may therefore contribute to the perpetuation of disadvantaged groups (Pleasence et al., 2004).

Access to justice problems in the UK are well-established for children and young people. For several years significant gaps in service provision for children and young people have been evident because of their service needs and the paucity of trained professionals capable of providing appropriate advice. Studies by Youth Access (Balmer et al., 2007; Kenrick, 2009a; 2009b; 2011), which focused

predominantly on young people (aged 16-24) rather than children, revealed that young people had a very poor understanding of both rights and services. They found that in general young people often gave-up seeking advice because they were unable to find services (if they even existed) and often consulted familiar sources of information instead such as family and friends for advice rather than accessing mainstream, professional advisors to deal with these problems. This was due to a widespread feeling amongst this group of feeling helpless and unable to do anything to deal with their problems, which was further exacerbated by unfamiliarity and mistrust of systems that young people perceived as being designed exclusively for adults.

The English and Welsh civil and social justice survey (running from 2001-2009) and the civil and social justice panel survey (from 2010 onwards) are UK data sets principally focused on people's experience of legal problems and advice-seeking behaviour. Analyses based on these surveys have consistently shown that when young people (defined as under 25) are able to obtain legal advice they are almost twice as likely to resolve their problems 'completely' (Balmer et al., 2007; Kenrick, 2011; Pleasence, 2011). Young people also reported improvements in their emotional, psychological, social and material well-being as a result of obtaining legal advice (Widdowson et al., 2010). A conservative estimate based on the 2004 survey suggested that the failure to provide legal advice to resolve problems for children and young people would cost the tax payer at least £1 billion annually as under 25 year olds would as a result become homeless, destitute, wrongly imprisoned or worse (CRAE, 2010; Kenrick, 2011).

Campaigns to redress the balance and promote fair access to legal services for children and young people such as the 'just rights' campaign have demonstrated how important the role of youth advocacy groups and charities are for vulnerable young people by furnishing them with information and advice about their rights and support (Balmer et al., 2007; Kenrick, 2009a; 2009b; 2011; 2012; Balmer and Pleasence, 2014). This particular campaign has included four leading charities: Children's Rights Alliance for England, Howard League for Penal Reform, Law Centres Federation and Youth Access. However, many youth advocacy organisations have struggled financially due to the lack of statutory income due to government austerity and advice services provided by the sector as a whole have reduced as a result (Kenrick, 2012).

Barbara Rayment, Director of Youth Access, highlighted that "*[c]hildren and young people are in a uniquely dangerous situation – they are the least likely age group to get good legal advice, and yet they often need it the most. Today, children and young people in the UK are living on the streets and experiencing serious financial problems because there is no one to defend their rights*" (CRAE, 2010).

Similar access to justice criticisms were also prominent in the most recent concluding observations of the UK Committee on the Rights of the Child, 2008. The Committee, in a wide ranging critique of the government response to fulfilling its obligations under the CRC, expressed concern about the total absence of the CRC from the national school curriculum for children, the general lack of awareness of the CRC among all groups in the UK, the failure to adequately train sufficient numbers of professionals that can work for and with children, and for failing to implement the provisions and principles of the CRC into the structure and practice of schools (UNCRC, 2008, para 20-21). The number of human rights treaties that have proliferated in recent decades are indicative of the aim of universality and human rights having failed for marginalised groups (Peroni and Timmer, 2013, p.1062).³

Although human rights are widely theorised as important moral and legal instruments to defend individuals from coercive state power and political tyranny, vulnerable groups tend to lack the opportunities and resources to pursue legal avenues for their own benefit. They also tend to lack awareness and education about their rights, although organisations and charities can help vulnerable groups to overcome some of these barriers by providing a vital support network to gain access to information and advice (Kenrick, 2009a; 2009b; 2011; 2012). These organisations therefore have an essential role because it is vulnerable groups that are the most likely to need the protections and entitlements provided by their rights as a result of their circumstances. A developed world equivalent to the 'full-belly' thesis therefore would suggest that reducing social inequalities and/or providing some level of funding for organisations and charities that support vulnerable groups is a necessary first-step to securing rights based protections and entitlements for vulnerable groups.

HUMAN RIGHTS STANDARDS AND THE MTD

Unanimity is a fundamental component of human rights, yet a consensus on human rights standards has always been difficult to achieve. In 1948, eight countries actually abstained in the vote at the United Nations to allow for the adoption of the UN Declaration of Human Rights despite some expressing serious misgivings about what they perceived to be a Western project informed entirely by ideas of natural rights developed in Europe. During the period within which these conferences on the

³ These treaties include the Convention on the Elimination of Racial Discrimination (1965); the Convention on the Elimination of all forms of Discrimination against Women (1981); the Convention on the Rights of the Child (1989); and the Convention on the Rights of Persons with Disabilities (2006).

principles of human rights took place, the world at that point in time was completely dominated by European influences both economically and legally (Cobb, 2015). In fact the British were still engaged in a war in Kenya and the Dutch fighting to maintain their control of Indonesia during 1948 when the Declaration of Human Rights was signed (Elkins, 2005). Additionally, none of these European colonies across the world had any representation at all at the United Nations. Therefore a consensus on universal human rights and their standards has always been tenuous. This Eurocentrism remains a key criticism of human rights and also underlines why human rights standards remain so variable in different times and places (Cobb, 2015).

Efforts in Europe since this time have concentrated upon standardising human rights in order to avoid variability and this was formalised through the creation of the ECHR in 1950 (coming into force in 1953). This pan-European human rights treaty relies on a court to adjudicate it to guarantee the collective enforcement of human rights standards across the continent. Despite the best efforts of the ECHR for over half a century (which has also expanded to incorporate some 47 separate countries), the court has on occasion enforced human rights standards that have caused significant resentment in countries that have strong historical and cultural traditions. For example in Italy where Catholic symbols (crucifixes) are customarily displayed in schools, the court deemed this to be incompatible with the ECHR in 2009. The response to this decision, however, has been described as the most widespread opposition in the history of the ECHR (McGoldrick, 2011). Ten other member states, the Vatican, several NGOs and a group from the European Parliament supported an appeal by the Italian government against this judgment which was subsequently reversed 2 years later (*Lautsi and others v Italy*, No 30814/06, ECHR Reports of Judgments and Decisions 2011). The Italian foreign minister Franco Frattini told Italy's *La Repubblica* newspaper: "*The decision underlines, above all, the rights of citizens to defend their own values and their own identities*" (BBC, 2011).

There remains therefore widespread problems across Europe even amongst countries of a similar economic development when it comes to the enforcement of human rights standards when they affect powerful political lobbies and/or involve historical traditions. A UK example of this is discussed in chapter 6 regarding corporal punishment which is legal in the UK yet infringes upon human rights standards that are frequently upheld by the court. To illustrate the different approaches taken by some of the institutions and authorities with regards to human rights, it is important to reflect upon the problems associated with human rights standards that have their roots in the thin and fragile consensus that culminated in the establishment of the UN Declaration of Human Rights in 1948. Universal approaches that are inherently epistemic in their aims are simply inadequate for the analysis of social phenomena with human rights tending to lack awareness of the context that is necessary to

advance human rights standards in many countries. This lack of unanimity on human rights standards by the regulators of human rights treaties is also evident with regards to the MTD.

Human rights standards are highly variable between the various authorities and institutions that uphold and advocate for human rights at a variety of different levels global, European and domestic. This variability has been no more apparent than with the human rights treatment within debates about the MTD with numerous different interpretations and conclusions emerging to produce a confusing picture regarding human rights but also widespread uncertainty about the legal status of the devices. Even within a UK domestic context there is split opinion with authorities and organisations aligning on opposite sides of a binary debate. The UK government has consistently refused to take a position on either side of the debate. However some local authorities have supported the use of MTDs while others have been keen to publicise that they would not allow the devices to be used on any council or public property (see Children's Commissioner, 2010; and chapter 7 for more detail). In addition some influential organisations have also stated that they would not endorse MTDs such as the Association of Chief Police Officers (2008), although there are numerous examples of police forces supporting use of MTDs which can be found in both national and local newspaper reporting about the devices also. This is also evident on the manufacturer website, CSS, as the company previously published customer feedback which included representatives from business, schools and various public authorities (see CSS, 2006b).

A similar position has emerged in Scotland following a public petition that was submitted by the Scottish Youth Parliament advocating for a national ban in Scotland for MTDs (Scottish Parliament, 2010). This petition was subsequently debated on numerous occasions and led to an investigation by the public petitions committee into the impact of the device which included contacting numerous stakeholders about MTDs. This culminated in a series of submissions from a wide range of groups, authorities and organisations such as the Scottish Police Federation, the Scottish Grocers Federation, Scottish Retail Consortium, Association of Chief Police Officers Scotland, Health Protection Scotland, the Children's Commissioner for Scotland, the Equality and Human Rights Commission in Scotland, local government representatives amongst many other contributors. Despite support for the petitioner from some groups with arguments supporting a ban from the National Autistic Society and the Children's Commissioner for Scotland, the Scottish government decided to reject a ban for the MTD in Scotland. They suggested that there was no indication of a widespread problem in Scotland, nor did there appear to be any identified long-term health risks associated with the devices (Scottish government, 2012b).

Uncertainty with regards to human rights standards and the MTD is also present across Europe internationally with some influential European states and pan-European institutions either deciding to ban the devices (e.g. Belgium), take the owners of MTDs to a tribunal as an infringement of public safety (e.g. France) or to recommend a ban on the use and sale of the devices Europe-wide (e.g. The Council of Europe). Although the Council of Europe itself has no binding statutory powers as a pan-European institution, its opinion on MTDs does carry considerable weight. This is because the Council of Europe has under its auspices the European Court of Human Rights to which all EU member states are signatory as well as its own parliament. A report prepared by the Council of Europe's parliamentary Committee on Culture, Science and Education (CCSE) in January, 2010, stated that "marketing, selling and use of Mosquito type devices" should be prohibited in Member States of the European Union, which includes the UK (Wach, 2010, p.7). It was also the opinion of the CCSE that MTDs infringed upon Article's 3, 8 and subsequently 14 of the ECHR and that the devices were also incompatible with Articles 2.2, 15 and 19.1 of the 1989 UN Convention on the Rights of the Child (UNCRC). Europe itself, however, is split on the issue of human rights compliance with the MTD as some European states such as Germany, the Netherlands and Switzerland allow use of MTDs. Meanwhile the other major pan-European institution, the European Union through its executive branch, the Commission, has decided that the use of MTDs was a matter for each individual member state to determine for themselves and that it would take no action (Wach, 2010, at para. 16). Consequently variable human rights standards are observed not only at a UK level but at a European level too with different states and institutions that have a responsibility for upholding and enforcing human rights failing to agree.

At a global level there is much less enforcement capacity for human rights. Indeed with respect to the UNCRC, there is no legal enforcement at all. However the regulator for the UNCRC, the Committee on the Rights of the Child, has also expressed a different interpretation about what human rights aspects may be affected by MTDs. As discussed previously the Committee publishes a report periodically on the status of children in the UK evaluating whether the UK is meeting its obligations under the UNCRC. In their concluding observations in 2008, which is the most recent report published, the only reference to the MTD is contained under a section on children's freedom of movement and peaceful assembly (UNCRC Article 15, which is similar to ECHR Article 11). At no point, however, does the UNCRC discuss the MTD in respect of any other rights. It should be noted nevertheless that this UNCRC interpretation of the MTD was produced much earlier than the positions of other human rights regulators that have been expressed above. This needs to be taken into consideration since the development of MTDs and their affects were still fairly recent by 2008 and the UK national campaign raising awareness of the devices and advocating for a ban was only just underway. This interpretation by the Committee may subsequently change in future reports.

“The Committee recommends that the State party [UK] reconsider the ASBOs as well as other measures such as the mosquito devices insofar as they may violate the rights of children to freedom of movement and peaceful assembly, the enjoyment of which is essential for the children’s development and may only [be] subject to very limited restrictions as enshrined in article 15 of the Convention.”

UNCRC, 2008, Concluding Observations at para 35.

Although the interpretation of the UNCRC adds more variability to human rights standards, its design is significantly different with regards to upholding and enforcing human rights standards compared to the ECHR. The UNCRC invariably produces different human rights standards because its procedure is decentralised in that each Committee scrutinising a country’s responses to implementing their obligations under the UNCRC consists of independent representatives from that country. The interpretation of human rights standards from the Committee therefore is grounded in the existing social context of that country rather than by theoretical interpretations and applications of human rights law.

Due to uncertainty about human rights standards with regards to the MTD it is evident that widespread disagreement exists about the specific human rights rules that may be infringed by the devices. Amongst the various regulatory authorities themselves, for example, there is a striking difference of opinion at the domestic level between UK regulators of human rights: the Equality and Human Rights Commission (2011) and the devolved Equality and Human Rights Commission for Scotland (2010). Each regulator interprets MTDs and human rights differently from each other (see Table 1, below) and differently from the Council of Europe’s interpretation. With domestic regulators unable to agree with regards to human rights standards and the MTD there is clearly scope for UK local authorities, police authorities and other public institutions to evaluate MTDs differently as a consequence. The impact of such a disagreement could have potential impacts on children and young people as a result of use of the MTD. Some media articles, for example, have claimed that there instances where MTDs have prevented children and young people from playing outside, has caused sickness and some children being unable to sleep at night (BBC, 2008b; Telegraph, 2010b; Merrill, 2013).

Table 1. Variable standards of human rights regarding MTDs by different regulators

| | Domestic | | Pan-European | Global |
|--|--|---|--|---|
| Regulator | UK Equality and Human Rights Commission | Equality and Human Rights Commission in Scotland | Council of Europe | UNCRC |
| Source of information re: MTD | Letter re: Mosquito to Department of Education (June 22 2011) | Submission to Public Petitions Committee PE1367/J (November 25 2010) | Parliamentary report by CCSE (see Wach, 2010) (January 22 2010) | UK Concluding Observations (October 20 2008) |
| Possible Non- compliance? | Depending on circumstances violates HRA/ECHR Art. 8, 11, 14. | Insufficient or unlikely to trigger HRA/ECHR Art. 3, 8, 11. | Violates ECHR 3, 8, 14; UNCRC 2.2, 15, 19.1. | Violates UNCRC 15. (Equivalent to ECHR 11) |

It is also noteworthy that in reference to the MTD neither the UK Equality and Human Rights Commission or the Commission in Scotland referenced the UNCRC in relation to the MTD. This is despite the Committee on the UNCRC expressing concerns as early as 2008 and Children’s Commissioners from England, Scotland, Wales and Northern Ireland also publicising these concerns at length (Buzz Off, 2008; Children’s Commissioner, 2010). It suggests that the UKs obligations to the UNCRC is not in a primary concern for the UKs domestic regulators of human rights, whereas the authority of the ECHR clearly retains a significant influence on human rights standards.

There is also a discrepancy observed between the interpretations of the UK regulator and the interpretation of the Council of Europe. Article 3 ECHR, for example, was entirely ignored by the UK Equality and Human Rights Commission as an issue of concern for the MTD. This is perhaps another example of conflict between human rights standards and traditional socio-cultural values that are specific to a particular country, in this case the UK, when it comes to constructions of children and young people as discussed previously in chapter 3. Children and young people tend to have a very different profile with regards to media representation and social policy compared to other European societies. It is possibly for this reason that Article 3 ECHR has been ignored by the UK regulator due to the political issues that it causes for the UK government. Article 3 for example has been the source of numerous cases against the UK government at the European Court of Human Rights vis-à-vis corporal punishment (the relevance of this is discussed in chapter 6) and often settlements have occurred out

of court to avoid domestic political consequences. Article 3 ECHR was considered but was flatly rejected by the Equality and Human Rights Commission in Scotland which suggested in its own submission that the MTD was not severe enough to trigger this article. While the ECHR does grant each state a margin of appreciation with regards to human rights interpretations it seems doubtful that a product (the MTD) can be considered non-compliant with Article 3 ECHR, which is an absolute right (the relevance of which is also discussed further in chapter 6), in one state but not another. It suggests how variable human rights standards and interpretations are the important role that the ECHR has in upholding and enforcing these standards.

CONCLUSION

Due to a desire for unanimity and universality with human rights acting as a yardstick that measures each countries progress and development, human rights have been vaguely defined to meet such designs. Its variable definitions tend to lack coherent accounts of the circumstances in which those rights ought to be defended and realised. This flexibility within human rights has been a major failing which has enabled human rights to become an ideological vehicle through which human rights themselves can be abrogated. In practical terms human rights have provided a means by which powerful actors or states can capture the morality of human rights and use them in a way to manage the weak on behalf of some unarticulated ideal. This is sometimes evidenced on an international scale whereby wealthy nations commit to military policies of humanitarian intervention with the stated aim of protecting rights within a country, yet through their actions violate these or other rights and cause further long-term destruction of their future attainment. Indeed there are many critics of human rights that point to a Western or Eurocentric bias as human rights formalised in the aftermath of the Second World War and thereby recognise the Holocaust in Western Europe as the definitive mass murder event of the 20th Century ignoring other mass killing events.

In many respects, the concepts of human rights and risk which are key themes in this thesis share many similar properties and problems in that they are stratified by power. They can be heavily influenced by political agendas and narratives attributing new meanings to these terms and defining what it is that they should entail particularly on behalf of the weak and vulnerable. It is due to this fact that human rights standards are so variable even amongst countries that have similar levels of economic development. Indeed even where there are legal processes to uphold and enforce human rights standards as is the case in Europe through the ECHR, significant political opposition when human rights conflict with long established cultural traditions ensures that variable human rights standards

are the inevitable consequence. However, human rights have always held a fragile consensus. The ECHR also remains a significant influence on human right standards in the UK whereas the UNCRC is not utilised by UK human rights regulators.

In the UK, the pursuit of human rights is problematised by a series of factors related to social inequalities that contribute to an inability of many vulnerable to access these opportunities. It is not simply a question of resources that are lacking for these groups however. For young people there is a lack of age-appropriate services. There is also evidence that young people lack awareness of their rights in general and the educational national curriculum does not include them. It is nonetheless apparent that government austerity from 2010 has also significantly affected young people and vulnerable groups' access to legal services. Cuts to legal aid have reduced the total amount of funding available and the process for gaining state aid has been made much more complex. The outcome of these changes has also had a significant impact on organisations and charities that rely greatly on funding provided by local government. These organisations and charities, some of which specialise in helping young people, provide a critical support network for young people to gain access to information and advice overcoming some of the barriers that all disadvantaged groups face in terms of their rights (Kenrick, 2009a; 2009b; 2011; 2012).

The MTD has divided numerous opinions on human rights and the status of the devices legality. For sociologists it is this social aspect of these protections and entitlements that are of most interest. What do they mean for young people and society and how are they embedded within society alongside responsibilities, duties and power? The next chapter will outline how this study has incorporated the analysis of human rights within a case study methodology to answer three research questions linking the key themes of regulation and risk for the MTD. This chapter will describe in detail the empirical methods that are deployed in this study, the benefits of the case study approach and the ethical challenges that were overcome.

CHAPTER 5: METHODOLOGY

This chapter outlines the research methodology that has been used in this study of the MTD. The approach that has been followed throughout this investigation is described using a case study typology developed by Thomas (2011). In the second part of this chapter, the empirical methods used in this study are explained and describe how access was negotiated and how they connect with the study research questions. In conclusion, the ethical and safety issues in the project and the reasons why some of the research methods were affected by changes in circumstances are discussed.

A CASE STUDY

A case study is not a method in and of itself, but a design frame that may incorporate a number of methods (Stake, 2005; Simons, 2009; Thomas, 2011). The aim of a case study is to provide as complete an understanding of a singular or small number of cases as possible through scrutiny of all variables. Quite how researchers arrive at a complete understanding of that case can vary from one case study to the next influenced by the research questions asked, the theoretical propositions of a study, the different range of methods of inquiry followed and the insights gained during the process of data collection and analysis. However, the unstructured and variable nature of the case study is not without its problems. In a review of the use of case studies within economics and political science, Gerring (2004) claimed that while the case study appeared to be popular within the social sciences, it exists in a 'methodological limbo'.

"Practitioners continue to ply their trade but have difficulty in articulating what it is that they are doing, methodologically speaking. The case study survives in a curious methodological limbo."

Gerring, 2004, p.341.

Responding to concerns about the limitations of the case study, Thomas (2011; 2012) has clarified the importance of distinguishing at the outset of a case study between the 'subject' and the 'object' of the study. A 'subject' is the "practical, historical unity" through which the theoretical focus of the study is being viewed (i.e. the case), and the 'object' is the "analytical or theoretical frame" for the study (Thomas, 2011, p.513). For Thomas, the 'methodological limbo' that exists for case studies is the result of researchers that neglect to establish an 'object' for their study. By failing to do so the case study exemplifies nothing and leads to the production of a simple description instead of a piece of research.

“For the study to constitute research, there has to be something explained (an object) and something potentially to offer explanation (the analysis of the circumstances of the subject).”

Thomas, 2011, p.513.

While the case study has received plenty of discussion about its methodological and epistemological virtues (e.g. Ragin and Becker, 1992; Stake, 1995; Flyvbjerg, 2006; Simons, 2009; Yin, 2009), there remains little in the way of a clear, organisational framework to assist researchers in undertaking a case study. What the case study lacks is a typology mapping out these potential routes of investigation (Thomas, 2011). Consequently, Thomas (2011; 2012) has devised a typology with three discrete stages termed purpose, approach and process once the subject of the study has been selected. The first stage ‘purpose’ is the reason for doing the case study and is intimately connected with the studies ‘object’ that is the theoretical context. Is the case study intrinsic, evaluative or exploratory with regards to the studies object? Secondly, the various ‘approaches’ can now be delineated. What is the theoretical proposition of the study? Is it theory-testing, theory building or illustrative? Thirdly, the case studies ‘processes’ can now be decided upon, depending upon whether the study will deal with a singular case or multiple cases. If the favoured choice is a singular case, will the case study be retrospective, snapshot or diachronic? If multiple cases are chosen, how will these cases be arranged? Are they nested, parallel or sequential? What this typology outlines is that there are numerous potential permutations for case study structures, where the case study advantage of its flexibility can be maintained within a coherent theoretical and methodological model (figure 3).

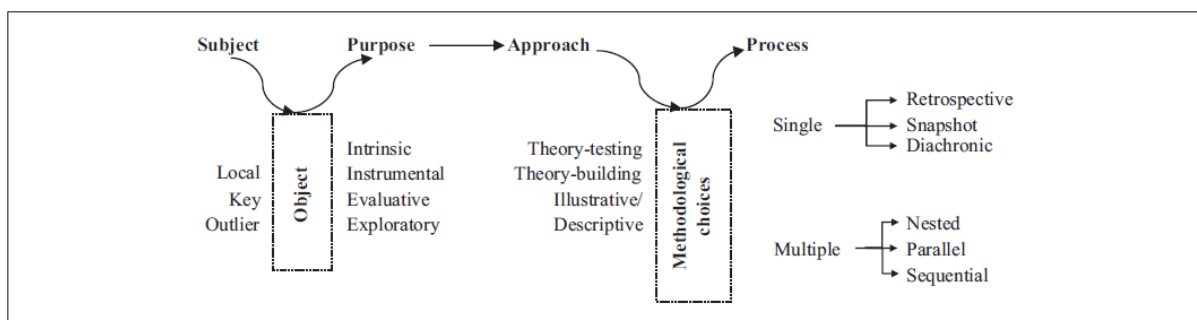


Figure 3. A Typology of Case Study from Thomas (2011).

Case studies are *“analyses of persons, events, decisions, periods, projects, policies, institutions or other systems that are studied holistically by one or more methods. The case that is the subject of the inquiry will be an instance of a class of phenomena that provides an analytical frame- an object- within which the study is conducted and which the case illuminates and explicates.”*

Thomas, 2011, p.513.

Of the various research designs that were considered for answering the research questions, the case study was the most appropriate option. Often within the social sciences the kind of information that a researcher requires cannot be replicated or moved into a laboratory for study. As a result 'the field' emerges as the significant source of knowledge claims with these observations providing unique and uncorrupted vantage points for the social scientist to develop intimate understandings of how a particular situation or case exists in a particular place and at a particular time. Thomas Gieryn (2006) describes how knowledge claims and authenticity within science are indelibly linked to 'place' and how field and laboratory can become two complementary sources of credibility. This is one of the strengths of the case study approach with its inherent flexibility: the case study enables the researcher to find the appropriate balance between the need for distance, objectivity and generality in the lab, and the essential aspect of 'being there' in the field, developing awareness and personal sensitivities to the discrete features of the place in which the case is situated.

1. THE TYPOLOGY

I. SUBJECT AND OBJECT

The selection of the subject for a case study is determined, simply, from the interest in a particular class of phenomena and especially, by its unusualness and uniqueness. However, Thomas (2011, p.514) suggests a subject must never be selected by virtue of its typicality or representativeness. In the typology proposed by Thomas (2011) there are three options suggested for selecting a subject. The subject may be an interesting case because it is something that a researcher is intimately familiar with as a 'local knowledge case', which will lend itself suitably to a detailed analysis and discussion of the various stakeholders involved, the situations they faced, the choices they made, the paths they chose and rejected, and the outcomes produced (Bates et al., 1998, p.13-14 cited by Thomas, 2011, p.514). Alternatively, there is the possibility that the subject can be used to produce what Thomas (2010; 2011, p.514) calls "exemplary knowledge" which is separated from generalizable knowledge. This situation arises if the subject in its novelty represents either a 'key case' or an 'outlier case' and by virtue of this distinctiveness, illuminates the object of the study and produces new knowledge. The subject of this study is the MTD as a key case and its operation within the UK by public authorities. The object is the analytical frame of regulation and risk and its impact on the usage of these devices over time. Table 2 summarises the stages of the case study typology and the options that have been selected as most appropriate for this case study.

Table 2: Overview of the MTD case study using the typology proposed by Thomas (2011)

| Typology Stage | Option Selected |
|---------------------------|--|
| 1. Subject | MTD, a Key Case |
| 2. Object | Regulation and Risk |
| 3. Purpose | Instrumental and Evaluative |
| 4. Approach | Theory Application |
| 5. Methodological Choices | I. Analysis of Regulation, II. Interviews, III. Quantitative Analysis, IV. Documentary Analysis, V. Liverpool: Participant Observation, Logbook and photographic evidence. |
| 6. Process | Single and Diachronic |

The object on the other hand need not be accurately identified or even considered at all in the outset of a case study and allowed to emerge as a study of the subject progresses. The choice of broad concepts such as regulation and risk to form the object for this study therefore achieves two aims. Firstly, the breadth and diversity of the concept provides sufficient flexibility to ‘soak and poke’ (Fenno, 1990 cited by Thomas, 2011, p.514). Secondly it provides a robust theoretical framework to explore a range of possibilities for further investigation. As Howard Becker (1992) has advised, researchers must ask continuously, throughout the course of their investigations, as evidence accumulates around potential theories - what is this a case of? The object of the study therefore can be located in the relationship that exists between a subject and the theory or explanation that gives rise to the subjects interesting or unique circumstances. In this case study therefore, the context of the MTD is the “prism through which ‘facts and concepts, reality and hypotheses’ about this change were refracted, viewed and studied” (Thomas, 2011, p.515).

II. **PURPOSE: INSTRUMENTAL AND EVALUATIVE**

The purpose for the case study and the object of the case study are closely and intimately connected (Thomas, 2011, p.515-516). For this study, the purpose was to understand how the governance of young people had impacted upon the development and use of the MTD in the UK. In the typology advocated by Thomas, there are four reasons listed regarding the purpose for doing a case study: intrinsic, instrumental, evaluative and exploratory. Thomas (2011, p.516), suggests that declaring these motivations for doing the study are important because they can assist with the decisions that will be taken in the approach section that follows. The purpose thus is reflected strongly in the approach that is subsequently chosen for the case study. There appears to be no limit, however, on

the number of purposes one may list for doing the case study and Thomas makes reference to several other case studies that contain more than one stated purpose.

One confusing aspect of the purpose stage of the case study typology is that there is no explanation or discussion of what Thomas means or has intended by the terms 'intrinsic' or 'instrumental.' Stake (1995), however, which Thomas has referenced, defines an intrinsic case study as an aim to achieve comprehensive understanding of a single case, such as a specific programme, a particular individual or agency. In addition, Stake (1995) also defines the instrumental case study as an attempt to understand something more generally. In other words, the instrumental case study aims to become a touchstone for the researcher that enhances their knowledge or general understanding about a particular issue, phenomenon or group of phenomena. In this sense, the instrumental case study might be viewed as a means to an end rather than an end in itself. In this case study for the MTD, the purpose is both instrumental and evaluative. The MTD as an instrumental and evaluative case must be understood in the context of the various agencies that decide to purchase and operate the devices. In addition, the MTD provides an excellent opportunity to gain insight into the governance arrangements of young people by public authorities.

III. **APPROACH AND PROCESS**

The approach stage of the case study is a major component for differentiation among case studies and the role that theory will play, if any, in the case study. This approach stage of the typology links directly to the methodological choices and the structural considerations for the case study. Thomas (2011) presents three possible options: A case study that involves theory-testing, where the object has been defined at the outset of the investigation; a case study involving theory building, where the object has been allowed to emerge throughout the course of the study; or alternatively, the case study may be entirely illustrative or descriptive. It should be noted that as with the purpose section, it appears possible that a case study approach can contain both theory testing and theory building with case studies summarised by Thomas declaring this intention (e.g. Bassey, 1999; cited from Thomas, 2011, p.516). For the purposes of this study, the approach adopted was that of theory application, using firstly, an analysis of the impact of regulation on the MTDs use in the UK (see chapter 7). Secondly, the theoretical constructs advanced by Neo-Foucauldian thinkers of governmentality, around responsabilisation, were deployed to investigate the use of MTDs by public authorities and the rationalities for using this technology in the UK (see chapters 7 and 8).

The process stage of the typology relates to the overall structure of the case study, where the researcher must decide if there is to be a comparative analysis to the study (Stake, 2005). To consider this possibility, Thomas (2011, p.516) suggests that boundaries be identified for the subject so that it may be delimited by nature of one or more properties. Analysis may then be conducted on more than one subject, a multiple case study. This is when a group of subjects that are the same class of phenomenon can be compared by virtue of a number of distinct or discrete differences such as the location, size, time frame, management and so on. Arrangement of these multiple subjects can be considered including whether they should be nested, in parallel or sequential. Because this case study was a single case study, there is no need to further consider the possibilities of a multiple case study, how to delimit the subject and the rigours of comparative analysis. Therefore, the only remaining issue for the process stage relates to the temporal aspects of the case study and how data was collected about the subject. Was data collected about the subject's past, so that it is retrospective; was data collected over a tightly defined period in the present such as a current event, so that it is a snapshot of the subject during this time; or was data collected over a much longer period which enables the researcher to analyse changes to the subject over time, the diachronic study. It is the diachronic study that was the most relevant to the study of the MTD to analyse the impact of regulation and risk upon the devices.

2. METHODS AND ANALYSIS

A mixed methods approach is adopted within this case study in order to answer the following research questions:

- a. What is the relationship between young people and notions of regulation and risk?**
- b. How have different stakeholder groups interpreted and approached the MTD as a technology?**
- c. How have notions of regulation and risk been deployed and mobilised in the context of the MTD?**

These three research questions have been answered in various parts of this thesis. The first question relating to the relationship between young people and notions of risk and regulation is answered in chapters 2 and 3. The second question relating to the three different stakeholder groups is analysed in chapter 6 (the youth advocacy groups) and 6 (the public authorities and the manufacturer of the

devices). The third question relating to notions of risk and regulation deployed in the context of the MTD is discussed across chapters 6, 7 and 8 by how the various stakeholders exert influence on the MTD and shape the way in which it is perceived.

The following section will describe the methods that were undertaken, why these particular methods were selected, the decisions taken regarding sampling and access, the problems that were encountered and how these were overcome, how data was analysed and the ethical implications.

I. ANALYSIS OF REGULATION

The term regulation is a slippery one that lacks a clear definition and fixed boundaries. To interpret the term narrowly for a social science project may be to refer to the study of law in its social context i.e. law in action (Jolly, 1997). In a broader sense, however, a legal analysis of regulation could be interpreted to refer to the study of the law and legal institutions from the perspective of the social sciences including criminological research, the sociology of law, political sciences and law and economics (Harris, 1983). The open-ended nature of regulation in social science has created difficulties for commentators to generalise and agree on what they understand to be the scope, meaning and purpose of a legal analysis within regulation studies (Salter and Mason, 2007). These generalisations themselves are subject to constant change and reinterpretation with representatives of various disciplines finding general definitions to be much too restrictive or too vague.

In the absence of a firm consensus, regulation research projects within the social sciences have the capacity to vary markedly in pursuit of the topics they seek to address and may be multidisciplinary or interdisciplinary, theoretical or wholly empirical. Great diversity is also possible in respect of content, approach, motivation and style in a social science approach to regulation research (Hillyard, 2002). The emphasis has developed from the perceived inadequacies of traditional legal research compared to social research:

“All the centuries of purely doctrinal writing on law has produced less valuable knowledge about what law is, as a social phenomena, and what it does than the relatively few decades of work in sophisticated modern empirical socio-legal studies ... Socio-legal scholarship in the broadest sense is the most important scholarship presently being undertaken in the legal world. Its importance is not only in what it has achieved, which is considerable, but also in what it promises.”

Cotterrell, 1995, p.296 and 314.

Regulation studies therefore should address the longstanding disparity between law in books and law in action. Whereas a doctrinal analysis would focus upon the content of legal rules, an analysis of regulation might begin differently by defining the issue within the context of its social-political-economic attributes, and through a largely social science research methodology examine the underlying public policy dimensions of doctrinal law, its consequences, the process of law or its enforcement. Most telling is the use of a methodology that expands the study of law beyond predominantly legal texts, marking the boundary that distinguishes social science research from legal research. For a social science research project on regulation to achieve complete coverage of its topic, it has been suggested that the analysis undertaken comprise of both law in books and law in action (Salter and Mason, 2007, p.125). The findings from this regulation analysis can be found in chapter 6.

II. INTERVIEWS: LIBERTY AND THE CHILDREN'S COMMISSIONER FOR ENGLAND

Two in-depth semi-structured interviews were undertaken with representatives for Liberty and the Children's Commissioner for England. The interviews took place in London on July 5 2010, at the offices of the Children's Commissioner and Liberty. The interviews were digitally recorded with permission and transcribed. The interviews aimed to focus on interpretations and applications of the law by both groups, particularly around children's human rights, the success of the national campaign that both organisations spearheaded in opposition to MTDs (known as the 'Buzz Off' campaign), and the strategies of both groups to oppose the use of these devices. These interviews were coded through the computer software and qualitative analysis package called nVivo by QSR International, to reveal the most frequent themes from the content of these interviews. Additionally, two follow-up telephone interviews took place on June 10 and 18 2014 with campaign co-ordinators from both organisations to provide updates about the use of MTDs in the UK and each organisations recent actions in relation to the devices. These follow-up interviews, which lasted approximately 20-30 minutes were recorded through contemporaneous notes. The findings from these interviews informed the analysis of regulation that can be found in chapter 6.

III. QUANTITATIVE ANALYSIS: ANNUAL FINANCIAL ACCOUNTS OF MANUFACTURER

To verify the number of MTDs that have been sold in the UK, a quantitative analysis has been undertaken on the annual financial accounts of the sole manufacturer of the devices in the UK, CSS.

An additional analysis has also been undertaken on the international trading partner of CSS to understand how the sales of these devices compare between the UK and internationally which was provided in chapter 2. The financial accounts of both companies were acquired through the UK government, Company House website, for each year of trading between 2006 and 2014 <<http://wck2.companieshouse.gov.uk/wcframe?name=accessCompanyInfo>>.⁴ The annual accounts of each company must be purchased separately at the cost of £1 for each financial year. CSS Ltd has the registered trading number: 5133881. The international trading partner of CSS Ltd is Compound Security Specialists, who were formerly named CSS (INTERNATIONAL) Ltd until October, 2014. Compound Security Specialists Ltd has the registered trading number of 5872255.

The financial data that is contained within the annual financial reports was used to assess the sales performance of each respective company and how this has changed over time providing a timeline for the sale of MTDs per year. Using this data it was possible to estimate the number of MTDs sold by CSS for each financial year of trading. By using the company debtor amount, which is the amount of money owed to the company (excluding assets such as stock and cash in the bank), the number of devices that have been sold by CSS can be extrapolated by dividing this figure against the MTDs sale price which has been fixed at £495 since 2005.

The results of this quantitative analysis do contain a limitation and as such, the figures produced can only provide an approximation of the number of MTDs sold by CSS per year and in total. The largest uncertainty is that it is impossible to determine from the financial accounts alone, what proportion of CSS' income is the direct result of sales of MTDs. This is because CSS sells products other than MTDs, although the devices are expected to be a major source of income for the company. The company director of CSS, however, has indicated that MTDs account for approximately 50% of all sales for CSS in 2012 and repeated this in a personal communication (Scottish Parliament, 2012a; personal communication, July 17 2014). Nevertheless, it is possible that 50% may be an underestimate or that MTDs accounted for a much greater proportion of CSS's income in earlier years than recently. Therefore, two approximations have been calculated for CSS from their annual financial accounts so that there is an upper, maximum limit of MTDs that could have theoretically have been sold and a lower limit comprising of the manufacturer's estimate of 50% sales for all years that CSS has been trading. This data is shown in chapter 6 and 8.

⁴ Each financial year ending February 28.

IV. DOCUMENTARY ANALYSIS

The documentary analysis includes data from three different sources: the Freedom of Information (FOI) Act 2000 to public authorities, a policy analysis of CDRP tri-annual strategies and an analysis of mosquito protocols that are documents that outline the operation of MTDs. However, some of the public authorities appear to have lost or not to have recorded some of this information correctly. Some responses received by public authorities in the course of this investigation denied ever having purchased or used MTDs. This was despite materials that were already in the public domain that directly contradicted this.

Using the FOI Act 2000, 132 local councils and police forces were contacted within England requesting information on the use and ownership of MTDs. Public authorities were asked how many MTDs they have purchased; when any of these devices were installed; where any of these MTDs were installed; what is the current status of these devices; and what guidelines for operation of the devices have been used. The information disclosed by these requests has been collated within two tables, one from the public authorities that have purchased the devices which is presented in chapter 7, and a separate table of all of the authorities contacted which disclosed that they did not purchase MTDs which is provided in appendix 1. Some of the local authority reports about MTDs were compared with material already within the public domain (such as local media reports and previous FOI disclosures stored on the website <<https://www.whatdotheyknow.com/>> which has records from 268,000 FOI requests) to verify their accuracy.

A total of 24 CDRP tri-annual strategy documents representing areas in England were also collected for the periods 2005-2008 and 2011-2014. These documents were analysed to understand how the priorities and approaches to reduce crime and ASB by CDRPs have not only changed over time but may have impacted upon the use of MTDs. Initially, these CDRPs were intended to include urban and rural communities in different regions of England; however CDRP strategy documents from the period 2005-8 were not available, even from the public authorities that originally produced them. In Liverpool, these documents could not be found in the central library database and repository, nor could the Liverpool CDRP known as Citysafe provide them. Some of the CDRPs contacted e.g. Hillingdon Safety Partnership said that they were not required to retain these documents after a period of 6 years had passed (Hillingdon Borough Council, personal communication, January 5 2015). Consequently, CDRP documents for 2005-8 were sourced from an internet search engine <<http://www.google.com>> which was able to provide a small pool of documents that were available from the public domain. From the total of 24 documents collected, 18 CDRP reports were then selected to equally represent the two periods (2005-8 and 2011-14). The CDRPs selected are shown

in table 3, below. Welsh and Scottish CDRPs were excluded because of the unknown influences of the devolved national assemblies upon CDRP policy.

Table 3. The CDRP tri-annual strategies analysed

| 2005-2008 | 2011-2014 |
|--|---|
| Blackburn with Darwen, West Cumbria, West Norfolk, Surrey Heath, Manchester, Wokingham, Hartlepool, Chorley, Bolton. | North Tyneside, Peterborough, Manchester, Canterbury, Derbyshire, Stevenage, Hillingdon, Rochdale, Hackney. |

The CDRP reports were analysed using content analysis through the computer software package, nVivo, by QSR International. The content analysis is a valuable technique for the reduction of large quantities of empirical data from different periods of time and produces quantifiable data that not only display trends but which also can have statistical validity (Wimmer and Dominick, 1997, p.113). As a research method, content analysis is unobtrusive because the researcher’s presence does not change what is being measured and the data can be verified or contradicted by future studies (Berger, 1991, p.28-29). However, content analysis also has a series of limitations. While it is effective at studying changes in the language of qualitative data, it has no capacity to study meaning and must be combined with another form of analysis to do so. Content analysis is also heavily influenced by the terms that the researcher chooses to select and also the researcher’s operational definition for those terms (Berger, 1991, p.27; Hansen et al., 1998, p.94). The researcher’s choices in these matters can be contentious, which is referred to as coder reliability and can be strongly affected by how strict or broadly a researcher defines their term or category (Berger, 1991, p.28). Even when presented with the results of a content analysis, there is still a great deal of interpretive work to be done before wider conclusions can be drawn (Hansen et al., 1998, p.95; Wimmer and Dominick, 1997, p.115).

There were two criteria used to select the key words used in the content analysis. Two terms that were predetermined at the outset were the words ‘risk’ and ‘young people’ to understand if there had been any significant changes in policy towards young people between 2005-8 and 2011-14. These two terms were also defined very narrowly as ‘risk’ and ‘young people’ only. The justification for the exclusion of other terms for young people was to a) reference young people when they were referred

to as a group only (rather than as individuals as in 'young person' or 'young persons'); and b) to exclude counts from terms like 'youth' because of statutory bodies like 'Youth Offending Teams' that do feature in these reports and impact the results.

The other key words used in the content analysis were selected using a word-frequency-analysis method. This was done in a sequence of stages. Firstly, a word-frequency-analysis was undertaken of the CDRP materials from both periods (2005-8 and 2011-14) separately, so that only common words that had featured 20-times-or-more in all of the CDRPs from each period were counted. Common-words on each list were then excluded on the basis that they were either 1) meaningless or 2) superficially overrepresented. This was necessary to reduce the large total of keywords due to the dominance of empty words such as 'of', 'and', 'to', 'is', 'the', 'in', 'will', 'local', 'anti', 'other', etc. Therefore, words were struck-off if they were considered either meaningless or unspecific. A second category of words was also excluded and involved words that were overrepresented due to them featuring prominently in particular phrases or if they were the names of places. Some phrases were often repeated throughout the remainder of the document particularly if they were contained in the title of the CDRP strategy. Words that were excluded were of the following type: 'safe(r)', 'safety', 'community', 'communities', 'partnership(s)', 'crime', 'disorder', 'drug(s)', 'misuse', 'reduction', 'strategy', 'restorative justice', etc. For example, Wokingham CDRP referred to their "Community Safety Strategy;" Bolton CDRP titled their strategy the "BSAFE Partnership's Crime, Disorder and Drugs Misuse Reduction Strategy;" or Peterborough CDRP to the "Safer Peterborough Partnership Plan." This exclusion was also justified on the grounds that these words had the potential to produce a misleading content analysis. Following this exclusion criteria, a total of 114 (2005-8) and 140 (2011-14) keywords were found for the CDRPs from each period. These key words were then compared between the two periods to see if there had been either a 50% increase or decrease in their use by the CDRPs between the two periods. Those words that did not reach this threshold were excluded and this reduced the total number of key words to 32. This total was further compressed to just 13 when words that had featured less than 100-times across both periods were also excluded. The justification for this step was that revealing change in the use of words was not in itself meaningful, these words had to also have been commonly used in at least one of the periods. The 13 words that were remaining were: 'vehicle', 'misuse', 'theft', 'neighbourhood', 'ASB', 'fear', 'education', 'harm', 'vulnerable', 'business', 'intervention' and 'assessment.'

After qualitatively sifting through the CDRP reports from both periods to gain a better understanding of the use of these terms by the CDRPs, the keywords that were considered most appropriate to the content analysis were the keywords 'harm,' 'fear,' 'vulnerable,' 'ASB,' 'neighbourhood,' and

'education.' All of these words were also defined narrowly (as they appeared in the word-frequency-analysis) except for ASB which was also found to have been commonly used as both a two-word term 'anti-social behaviour' and as a three word-term 'anti social behaviour' within the CDRP reports. Therefore, to capture the true extent of this particular term within the CDRP strategy documents, the definition of ASB was expanded so that its subtle variations were combined to give a better reflection of its importance across both periods. No suffixes of any of the terms were counted such as 'harmful,' 'fearing,' 'vulnerability,' etc. The findings from this analysis can be found in chapter 7.

Several public authorities have also provided a document known as a mosquito protocol which was another rich source of information which can be considered alongside some of the other data collected such as the logbook and contemporaneous notes taken from the participant observation described below to draw conclusions. The public authorities that provided mosquito protocols were Leicestershire Constabulary (2006), Citysafe Liverpool (2006), Merseyside Police (2007) and the Metropolitan Police (2008). The retrieval of these documents were sourced from Merseyside Police under the FOI Act (see section IV above) but also from a personal communication exchange with the manufacturer of the devices, CSS, who provided the mosquito protocol for the Metropolitan Police which is otherwise an undated document (CSS, 2008c). Therefore, although this document has been dated from the month and year it was received through the personal communication (June, 2008), it was likely to have been written and developed around the same time as the mosquito protocols for City Safe Liverpool and Leicestershire Constabulary in 2006. The Merseyside Police mosquito protocol was for the mobile version of this technology, which is discussed below in relation to the participant observation. The various protocols were thematically coded and individually compared in a matrix. The mosquito protocol analysis can be found in chapter 8.

V. LIVERPOOL: PARTICIPANT OBSERVATION, LOG-BOOK AND PHOTOGRAPHIC EVIDENCE

One of the pitfalls of a case study's internal validity is making inferences that cannot be corroborated or observed directly through observation (Yin, 2009). To address this problem, a component of this empirical research has included observing and experiencing the MTD in practice when the device was operated in the field by a public authority in the city of Liverpool: through the use of a participant observation (Jorgensen, 1989; Grigsby, 2001). By providing photographs of this study site where the MTD was used it is also possible to see how the public authority has approached the control and management of this area over time, long after the participant observation concluded (see chapter 7).

These particular insights are also strengthened by a logbook that recorded the deployment of a mobile version of the MTD by Merseyside Police documenting the usage of this device. This log-book has provided data on when this mobile device was used, where it was used and for how long it was used such that it is possible to study the use of the mobile MTD device over time. Overall, using a mixed methods approach, it was possible to construct important insights into the way in which the MTD has been deployed in both theory and practice by this one public authority, and to understand the aims and limitations of using the devices.

The participant observation provided rich, detailed information about MTDs that would not otherwise have been known. Enriched by the experience of being in the field the sights and sounds of the devices deployment and the feel of places that were considered a 'hotspot' for ASB gave me a unique insight. It also provided confirmation in terms of the theoretical approach to risk that was subsequently adopted by the study linking the use of MMVs and MTDs with a wider policy context linked to Crime and Disorder Reduction Partnerships and urban regeneration schemes. As a research method, however, the participant observation has a number of limitations regarding its authenticity and interpretability, not just that a participant observation is difficult, if not impossible, for other researchers to replicate. Its main weakness is the potential for bias from the researcher's relationship with those that are being studied. In this case, the police officers involved in the deployment of these devices, aware that they were being watched, may have behaved differently than they might have done in normal circumstances. This problem is known as the 'Hawthorne effect' (French, 1950) and can produce results that are misleading. Similarly, there is the potential for police officers involved in the participant observation to inadvertently provide information that they perceive the researcher to want to hear. These were challenging obstacles to overcome, particularly because the period available for the participant observation was short and repeat observations were not possible. Establishing a rapport with participants was nevertheless essential for success of the participant observation in order for the police officers to behave as normally as possible.

Gaining access to the participant observation with Merseyside Police was surprisingly straightforward. After an interview given by the then Chief Constable of Merseyside Police on a local radio station in which he encouraged members of the general public to write to him about any police or local issues that they had, I wrote to the Chief Constable inquiring about the MTD and attaching an information sheet about this research project. I received a response approximately three weeks later, by e-mail, extending a personal invitation to visit a police station in South Liverpool to meet some of the police officers that had the responsibility for operating the Mobile Mosquito Vehicle (MMV) that Merseyside Police was currently trialling. Because of my particular interest in the devices, this visit would include

an opportunity to see the use of the device in action and experience for myself the sound generated by a MTD (as I was aged within the 25 years old threshold that the device was designed for). This visit lasted approximately two hours and took place on Friday the 6th of March, 2010 at 17:00. During this visit, which was recorded on a field pad without any digital recording, I was given a tour of the police station and invited to ask questions regarding ASB locally and how the police approached these problems including the role of the MTD in dealing with groups of young people. It was through these conversations that I became aware of the existence of a log-book for the MMV that contained information on the dates, times, places and the durations that the MMV had been in operation previously. The participant observation itself took place at a recurring ASB 'hotspot' in Speke for young people where the MMV had been used previously on Friday and Saturday evenings which were peak times for ASB. This was a street on Eastern Avenue, Speke, outside of a small convenience store called Quix. Photographs of the study site (see chapter 8) have been captured using Google Street Maps as I was without a camera at the time. When the visit concluded, I immediately wrote down as much information that could be recalled from my experience while it was still fresh in my memory.

The logbook was analysed with the assistance of Google Street Maps. The maps made it possible to place the MMV at various locations recorded in the logbook, so that insight could be gained into its use and how the area has subsequently changed. This process did require some subjective judgments as it was only possible to estimate the likely area where the MMV was deployed since the details given in the logbook are rarely specific or descriptive enough, unless there are multiple visits. In most cases the only information provided is the name of the road where the MMV was deployed. Unfortunately, some of the details in the logbook are missing or the location is simply referred to as 'local.' Nevertheless, it has been possible to improve the internal validity of this study and the evidence from the participant observation by comparing it with other sources. Using the contemporaneous notes recorded during the participant observation and the logbook it was possible to compare how the practical usage of these devices conforms to the regulations set-out in the protocols for the public authority usage of both the MTD and the MMV. The findings from this data can be found in chapter 7.

3. ETHICAL CONSIDERATIONS

This study received approval from the mandatory University of Liverpool, Ethical Approval Committee, in advance of all empirical work undertaken. This included the possibility of interviewing young people, although for reasons that will be discussed later this was not undertaken. Where possible, the

data used in this study has been collected from material that was already within the public domain such as the annual financial accounts of the manufacturer of MTDs, for example. In addition FOI requests from individual public authorities and previous FOI disclosures made to other members of the general public were collected through this process. So too was information about the use of MTDs by some public authorities through website media articles (local newspapers and national media sources). CDRP tri-annual strategies were also collected from the authorities directly or in the event this was not possible, through internet search engines. The two components that are central to an ethical research project are the research rationale which deals with the moral justifications of the research goals set, whether they are appropriate or necessary and if sufficient data already exists to avoid primary research. The second component is the principle of 'ethical research practice' and dissemination, focusing on how the researcher has conducted the data collection and dissemination phase of their research with ethical awareness. Ethical research practice applies to four main areas: (i) Whether there is any risk of harm to participants; (ii) negotiating informed consent; (iii) invasions of privacy; and (iv) if deception is involved (Diener and Crandall, 1978 cited by Bryman, 2012).

The empirical research undertaken by this project where ethical research practice was most involved was at the primary research stages regarding the interviews and participant observation. At the outset of each of these endeavours, a participant information sheet revealing details and the aims of this project was submitted to each organisation concerned: Children's Commissioner for England, Liberty and Merseyside Police (appendix 2). Permission to record the interviews, transcribe their content and then to destroy the recording was given by a completed and signed consent form by a representative for the Children's Commissioner for England and Liberty (appendix 3). A copy of the transcript from each interview was sent, via e-mail, to each participant to ensure that the content of the interview was accurate. No recording device was used during the participant observation

To avoid the potential for harm to research participants, confidentiality and where necessary, anonymity, has been provided to research participants. All participants were also informed via the participant information sheet sent out at the outset of this empirical research about the limits to providing confidentiality, particularly, with regards to any evidence uncovered regarding or relating to criminal offences. It is possible, nevertheless, that I benefitted in the participant observation from the police officers involved not knowing much, if anything, about my research project since this information did not appear to have been passed on to the police officers involved. In the e-mail that was sent to these officers (and later sent to me), these officers were simply asked to do this one-off "special favour for the Chief Constable." For this reason, it is possible the police officers operation of

the MMV at the study site was normal even though I introduced myself to them as a student interested in the use of the MTD.

Despite receiving ethical approval for interviewing young people about their experiences with the MTD, this was never undertaken due to the changing circumstances of the MTD. The devices were fewer in number than anticipated. Consequently, a different investigation unfolded to understand how the devices were being used by public authorities since their distribution was not considered a widespread problem for young people. In addition, recruiting local participants may have proven difficult due to the use of the MMV, a covert vehicle, which was designed to be inconspicuous. It is possible that many young people affected by MTDs may have been unaware that the device was in fact intentionally targeting them. Interviews with young people would undoubtedly have improved this project, particularly chapter 8 which discusses the potential strategy for responsabilisation of young people by MTDs. Without interviewing young people it is impossible to determine how young people experience the strategy of regulating their use of space.

This study has adhered to the ethical guidelines established by the Socio-Legal Studies Association's, Statement of Principles of Ethical Research Practice (SLSA, 2009), and the British Sociological Association's, Statement of Ethical Practice for the British Sociological Association (BSA, 2002). The integrity of good social science research can only be maintained if ethical principles are given detailed examination at all stages of the research process. Researchers must understand and examine the moral and ethical implications of their research and continually revisit such issues throughout the research process (Iphofen, 2011). A strong commitment to abide by ethical principles by the social science community also helps to ensure that research produced by social scientists is trusted by the public, study participants and the funders of social science research and I have endeavoured to maintain these principles throughout the study.

CONCLUSION

The most appropriate methodological approach for investigating the MTD was a case study. This provided a large degree of flexibility and enabled the investigation to explore many different facets to the MTDs existence in order to gain as much information as possible about this technology which was still relatively new and unknown. It also enabled the study to strike a balance by incorporating first-hand experience of the device through a participant observation and not just relying on the interpretation of the devices from other sources. The analysis of the participant observation is discussed in chapter 6. Using a typology for case study it was also possible to sequence and organise

the case study allowing for the object of the case study to emerge through the investigation of the MTD. In the course of this multi-method investigation the problems linked to this technology became clear and exposed two themes concerning the devices use: regulation and risk. Subsequently, three research questions were developed around these themes and the MTD. The research questions the study addresses are:

- a. What is the relationship between young people and notions of regulation and risk?**
- b. How have different stakeholder groups interpreted and approached the MTD as a technology?**
- c. How have notions of regulation and risk been deployed and mobilised in the context of the MTD?**

These research questions were selected for the following reasons. The first research question provides an important link to the historical perspectives that inform social attitudes and policies towards children and young people in the UK and how they have developed and changed over time. These social and cultural attitudes to children and young people are very much the product of the prevailing socio-economic and cultural conditions of the time in the UK. The focus on stakeholder groups for the second research question was to ensure full examination was given to the groups involved with the MTD in order to provide an overall and fully informed picture of the devices use in the UK. This included a multi-method analysis of the manufacturer's financial accounts to understand how numerous and widespread these devices were in the UK and their role in trying to defuse human rights concerns about the devices. In addition freedom of information requests were collected from 132 public authorities to establish how public crime and disorder policies and their responsibilities to uphold legislative requirements to protect young people would affect their use of these devices. Finally the youth advocacy groups that opposed the use of MTDs were consulted to understand how young people had tried to use human rights concerns and the law to try and influence the use of these devices. The final research question also involves the stakeholder use of MTDs to identify how notions of risk and regulation were operating at different levels. Analysis was therefore focused on those public authorities using MTDs to document possible trends or patterns concerning their use. Indeed it was useful to identify how the rate of purchasing MTDs changed with time in line with the role that MTDs appeared to perform for the public authorities themselves. This was analysed in conjunction to crime and disorder strategies that public authorities operate on 3 yearly cycles from two different periods. Due to the City of Liverpool's prominence with the development of MTDs, a particular focus was brought to bear on how the MTD was being operated and managed by public authorities there as well as more broadly on a national basis.

The next three chapters in this thesis are analytical chapters that incorporate the empirical data that was collected during the mixed methods approach described in this methodology chapter. This forms the backbone of the case study by analysing the themes of regulation and risk in relation to the MTD. Having explored and discussed in the previous chapter the aims, processes and limitations of human rights, the next chapter on regulation examines two aspects of this relationship with the MTD. Is the MTD compatible with the UK's human rights obligations with regards to the established case law and how have the organisations opposed to the MTD used regulation like human rights law to combat its use? The way in which regulation is used or not used by the stakeholders of this campaign opposed to the use of MTDs reveals some of the problems implicit to regulatory tools for groups such as young people that were suggested in chapter 4. These regulatory issues are subsequently linked with risk, politics and power in the chapters following as the MTD is discussed in relation to policy, ASB and space with regards to the public authorities.

CHAPTER 6: REGULATION, THE MTD AND YOUNG PEOPLE

The use of the MTD has been described as the weaponisation of sound due to the devices capacity to channel high-frequency sounds that affect infants, children and young people only, regardless of how they are behaving (Akiyama, 2010; Little, 2014). The devices have elicited concerns that they can be deployed to serve a range of private and political interests without any public consent or awareness that these devices are in operation within local communities (Crawford, 2009; McInroy, 2010; Akiyama, 2010; Little, 2014). Uncertainty about the way that the devices are used, the potential harmful effects from the devices, its discriminatory impact and the lack of regulatory oversight has prompted fury from young people and youth advocacy groups that society would not tolerate such treatment on any other group. The MTD has therefore become a pressing human rights issue (Walsh, 2008), with young people and youth advocacy groups determined to define and reaffirm the boundaries of acceptable treatment and respect for young people. In this chapter, the compliance of the MTD will be considered in the context of the UKs domestic and international human rights obligations. In the first part of this chapter an analysis of regulation is undertaken to examine the relevance of the 1950 European Convention on Human Rights (ECHR) incorporated into UK domestic legislation through the 1998 Human Rights Act (HRA). The 1989 UN Convention on the Rights of the Child (UNCRC) will also be examined. The second part of the chapter discusses how these instruments have been used by the main opponents of MTDs in the UK.

ANALYSIS OF REGULATION: THE UK'S HUMAN RIGHTS OBLIGATIONS

On June 22 2011, the UK Equality and Human Rights Commission, a body that is independent of government and established by statute in the 2006 Equality Act, to promote and protect human rights, advised that indiscriminate use of MTDs may not be compatible with the UKs human rights obligations. In the Commission's opinion MTDs could, depending on circumstances, violate Articles 8 (right to a private life), 11 (right to assembly) and 14 (discrimination on the basis of age) of the ECHR unless a series of balances could be established and the action justified. In a letter written to the Department of Education it was concluded:

"In the Commission's view to justify interference each individual use of the device would have to be examined on its own facts/merits and Mosquito should only be used where there is actual ASB where the operation is proportionate to the behaviour it is intended to prevent. However, we suggest that consideration be given to whether some kind of regulatory regime is needed to ensure their proper use which provides a clear legal framework identifying the circumstances in which their use could be lawful

and when not [original emphasis].... If it is the government's view that such a regime would be unworkable in practice, then a straightforward alternative would be a ban on their use."

Equality and Human Rights Commission, 2011, p.5.

These concerns follow another report into the use of the devices published in January, 2010, when the Council of Europe's Committee on Culture, Science and Education (CCSE) declared that "marketing, selling and use of Mosquito type devices" should be prohibited in Member States of the European Union, which includes the UK (Wach, 2010, p.7). It was the opinion of the CCSE that MTDs did infringe upon Article's 3, 8, 11 and subsequently 14 of the ECHR, and that the devices were also incompatible with Articles 2.2, 15 and 19.1 of the 1989 UN Convention on the Rights of the Child (UNCRC). However, the CCSE has no binding powers in regards to human rights, children's rights or to prohibit sales of MTDs.

Despite the advisory content of these opinions, which question the compatibility of MTDs and human rights, the devices remain legal and continue to be used throughout the UK. There has been no legal challenge to the use of these devices either under the HRA or the ECHR. There is also some uncertainty and disagreement about which provisions of the ECHR are considered most relevant to MTDs and the conditions or circumstances in which the devices would be considered compatible with these provisions. The civil rights group Liberty (2009) has suggested that Article 8 of the ECHR relating to privacy would not be compatible with use of the MTD. However, the UK Committee on the Rights of the Child suggested in their Concluding Observations of 2008 (UNCRC, 2008), that Article 11 regarding freedom of movement and peaceful assembly was perhaps most relevant insofar as the Committee's reference to the MTD was found solely under this heading (UNCRC, 2008, p.10). Another possibility is the use of Article 3, which is enshrined as an absolute right insofar as there is no defence or justification provided within the Convention for a contracting party [the government] to interfere with it. Article 3 reads: No one shall be subjected to torture or to inhuman or degrading treatment or punishment. Articles 8 and 11 meanwhile are qualified rights. What separates Articles 8 and 11 from Article 3 is that the Convention allows state parties to put restrictions on these rights. State parties can therefore legitimately interfere with qualified rights provided their actions are justified. In doing so the state party must prove, on the balance of probabilities that it has, a) acted in a manner prescribed by law; b) that the restriction in question has a legitimate aim; and c) that the restriction is necessary in a democratic society. For this reason, Article 3 ECHR would seem to be a stronger provision relevant to MTD regulation because there is no proportionality or justification required. However, this does not mean that qualified rights should be disregarded. For example, the use of

police 'stop and search' powers that were granted under the Terrorism Act 2000 were found by the court to violate Article 8 ECHR, the right to a private life, in *Gillan and Quinton v the UK* ((2010), no.4185/05, 50 EHRR 45). The use of this power was not prescribed in law because it did not have adequate safeguards to prevent abuse (*Gillan and Quinton v the UK*, at para. 87). Finally, Article 14 ECHR is also a relevant provision to consider because it is a detached Convention right insofar as it does not apply unless another Convention right has been infringed upon on the basis of a discriminating factor. These discriminating factors include discrimination on the basis of race, gender, class, colour, language, political opinion, or other status where other status would almost certainly imply discrimination on the basis of age. Because the very high-frequency sounds produced by the MTD are designed to specifically affect children and young people under the age of 25, provided the MTD is found to violate another Convention right, the MTD would be found discriminatory against children and young people simply on the basis of their age.

While it is also possible to consider the use of the MTD within the context of all three ECHR Articles that have been suggested above, that is Articles 3, 8 and 11 in practice, there is no need to do so. When a number of Convention rights are alleged to have been breached, the court does not routinely scrutinise each Convention right individually and in turn. This is because if the MTD was found to violate one of the Articles contained within the ECHR, it would render the MTD incompatible with the Convention as a whole. Therefore, there is only a need to methodically work through the various Convention Articles of relevance. In the next section, the most relevant case law which concerns the use of noise under Article 3 of the Convention will be considered to test whether the use of the MTD can be regarded as comparable to the judgments given in these cases.

CASE LAW RELEVANT TO ARTICLE 3 ECHR

Cases relevant to Article 3 ECHR and noise are few and far between. The most applicable involves the historically high-profile case of *Ireland v the UK* (Eur. Court H. R., Case of Ireland v the United Kingdom, judgment of 18 January 1978, Series A no. 25). This case relates to the treatment of detainees and their interrogation by UK authorities which was found to violate Article 3 and constitute inhuman and degrading treatment. However, a direct comparison with the MTD and its production of high-pitched sounds is problematic. This does not concern the nature of the noise itself as the European Commission report on *Ireland v the UK* noted was a "continuous and monotonous noise" (*Ireland v The United Kingdom*. Comm. Rep. 25/01/1976 at page 247). This definition precisely describes the MTD output. One important point to bear in mind, however, is that in *Ireland v the UK* the noises did

not occur in isolation. The use of noise was in fact only one of five methods, known as the five techniques, which were used by agents of the state in their combined attempt to extract information from the detainees concerned. The use of noise therefore as a separate method of treatment applied to a victim has not been considered by the European Court of Human Rights (ECtHR) in respect of Article 3 ECHR. However, understanding the use of this noise and the courts judgment of *Ireland v the UK* can provide insight into areas that the court might apply to Article 3 ECHR in respect of the MTD. A useful test, therefore, would be to analyse whether the noise produced by the MTD is significantly different from the use of noise in *Ireland v the UK* by taking into account the duration, ability to move away, and the physical and mental consequences.

In terms of duration, the noise in *Ireland v the UK* was applied to the detainees for hours at a time. The duration of the MTD meanwhile is potentially, although not always, variable (see chapter 7 and 8). Guidelines that have been produced by some public authorities (chapter 8) and for private users of the devices by the manufacturer recommend different lengths of time for which the MTD should remain active (CitySafe Liverpool, 2006; Leicestershire Constabulary, 2006; BSIA, 2007; Merseyside Police, 2007; Metropolitan Police, 2008). These guidelines recommend noise duration of between 15 and 25 minutes. The extent to which these guidelines are followed, however, is also questionable (see chapter 8). Developments by the manufacturer have improved MTD products which can now reduce the devices output gradually over a 15 minute period and then self-terminate. However, it is unclear whether this is mandatory or optional or if this is simply a setting that can be changed manually. There is also a possibility that individuals exposed to the MTD are able to move away from the noise produced by the devices, yet this was not possible for any of the detainees involved in *Ireland v the UK* and will be discussed below. It was also established in *Ireland v the UK* that the detainees subjected to the noises suffered with physical and mental consequences which manifested, in some instances, as psychiatric conditions as a result of their treatment. It has not been established that MTD has affected its victims similarly. However, this last point is somewhat weaker than the other two since exposure to loud noises was not the only method used in *Ireland v the UK* in order to inflict punishment upon the detainees. For example, the detainees were subject to four other stress positions prior to interrogation, which compounded the effects of the noise. Therefore, the necessity to establish that the MTD must produce similar mental or physical effects on its potential victims may not be considered so important if these loud noises are considered in isolation. It is also not possible to rule out the possibility that the MTD may be equally capable of inflicting serious psychological damage upon its victims through abuse or repeated and sustained use (see chapter 2 and 7), especially because its victims can be of a very young age. Consequently it may be considered sufficient that the known

physical and mental consequences for the victims through use of the devices are that they are forced, as a result of these high-pitched sounds, to leave the area where the MTD is operating.

It is important to consider that the potential victims of the MTD include infants and the newly-born. Indeed the unborn child can also be affected (Mulder et al., 2002). Existing case law surrounding Article 3 recognises that the age of the victim is a factor that must be weighed relative to the circumstances. For this reason, the severity of the MTD and its period of duration need not meet the threshold set for inhuman and degrading treatment that was found in *Ireland v the UK*. A much lower threshold can be considered by the courts because of the potentially, very limited tolerance that very young children may have to such stimuli. This substantially lowers the requirement imposed under Article 3, where the court considers if the level of treatment has attained a minimum level of severity. Duration of the MTD must be revised with this in mind since minutes of exposure to the MTD rather than hours could still exceed what its potential victims can conceivably tolerate. Admittedly, these are difficult circumstances for the court to quantify. In light of the vulnerability of the victims exposed to the MTD, however, it is reasonable to assume that the devices are of sufficient potency and remain active for long enough to cause serious discomfort to young children. This can be surmised because it is known that teenagers, for example, are unable to remain within the area when the MTD is activated; correspondingly very young children and those with mobility or cognitive impairments would be adversely affected. On this basis the issue of duration does not differentiate the MTD from the perceived unacceptable length of exposure to loud noises that was present in *Ireland v the UK*.

For the same reason that very young children can be strongly affected by the MTD, the only remaining factor, mobility, should also be reconsidered. This is dependent on whether children can lessen their exposure to the MTD by leaving its area of operation - that is moving beyond the perceptibility range of the high-pitched sounds. This requires a judgment to be made about the mobility of young children, and it is difficult to form a conclusion that young children and infants do, definitively, possess the capabilities needed to move beyond this range of their own free-will. There are several reasons why children may be considered unable to do so. As a starting point it is necessary to take account of the limited understanding of children about the source of these high-pitched sounds, particularly when they are targeted through the use of covert vehicles (see chapter 7 and 8). There is also a distinct possibility that a child affected by the high-pitched sounds of the MTD might be unable to express their pain or discomfort to others about what, exactly, they believe they are experiencing, and thus they may be unable to seek assistance from another person should they be unable to physically move away from the source independently. Furthermore, some children may be unable to move beyond the confines of the space that the MTD operates within because of their limited mobility, a problem that

may be even more acute for the child that is physically disabled or if the child in question may be dependent on another for their mobility because they are in a pram or a push-chair. Because the MTD is designed so that a parent of a child is unable to hear the sounds produced by the MTD, they could unknowingly take a child into an area where the MTD is operating. The cumulative impact of these points regarding children and the MTD does not demonstrate that the circumstances produced by the MTD are different from the noises present in *Ireland v the UK* where detainees were unable to move away from the noise. The defence that victims can simply leave the area of operation to escape the effects of the MTD therefore is insufficient when consideration is given to the possible effect of the MTD upon young children.

With the elimination of all three factors, the most relevant case law on the use of noise in respect of Article 3 ECHR could be considered comparable to the MTD. The interesting aspect of the judgment in *Ireland v the UK* is also that the court said, when speaking of the techniques used on the detainees:

“The techniques were also degrading since they were such as to arouse in their victims feelings of fear, anguish and inferiority capable of humiliating and debasing them and possibly breaking their physical or moral resistance” (Eur. Court H. R., Case of *Ireland v the United Kingdom*, judgment of January 18, 1978, Series A no. 25 at para. 167).

It was not therefore the cumulative impact of the five techniques in *Ireland v the UK* that made the treatment degrading, each technique was considered degrading independently of the others. With regard to this reasoning and the results of the relevant case law applied, the deployment of the MTD is comparable to the use of noise in *Ireland v the UK* which has already been found incompatible with the Convention. In addition, in the thirty years that have passed since *Ireland v the UK*, the ECtHR has shown an increasing desire to modernise its interpretation of what should constitute torture, inhuman and degrading treatment in line with its living instrument doctrine. The court declared its intention in *Selmouni v France* ([GC], 25803/94, ECHR, 1999-V), in which a 47 year old man was beaten whilst in police custody, to become much stricter upon contracting parties and their obligations under Article 3, finding that the suffering inflicted in this particular case amounted to torture. It was stated,

“ [c]ertain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in future. It [the court] takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies” (*Selmouni v France* [GC], 25803/94, ECHR, 1999-V at para. 101).

THE PERSPECTIVE OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

The Committee published their most recent Concluding Observations in 2008 (the next report is scheduled in October, 2015), which outlined the UK government's progress towards the implementation of children's rights (UNCRC, 2008). Only one reference was made by the Committee to the use of the MTD in a section on the freedom of children to peaceful assembly, considered in some detail by McInroy (2010). There are, nonetheless, some other pertinent points raised by the Committee's Concluding Observations, 2008, which are relevant to the MTD and this concerns the UK's attitude towards corporal punishment, a subject that has received much scrutiny since the case of *A. v the UK* (Eur. Court H. R., *A. v the United Kingdom* judgment of 23 September 1998, Reports of Judgments and Decisions 1998-VI). In this case the ECtHR held the UK responsible for a breach of Article 3 ECHR because of a failure of English criminal law to adequately protect children from acts of corporal punishment which can be administered under the guise of reasonable chastisement. The issue arose after the conclusion of a criminal trial where proceedings had been instituted by a 9 year old boy against his step-father who had struck him two to three times over a period of one week with a garden cane, resulting in serious bruising. The jury in the case, however, acquitted the stepfather because the onus was unreasonably placed on the prosecution to prove that the acts committed by the defendant were excessive and unjust under the law, which permitted reasonable and moderate physical punishment of the child. When this matter was considered by the European Commission, before subsequently being referred to the ECtHR, the Commission in its judgment expressly relied upon the Concluding Observations of the UK Committee on the Rights of the Child which had criticised the UK government in its first report in January, 1995, for failing to outlaw the use of corporal punishment upon children. This was reiterated in the Concluding Observations of the Committee for 2008, which stated:

"The Committee is concerned at the failure of the State party to explicitly prohibit all corporal punishment in the home and emphasises its view that the existence of any defence in cases of corporal punishment of children does not comply with the principles and provisions of the Convention, since it would suggest that some forms of corporal punishment are acceptable."

UNCRC, 2008, at para. 40.

By referring to the existence of any defence in cases concerning corporal punishment of children, the Committee is referring to the fact that the UK government despite being found to have breached Article 3 ECHR by the ECtHR, in *A v the UK*, did not respond by repealing the law allowing reasonable

chastisement of the child. Instead, the UK government elected to restrict the availability of this defence to defendants. The reason why the Committee's views on corporal punishment are relevant to the MTD is because the MTD does itself represent a form of corporal punishment to children. Consider that the Committee in its general comments defines the concept of corporal punishment as "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light" (UNCRC, 2006, at para. 11). It is apparent from such a definition that the MTD is in fact designed to do both. Its intention to cause discomfort is indisputable, the devices are in fact marketed as a deterrent. The use of the term physical force by the Committee, however, is more arbitrary. The word physical could imply something that can be perceived through the senses, in which case sound would certainly be a physical force. One could also argue, however, that the MTD was not physical in the same way that corporal punishment is traditionally imagined and practiced, such as in the form of smacking or hitting; therefore, physical force can only be administered through the body of another person, and the MTD is not a physical force. The problem with this argument, however, is that the use of sound is already established as a physical force. The basis for this opinion can be found when reverting back to the case of *Ireland v the UK* (1978) and the noises that detainees were subject to. The Compton Reports which were commissioned by the UK government to investigate the treatment of the detainees established that in respect of the noise, the procedure consisted of "submitting the detainees to continuous and monotonous noise of a volume calculated to isolate them from communications and that this was a form of physical mistreatment" (cited from *Ireland v The United Kingdom*. Comm. Rep. 25/01/1976 at page 247). Thus the MTD can be considered to be a form of physical mistreatment also and a form of corporal punishment.

Incidentally, it is not actually necessary to reconcile fully, for the MTD, what is supposed by the Committee's term of physical force. This is because the Committee continues by declaring that:

"In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment which are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child."

UNCRC, 2006, at para. 11.

In the event that it was possible to argue that the MTD was not a form of corporal punishment, this factor would not itself be decisive as to whether the MTD was still considered to be degrading and

cruel under the terms of the UNCRC according to the Committee. Indeed the supplementary criteria which are listed by the Committee to serve as examples of non-physical forms of punishment, which would also be considered cruel and degrading and thus incompatible with the UNCRC, could easily apply to the MTD. The implications of these general comments from the Committee leave no room for doubt. When discussing the relevant provisions from the UNCRC in respect of corporal punishment, the Committee states in respect of Articles 19 and 37:

“... There is no ambiguity: ‘all forms of physical or mental violence’ does not leave room for any level of legalised violence against children. Corporal punishment and other cruel or degrading forms of punishment are forms of violence and States must take all appropriate legislative, administrative, social and educational measures to eliminate them.”

UNCRC, 2006, at para 18.

Furthermore, the Committee will not entertain any justification for interference with these rights. *“When the Committee on the Rights of the Child has raised eliminating corporal punishment with certain States during the examination of their reports, governmental representatives have sometimes suggested that some level of ‘reasonable’ or ‘moderate’ corporal punishment can be justified as in the ‘best interests’ of the child... But interpretation of a child’s best interests must be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child’s views; it cannot be used to justify practices including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity.”*

UNCRC, 2006, at para 26.

As a result of the interpretations provided by the Committee on corporal punishment, the MTD can be considered to be incompatible with the UNCRC. The two most commonly referred to Articles from the UNCRC that require states to protect the physical and mental integrity of children are Articles 19 and 37. In the case of *A v the UK* (1998), outlined above, the ECtHR referred directly to each of these separate UNCRC provisions in its judgment when finding that a breach of Article 3 ECHR had occurred. By taking account of the Committee’s own views on corporal punishment, the MTD is possibly a

violation of both Article 19 and 37 UNCRC. However, the ECHR also has case law on corporal punishment.

CORPORAL PUNISHMENT AND ARTICLE 3 ECHR

While the Committee has left us in no doubt under the UNCRC with regards to corporal punishment, the matter is not always applied consistently under the ECHR. There is another case involving corporal punishment in which the ECtHR did not find a breach of Article 3 ECHR. This case, *Costello-Roberts v the UK* (Eur. Court H. R., *Costello-Roberts v the UK* judgment of 25 March 1993, Series A no.247-C), involved a seven-year-old boy hit three times with a soft-soled shoe on his clothed buttocks, leaving no mark or bruising. The court examined both Article 3 and Article 8 in respect of the applicants complaint (Article 8 also has a physical integrity component) and did not find that the applicants Convention rights had been violated in either instance. However, this judgment was only narrowly secured (5 judges voted against finding a violation of Article 3 ECHR, with 4 judges dissenting).

However, prior to *Costello-Roberts v the UK*, the case law has consistently found corporal punishment to be a violation of Article 3 ECHR (all cases involving the UK). In *Tyrer v the UK* (Eur. Court H. R., *Tyrer Case v The United Kingdom* judgment of 25 April 1978, Series A no.26.), the ECtHR found a breach of Article 3 by six votes to one. In this case the applicant, a resident of the Isle of Man and aged 15 in 1972, had pleaded guilty to a charge of actual bodily harm and was sentenced by a local juvenile court to receive three strokes of the birch to his bare buttocks. This was in keeping with the relevant legislation of the Isle of Man at the time. These strokes were administered, in private, by a policeman, in the presence of the applicant's father and doctor. Pieces of the birch reportedly broke after administering the first of these blows, and Tyrer claimed he was sore for a week and a half afterwards, with the birching raising but not cutting his skin. The court had no hesitation in condemning what it believed to be institutional violence and found the punishment to be degrading within the meaning of Article 3 ECHR.

A number of other cases involving corporal punishment have been settled with the UK government before reaching the ECtHR such as *Three Members of the A. Family v the UK* (*Three Members of the A. Family v The United Kingdom*. Comm. Rep. 16/07/1987). There are also two cases that settled after a finding from the junior body that formerly existed as a buffer to the ECtHR which was known as the European Commission of Human Rights. Their role was to assess initial applications for admissibility, to learn and gather the facts of the case, to provide an opinion on the merits of the case under the

Convention and if a friendly settlement could not be reached between the parties, to refer the matter to the ECtHR. In the two cases concerned, *Warwick v the UK* (*Warwick v The United Kingdom*. Comm. Rep. 18/07/1986) and *Y v the UK* (Eur. Court H. R., *Y. v The United Kingdom* judgment of 29 October 1992, Series A no.247-A), the European Commission judged a violation of Article 3 ECHR to have occurred through the use of corporal punishment in school.⁵

If the MTD is a form of corporal punishment and is analysed in respect of the case law on corporal punishment under Article 3 ECHR, there may exist some doubt whether the MTD would attain the minimum level of severity to be considered degrading. The ECtHRs suggestion in *Costello-Roberts v the UK* that more severe treatment was required in order to reach this threshold provides this doubt (Eur. Court H. R., *Costello-Roberts v the UK* judgment of 25 March 1993, Series A no.247-C at para. 32). In contrast, consider ECHR case law when corporal punishment has been applied to adults. Not only has the ECtHR found acts of corporal punishment inflicted upon adults degrading, for example, *Yankov v Bulgaria* (39084/97, ECHR, 2003-XII) when a prisoner had his hair forcibly shaved before transference to an isolation cell. The ECtHR has also found corporal punishment of adults to be inhuman and degrading (as in *Ireland v the UK*) and also as torture (as in *Selmouni v France* when a detainee was cruelly abused in police custody). It is curious that corporal punishment when applied to adults always seems to attain the minimum standard of severity required under Article 3 ECHR for each of the three categories prohibited, yet corporal punishment of children has sometimes failed to meet even the very lowest standard.

In spite of this discrepancy, the case law on corporal punishment as a whole for Article 3 ECHR, suggests that corporal punishment when applied to children is almost always degrading. In fact even when it is not administered, meeting the threshold required for Article 3 from the MTD is still possible if the fear or threat of corporal punishment is considered serious after regard has been given to all the circumstances. The circumstances do not include the justification for corporal punishment. They refer only to the nature of the treatment (its duration), the manner and circumstances in which it was administered, the persons involved and its mental and physical effects. Due to the added provisions enshrined within the UNCRC and its influence over the jurisprudence of the ECtHR for cases involving children and young people, the MTD would likely be considered degrading at the very least.

On the basis of the legal principles and rules provided in the ECHR and the UNCRC, there is the potential to challenge the deployment of MTDs in the UK on human rights grounds. However, despite

⁵ Decisions from the European Commission of Human Rights must be considered by UK domestic courts under the HRA 1998 as well as judgments from the ECtHR.

this promising position, key stakeholders for children’s rights and welfare in the UK opted instead to use the threat of law combined with negotiation with individual public authorities and local councils to resist the deployment of MTDs as discussed in the next section.

STAKEHOLDER OPPOSITION TO MTDs

Two key opponents of the MTD were the Children’s Commissioner for England (CC) and the civil rights organisation Liberty. The CC was established in the Children Act 2004 as an office independent of government. The role of the CC is to raise the profile of the issues that affect and concern children and to promote awareness and understanding of their views and interests among all sectors of society both public and private. There are separate CCs for each country of the UK: England, Wales, Scotland and Northern Ireland. Liberty meanwhile, also known as the National Council for Civil Liberties, is an organisation with independent membership that is focused on safeguarding fundamental rights and freedoms in the UK. Interviews with these stakeholders were held at the offices of the CC and Liberty, and were recorded and transcribed in July, 2010, with permission of the participants. A follow-up telephone interview was also undertaken with both organisations in June, 2014, for updated information. All quotes in this section are from the initial interviews and the transcriptions were validated by participants who were sent copies.

Both Liberty and the CC provided complementary views about how the devices could be challenged in the UK, although there was no agreement about the potential for a legal action to challenge MTDs or even that the devices were an infringement upon children’s human rights. During the interview the CC was reticent about calling for a ban on MTDs and rejected such a confrontational stance to the devices. The CC was “more than an organisation for children’s rights and had to be mindful of this fact.” Instead the process that the CC preferred to support was “the encouragement of solutions inclusive of children,” and to work with public authorities to make this a reality. The CC suggested that if public authorities engaged with children and young people then they would not pursue solutions such as MTDs in the first place and pointed to the model of Corby, Northamptonshire, as evidence where the devices had been withdrawn after a group of young people initiated a campaign that brought together the areas Member of Parliament, local councillors, council officials, the police and young people to come to an agreement not to use the devices.

The CC also indicated they did not believe that a ban on the MTDs was either necessary or achievable. Limited resources had precluded any possible involvement in legal action against the devices, although the CC would support Liberty in whatever way they could with materials and information that may

prove valuable to them. The CC was convinced that the best practical option was to work alongside young people, youth advocacy groups and Liberty to raise awareness about the devices and use these links to persuade public authorities that there were “alternative and more effective methods at reducing ASB.” Alluding to several public authorities that were reviewing their usage of the devices and a handful of public authorities that had declared a total ban on the devices during the ‘Buzz Off’ campaign, the CC expressed confidence that the remaining authorities would also fall into line. Adding that the pressure exerted on public authorities “by a coalition of groups including UKYPs [UK Youth Parliament members] (representatives for young people aged 15-19 in local areas), was proving quite effective at bringing this issue into the public eye and persuading councils to look again.”

Liberty meanwhile were much more enthusiastic about the possibility of using legislation and in particular the HRA 1998 to oppose the use of MTDs, which they said had been strengthened following the reports from the UN Committee on the Rights of the Child and the Council of Europe expressing concern about the devices (UNCRC, 2008; Wach, 2010). However, according to Liberty, the main reason the organisation had been unable to establish a test case against the use of MTDs was that the private companies and public authorities that the organisation had challenged to date quickly capitulated and agreed to stop using the devices. One of the successful outcomes achieved by Liberty against the use of MTDs was action taken against the Co-operative group (a national retailer of convenience stores), who agreed to replace MTDs at their stores with a classical music system. This was after Liberty threatened to bring a case on behalf of an autistic child from Lancashire against them in May, 2008. Liberty was nevertheless, unable to use the HRA 1998 in this instance because the Co-operative group is not a public authority. Liberty subsequently refined their approach to targeting private users of MTDs by recommending that young people who encounter MTDs should report the devices to local councils as a statutory noise nuisance under the 1990 Environmental Protection Act which the authorities would then be obliged to investigate in the first instance. This would then enable Liberty the opportunity to intervene, if necessary, following the outcome of any subsequent investigation.

Liberty also revealed that they had also been involved in targeting specific public authorities that were reluctant to stop using the devices such as Plymouth City Council. Liberty advised these authorities that they were prepared to “back any child or young person wanting to take legal action” against the use of MTDs through the HRA 1998, with Article 8, pertaining to a right to a private life, the preferred choice for challenging the legality of the devices. Liberty nevertheless claimed that in spite of these promises they were still looking for “the right test case” to take this matter forward. This restraint, however, is more likely related to the costs of legal action in terms of time and resources. Indeed,

Liberty went on to suggest that resources had to be prioritised accordingly and that MTDs were just one campaign among many others.

“I think our success rate might be better measured on our public speaking events, our media type things in trying to get the message out about Mosquito, and working for individual clients in particular cases. In those cases, most of the time, the organisation or shop or whoever might well just take-down the devices because it’s easier than having litigation... So in those cases I think it’s been quite successful, but obviously there are still far too many Mosquito’s and this is just one of our many, many campaigns.”

Liberty, 2010

Both Liberty and the CC also indicated that MTDs were symbolic of wider issues of intolerance affecting children and young people in the UK. For the CC, age discrimination and the criminogenic representation of young people were major concerns as under-18s encounter unjustifiable restrictions on their use of public space including activities such as access to buildings like museums and leisure centres without the accompaniment of an adult. This assumption that children and young people hanging around were ‘up-to-no-good’ and that their exclusion could be justified on this basis needed to be consistently challenged. Similarly, Liberty expressed many of these concerns regarding age discrimination, the demonization of young people and the prospect of public spaces becoming no-go zones for young people (see chapter 7 and 8).

“There have been so many legal measures that aren’t specifically directed towards children as such, but have a major impact on children. So ASBOs is probably the major one ... [but] last year they passed legislation about GANGBOs, gang injunctions that are horrendous. ... [A] mix of ASBOs and control orders. It ... could involve basically house arrest for up to 8 hours a day and reporting to the police in bail like conditions; not being allowed to associate with certain people; not being allowed to wear certain clothes or have certain animals; you can’t go to certain areas. ... So I just mention that as part of the general criminalisation of, well it applies to everyone, but it certainly has a much more detrimental effect on young people.”

Liberty, 2010

At the heart of the discussions with Liberty and the CC was a recognition that legally, human rights and children’s rights, despite their ideals, are limited in what they can achieve. As a policy platform, however, human rights are a useful conduit that provides opportunities to improve situations for

children and young people which public authorities appear willing to consider and support. Legal action, even to groups like Liberty, despite the promise of a successful outcome is not always a desirable outcome.

“In a way, the HRA and human rights generally are sort of a shield against some of the worst excesses of the state and they can only do so much. It’s up to government to step forward and to actually do some proactive measures to make sure people’s rights are protected. ... I don’t think it’s a failure of human rights law; it’s a failure of government and of society in general to recognise the rights of children.”

Liberty, 2010.

Despite the shared views from Liberty and the CC on many issues affecting children and young people in the UK, the campaign against the MTD has been shown to share the same kind of disagreements with regards to human rights standards that were also apparent for the various regulators of human rights at a UK domestic, European and global level as shown in chapter 4. While the CC prefers to outline potential infringements of the MTD with the UNCRC, Liberty’s view has actually changed numerous times. This was confirmed in the interview after the publication of the Council of Europe’s parliamentary report into the MTD which amongst its suggestions identified Article 3 ECHR as an infringement by the MTD (Wach, 2010). Previously, Liberty had focused on the use of various domestic laws such as equality and discrimination legislation as well as environmental protection regulations to challenge the use of the MTD. In relation to human rights Liberty favoured the use of Article 8 ECHR as the most effective provision for combatting the use of MTDs. At no point, however, did Liberty consider possible human rights infringements with regards to the UNCRC. Liberty acknowledged, however, that although this was an important standard globally, it was of limited use to Liberty because it lacked any legal enforcement mechanisms. This was again suggestive that the UNCRC appears to have a limited influence on human rights standards in the UK as suggested in chapter 4 where the UKs domestic regulators did not consider the MTDs compliance with respect to the UKs obligations under this instrument. It suggests that enforcement mechanisms are highly influential for upholding human rights standards with instruments that contain them closely scrutinised by both campaigners and regulators.

Although the CC has suggested on numerous occasions that the MTD is not compatible with the UNCRC, the CC was only prepared to say that the devices were discriminatory when asked about any specific articles or human rights standards that they felt the devices were non-compliant with. This

has likely contributed to the split strategy that has been described above with Liberty pursuing legal avenues against the users of MTDs whereas the CC has focused principally on working with local pressure groups with young people and a range of organisations and businesses to pressure and undermine the policy position of operating MTDs by local authorities. This split-strategy that has been adopted, although not intended by design, has actually produced a powerful pincer movement whereby the campaign group has attacked from 2 different positions simultaneously and produced some worthwhile successes by doing so reducing the use of MTDs in the UK. As discussed earlier in this chapter, the impact of the pressure of human rights that has been brought by the campaign reveals a number of local councils that ultimately reconsidered their use of the MTD in response. These local resistance campaigns have often been led by representatives of young people in the England and Wales Youth Parliament and have been successful in persuading public authorities to review use of the MTD or how they use the MTD. There are other possible factors that may also have impacted on the use of MTDs and reduced their use in the UK, however, these are discussed in chapter 7 with evidence collected from the local authorities.

STAKEHOLDER CAMPAIGNS

In 2008, a major campaign against the use of MTDs was launched that included young people, youth advocacy groups such as the Children's Commissioner for England and human rights organisations such as Liberty. Some smaller, fragmented opposition groups to MTDs have also appeared on a regional basis, led largely by single individuals or small groups of young people which have attracted some media appearances in local and national media. In most cases the young people leading these groups are elected UKYPs or SYPs (UK Youth Parliament or Scottish Youth Parliament) where 15-19 year olds are responsible for representing young people in their local areas. A number of these UKYPs have been credited by public authorities of leading important local campaigns which have persuaded local councils to declare a council ban on the use of MTDs (Children's Commissioner, 2009; CRAE, 2011; Department of Education, 2011). The policy document entitled 'Positive For Youth,' produced by the Department of Education (2011), claims that the councils where young people campaigns had led to a ban on MTDs include Lancashire in May, 2007; Knowsley in June, 2007; Kent in June, 2008; Kirklees in September, 2010; and Sheffield in January, 2011.

The campaign called the 'Buzz Off' campaign was launched in February 2008 and continued until April 2009 when the campaign officially ended. The campaign was inspired by a group of young people that had led their own local campaign very successfully against the presence of MTDs in Corby,

Northamptonshire, featured in figure 4 below. The objective of the Buzz Off campaign was to “gain support for a national halt to use of ultrasonic dispersal devices” (Children’s Commissioner, 2009).



Figure 4. Logo for the Buzz Off campaign (left), featuring the CC and young people from Corby, in Parliament Square, Westminster (right).

At the launch of the Buzz Off campaign, the Children’s Commissioner for England from 2005-2010, Sir Al Aynsley-Green said:

“These devices are indiscriminate and target all children and young people, including babies, regardless of whether they are behaving or misbehaving. The use of measures such as these are simply demonising children and young people, creating a dangerous and widening divide between the young and the old. We are sending out the message that we as a society don’t value our children and we don’t respect their rights as outlined in the United National’s [sic] Convention on the Rights of the Child” (Buzz Off, 2008, p.2).

The Director of the civil rights group, Liberty, Shami Chakrabarti, also added:

“What type of society uses a low-level sonic weapon on its children? Imagine the outcry if a device was introduced that caused blanket discomfort to people of one race or gender, rather than to our kids. The Mosquito has no place in a country that values its children and seeks to instil them with dignity and respect” (BBC, 2008a).

Local campaigns were also formed to press for an abolition of MTDs. One such campaign launched in April, 2009, by the Stafford and Stone Youth Forum called 'Bite Back' was set up to raise awareness of the then newly developed MTD MK4 devices. The group supporters included its chair, a local Member of Youth Parliament for England and Wales, Staffordshire County Council, Staffordshire Youth Service, and Staffordshire Children's Trust. A website was also created to co-ordinate events and information about MTDs and to invite young people aged between 11 and 19 to complete a small survey on the campaign group website <<http://bitebackcampaign.blogspot.co.uk/>> about their personal experiences with MTDs (figure 5).



Figure 5. Partial website screen shot of the Staffordshire Youth Forum's Bite Back campaign against MTDs (accessed June, 2013).

In a motion to ban MTDs in Scotland in March, 2010, 88% of Members from the Scottish Youth Parliament voted to support a ban (SYP, 2010). In Scotland, the Scottish Parliament, a devolved national assembly of the UK government, has a Public Petitions Committee that investigates and ultimately refers issues of public interest to the Scottish Parliament for consideration and if necessary, legislation. A petition to "ban Mosquito devices now" was lodged in October, 2010, by a Member representing the Scottish Youth Parliament (Scottish Parliament, 2010). This petition process has gathered a wealth of material evidence from a wide variety of different sources which are publicly and electronically accessible from the Scottish Parliament website. However, the petition was finally closed and rejected in April, 2013, following submissions from a minister from the Scottish government (Scottish Parliament, 2012).

CONCLUSION

In this chapter it has been shown that the use of the MTD is incompatible with the human rights of children as enshrined in Article 3 ECHR and the UNCRC. Article 3 ECHR is an absolute right in that the state cannot offer justification as a reason for violating this particular right. The case-law involving Article 3 and the use of noise has been used as a possible test case against which the use of the MTD could be analysed and a potential breach of Article 3 ECHR considered. In addition the application of the UNCRC, which is used as an interpretive tool by the ECtHR for consideration of Convention rights in cases involving children, revealed that the MTD and its production of sound would also fall clearly within the definition of corporal punishment. This definition was established in the UN Committee on the Rights of the Child's (UNCRC, 2006) general comments which was declared unacceptable in any form. Consequently, it is possible to also consider the MTD in the context of Article 3 case law involving children and corporal punishment as well. The UK features frequently in the case law around Article 3 ECHR and corporal punishment and the court has regularly, though not always, found against it based on the treatment of children and young people. In one case, the court judged that the severity of the treatment was not sufficient to meet the threshold of degrading treatment required under Article 3. However, it has been argued that this anomalous finding is curious when cases of corporal punishment and Article 3 ECHR involving adults always seems to attain the minimum standard of severity that is required and has sometimes been classified as inhuman treatment or even torture. Nonetheless, the use of the MTD should be considered a violation of Article 3 ECHR as a use of sound in its own right or as a form of corporal punishment for children and young people. Accordingly I argue the MTD is also a violation of Articles 19 and 37 UNCRC.

Two stakeholders, the Children' Commission for England (CC) and Liberty interpreted and approached the MTD in different ways despite co-operating in a national campaign opposing the use of MTDs in the UK. The CC was reluctant to be drawn into questions of human rights and the MTD and favoured practical measures to combat the devices. This involved raising awareness of the devices and building a broad coalition of young people and youth advocacy groups to pressure individual public authorities known to use the device to remove them. This strategy appears to have been moderately successful in persuading some public authorities to stop using the devices. Liberty by contrast suggested that they would support any young person wanting to bring legal action against a user of these devices. However, in all cases the devices were voluntarily removed in order to avoid litigation. The threat of legal action by Liberty, nevertheless, did form the basis for negotiation for campaigns led by young people and youth advocacy groups to some of the public authorities that did use MTDs.

In this chapter, evidence has been provided for the second and third research questions. It has been revealed how two of the stakeholders in opposition to the use of the MTD co-operated in their approach to the deployment of the devices by private companies and public authorities. Both organisations co-ordinated their efforts and utilised their respective expertise to facilitate campaigns led by young people on a local basis against the usage of these devices. The CC used its influence to work with the public authorities to consider alternatives to ASB, to improve dialogue with young people's concerns and to build opposition against the use of the devices. Whereas Liberty used its reputation as a defender of civil liberties to threaten legal action on some public authorities and to raise awareness among young people of their rights and the organisations willingness to support anyone wanting to take legal action against a user of the devices.

It is also evident in this chapter how notions of risk and regulation have been deployed and mobilised in the context of the MTD by the CC and Liberty but also by bodies such as the Committee on the Rights of the Child, the CCSE for the Council of Europe, and the Equality and Human Rights Commission. For Liberty as well as other human rights bodies notions of risk and regulation have been shaped by the law around perceptions of sound or noise that is produced by the MTD. Liberty, for example, favoured using the 1990 Environmental Protection Act to oppose the use of the devices citing MTDs as a noise nuisance. This was also reflected in their initial approaches to public authorities as they suggested the devices may infringe Article 8 ECHR which refers to the right to a private life and has a substantial case law developed around noise pollution (in relation to things like airport flight paths) affecting quality of life and disrupting communication between people (Liberty, 2009). It was only following the CCSE report (Wach, 2010) that Liberty decided Article 3 ECHR was a better choice to challenge the use of the MTD by public authorities. The CC, however, was more inclined to question whether the devices were an effective method for dealing with ASB when there were numerous alternatives available. For the CC, it was the way in which young people were constructed by media, the public and authorities that needed to be challenged in order to regulate the MTD.

A legal analysis of human rights law has shown that the MTD is not compatible with the rights and fundamental freedoms enshrined within the HRA 1998, the ECHR and children's rights as defined by the UNCRC. However, despite claims by groups such as Liberty that they will take legal action against users of MTDs, no human rights cases against the MTD have been forthcoming. The reasons for this are financial, but it is also because use of the MTD is not as widespread as commonly assumed. In the next chapter risk-regulation is discussed in the context of how public authorities have interpreted and approached the MTD as a technology in order to control young people's access to space.

CHAPTER 7: RISK, THE MTD AND YOUNG PEOPLE

Chapter 6 examined how the MTD was considered to be incompatible with the human rights of children and young people and was unacceptable as a regulatory technology. Building on this analysis of regulation for children and young people this chapter is concerned with local government crime prevention strategies and how the MTD has become an acceptable aspect of the governance of young people in order to reduce the perceived risk posed by them. The actual deployment of MTDs by public authorities will be examined and compared to the claims by the media and manufacturer of the commonality of these devices in the UK. The chapter will then explore in detail the policy documents of CDRPs in order to uncover the context within which public authorities deploy MTDs. The chapter will conclude by highlighting the emerging spatial characteristics of ASB prevention policies that has led to the deployment of MTD in ways that exclude young people from place and space.

BACKGROUND TO PUBLIC AUTHORITIES AND THE MTD

As discussed earlier in chapter 2, there is the potential for MTDs to be considered a noise nuisance as well as incompatible with health and safety regulations (BSIA, 2007; Walsh, 2008). Some of the public authorities that used the devices have drawn up guidelines called mosquito protocols for their use (see chapter 5, section 2, part IV). These protocols outline a series of procedures that must be followed by the public authority. They include the decision-making and installation processes prior to the deployment of the devices, and also processes of consultation with residents and businesses in the vicinity during which a risk assessment must be carried out. There are also additional considerations that must be carefully considered before and during the devices operation, such as the time of day that the device can be used, the level of noise, the duration of the noise, the potential for other groups in the area to be affected, the frequency of use, and whether the area is one from which people can readily disperse.

The Crime and Disorder Reduction Partnerships (CDRP) are multi-agency taskforces appointed by statute to represent discrete areas of the UK by co-ordinating and combining the efforts of the various public authorities that have responsibilities for that area. This requirement is given in Sections 5 and 6 of the Crime and Disorder Act 1998 which stipulates that the CDRP do "all that it reasonably can to prevent crime and disorder in its area" (Crime and Disorder Act 1998 §17). This definition was subsequently amended in §19 of the Police and Justice Act 2006 to include "preventing the misuse of

drugs, alcohol and other substances, anti-social behaviour and behaviour adversely affecting the environment." The CDRPs are expected to deliver their objectives through a partnership approach that emphasises 'joined-up thinking,' sharing information and targeting resources at the issues or groups identified as a priority for preventing and reducing crime and disorder. To deliver their objectives CDRPs are required to produce policies that are a response to an audit which forms the basis of CDRP reports that are publicly available. These three-year strategies which are produced in consultation with the public authorities (the local authority(s), the police authority, fire and rescue, foundation trusts and probation and prison services) contain the targets and priorities for reducing crime and disorder for the next three years and suggest how this will be achieved. The analysis of CDRP tri-annual strategies has been used to develop an understanding of the overarching framework and structures within which public authority use of MTDs can be located and will be discussed later in this chapter.

PUBLIC AUTHORITIES AND USE OF MTD

Using the FOI Act 2000, 132 local councils and police forces were contacted within England requesting information on the use and ownership of MTDs, specifically how many MTDs they have purchased; when any of these devices were installed; where any of these MTDs were installed; what is the current status of these devices; and what guidelines for operation of the devices have been used (see chapter 5, section 2, part IV). 99 of these authorities disclosed that they had never purchased a MTD. The remaining 33, which made up a quarter of the contacted authorities (25%) revealed that they had purchased at least one MTD and some as many as 12 (see table 4, below). This is a much bigger percentage of procurement of the devices than was found by the Children's Commissioner (CC) for England in April, 2009. The CC had contacted 82 local authorities and found that only 12 (14%) had used MTDs (Children's Commissioner, 2009). The local authorities they found to have used MTDs included Blackburn with Darwen; Bradford; Bristol; Derby; Essex; Hillingdon; Liverpool; Plymouth; Rochdale; Stoke on Trent; Tameside; and Wigan (Children's Commissioner, 2009). Further analysis of these FOI requests revealed that the management of MTDs by some of the public authorities was undermined by inaccurate information given about how many MTDs had been purchased and deployed. For example, some of the local authorities contacted as part of this study claimed never to have purchased a MTD e.g. Liverpool and Blackburn with Darwen. This is despite previous FOI disclosures that suggest City Safe Liverpool, for example, had acquired a significant number of MTDs- approximately 44 (Merseyside Police, personal communication, August 11, 2008). In addition a series of local and national media articles and website reports by CSS (e.g. BBC, 2006; The Herald, 2008; Tibbetts, 2008; CSS, 2009; West Briton, 2009; Meneaud, 2010; Sheffield Telegraph, 2011) suggest that

several other public authorities purchased large numbers of MTDs with some accounts describing the use and placement of these devices in some detail. These public authorities, however, (Borough of Bexley, Bradford Metropolitan District Council, Liverpool City Council, Metropolitan Police, Plymouth City Council and Sheffield City Council) made no mention of any public purchases or use of these devices in their FOI disclosures.

Table 4: Public authorities that disclosed they have used MTDs

| Public Authority | Region | How many? | Date | Residential | Business | Still in use? | Notes |
|------------------|--------|-----------|------------|-------------|-----------|-------------------|--|
| Brent | London | 5 | 2010-11 | Y | N | N | 2 vandalised and the rest disposed of. |
| Croydon | London | Not known | ~2005. | Not known | Not known | N. Trialled only. | Devices challenged, considered a health hazard and contrary to human rights. |
| Enfield | London | 2 | 2009 | N | N | N | Devices never used. Disposed of in 2010. |
| Havering | London | 2 | Not known | Y | N | Y | In the foyer/stairwell of residential tower blocks. |
| Hillingdon | London | 8 | 2006-7 | N | Y | Y | 8 in storage. One was used in a private car park. |
| Tower Hamlets | London | 1 | 2012 | N | N | Y | Device never used. In storage. |
| Bristol | SW | 2 | 2005-6 | Y | N | N | Disposed of following disrepair. |
| Cornwall | SW | 3 | ~2007 | N | N | Y | 2 broken. 1 with police in storage. |
| East Devon | SW | 1 | 2006 | N | N | Y | Taken down 1 year after installed, used at a park pavilion. |
| Plymouth | SW | 2 | Not known | N | Y | Y | 2 at Adult Social Care Day Centres (privately owned). |
| Purbeck | SW | 1 | 2007-8 | N | N | Y | Device never used. |
| Swindon | SW | 2 | 2005-6 | N | Y | N | Disposed of. |
| Aylesbury Vale | SE | 1 | 2006 | N | Y | N | Disposed of in 2007. |
| Guildford | SE | 1 | 2005-6 | N | Y | N | Device never worked. |
| Havant | SE | 2 | 2005, 2013 | N | Y | Y | Used at leisure centre and cricket pavilion. |
| Southampton | SE | 8 | 2003 | N | N | Y | 5 broken. 3 still used in car park stairwells. |

| Public Authority | Region | How many? | Date | Residential | Business | Still in use? | Notes |
|------------------|-----------|------------|-----------|-------------|-----------|------------------------------|--|
| Huntingdonshire | E | 2 | 2006 | N | Y | N | Used at village shop. Disposed of. |
| Luton | E | 5 | 2005-7 | Not known | Not known | N. Trialled only. | Devices incompatible with CDRP policies. Removed soon after installation. |
| St Albans | E | 1 | 2006 | N | N | N | Device never used. Disposed of in 2011. |
| Suffolk Coastal | E | 3 | 2010 | Y | Y | Y. 1 to remain indefinitely. | 1 was broken. Repeatedly installing and removing MTDs is too costly. |
| Waveney | E | 1 | 2005 | N | Y | Y | Device in storage. Used once at local supermarket in 2006. |
| Welwyn Hatfield | E | 2 | ~2007 | N | N | N | Devices never used. Bought to protect cars but challenged by concerns for pregnant women and children. |
| Ashfield | East Mid | 1 | ~2008-10 | N | N | Y | Used at park pavilion. |
| Derby | East Mid | 5 | Not known | Not known | Not known | N | Devices became damaged over time and were not repaired. |
| Northampton | East Mid | 4 | 2007 | N | N | Y | Devices have never been used. |
| South Kesteven | East Mid | 1 | Not known | N | N | N | Used at council office. Currently switched off awaiting tests. |
| Carlisle | NW | At least 5 | 2006-7 | N | N | Y | Used at community centres. |
| Rochdale | NW | 12 | ~2006-9 | Not known | Not known | Y | 8 in storage. |
| Wigan | NW | 10 | 2009 | Not known | Not known | Y | 10 in storage. |
| Copeland | NW | 1 | 2007 | N | N | Y | Used at council office. |
| Doncaster | Yorkshire | 6 | 2006 | N | N | Y | Devices never used. Human rights concerns. |
| Huddersfield | Yorkshire | 1 | 2008 | Y | N | Y | In storage. At old peoples flats for 1 month in April 2008. |
| Kirlees | Yorkshire | 1 | 2007 | N | Y | Y | In storage. At parade of shops for 6 months in Dec 2007. |

The FOI requests that did report use of MTDs by public authorities revealed that 23 of the 33 authorities (69%) purchased at least one device before 2008. However, seven (21%) had never actually deployed the devices even once. As of May 2015, eleven (33%) had completely disposed of the MTDs that they had purchased. Finally, the locations where MTDs were deployed included residential settings, convenience stores, supermarkets or shopping centres, and car parks. The public authorities justified the use of MTDs in places such as car parks as these were areas young people should not be and as such MTDs could be operated continuously after dark.

A number of the public authorities reported that the MTDs they purchased either did not work as desired (Croydon Borough Council, personal communication; April 30 2015; Guildford council, personal communication, June 18 2015); fell into disrepair (Bristol City Council, personal communication, April 22 2015; Cornwall Council, personal communication, May 5 2015; Suffolk Coastal District Council, personal communication, April 30 2015); or were vandalised (Brent Housing Partnership, personal communication, April 28 2015; Derby City Council, personal communication, June 9 2015). Consequently, MTDs were often disposed of on the basis that they were not effective or were too costly to maintain.

“My recollection is that it never worked properly and eventually it was put in the bin” (Guildford council, personal communication, June 18, 2015).

The FOI requests suggest that there is some uncertainty about how many MTDs have actually been purchased by public authorities and how or where the devices have been used. In some cases this is due to some missing records. For some of the public authorities, however, their claims not to have purchased MTDs is directly contradicted by evidence available in the public domain that suggests a small number have purchased MTDs in significant numbers. Use of the devices varies from those public authorities that deploy MTDs in permanent locations to those that have used the devices in several locations and many which have discarded the devices completely. One other significant development was the emergence of a mobile MTD in Liverpool by Merseyside Police. This was a new kind of MTD with the potential to open up a new frontier for usage of the devices as a rapid response unit. Its use within Liverpool was in need of further study.

USE OF MOBILE MTD (MMV)

The Mobile Mosquito Vehicle (MMV), was on trial in a pilot scheme for Merseyside Police. Unconventional in its design, the MMV was a MTD that was contained within a police vehicle rather than being fixed to a wall or building that is stationary. This new version of the technology was awarded a Merseyside Police Innovations Award for 2007 for its ability to target 'hotspot' areas for ASB within the community (Concord Security, 2009). The MMV was a MTD that could be driven to different places with ASB problems that were considered a persistent problem and a high priority to target.

During the participant observation I was able to watch how the MMV was deployed in practice to affect young people in its surrounding area. This occurred at a known hotspot area for ASB outside of a convenience store on Eastern Avenue, Speke, where a large open space frequently had young people congregating (see chapter 5, section 2, part V). The MMV, however, had been designed intentionally not to look like a customary police vehicle. It was a covert vehicle, so that the MMV could be used discreetly and parked on somebody's drive-way if young people were reported to be loitering in a particular residential area, or left in a car park, or parked outside a parade of shops where it could be activated remotely by a key fob. The MMV was blue in colour and was designed to mimic an ordinary civilian vehicle. It was also surrounded by speakers concealed on all sides of the car that were also built into the car's bumpers. Merseyside Police produced a "Mobile Mosquito Protocol" to govern use of the MMV which was to roam around Liverpool and target "local hotspots" where there were ASB problems (Merseyside Police, personal communication, August 11th 2008). The use of the MMV was triggered through an 'escalation model,' where reports of ASB within an area had to reach a certain threshold before the device would be used.

Although similar regulatory issues apply to the MMV as they do to MTDs, these were not taken into account during the deployment I attended. No consideration was given to any potential regulatory issues that could have arisen from the deployment of the MMV. During the session I observed, the MMV was parked approximately 10 metres away from a convenience store where it was left unattended and was activated for a period of approximately 20 minutes after which the device automatically shut-down. The intended target of the MMV was a group of 4 young men that were congregating to the side of the convenience store. Within five minutes of the MMVs deployment this group of men had left the area although they remained on the other side of the road. Details of how this MMV impacted on the relationship between young people and space and place permanently is discussed more fully in the next chapter. The MMV also had a powerful effect on me as I was aged within the devices designed working range which was to affect people up to 25 years old (see chapter

2). The high-frequency buzz from the MMV quickly became overbearing and quite disorientating. Although the sounds were not immediately painful, the effect made me feel nauseous and my ears were still ringing for several hours after the event. It was apparent that it was not only young people that were able to hear the devices as the police officer that escorted me to this location to experience the device in action-admitted that he too could hear the “low whiney tone” from the device even though he was outside of the target age-range.

The cost of the MMV was estimated by Merseyside Police in the region of £16k, although it was not considered to be cost effective and was ultimately mothballed.

“Other diversionary tactics were subsequently adopted and the MMV ceased to be used. The date it ceased operation is not held by Merseyside Police, but was prior to the beginning of 2011. The Mosquito Vehicle has now been decommissioned and will not be replaced”

Merseyside Police (personal communication, August 7, 2014).

Despite the MMVs success at displacing a group of young people from this particular hotspot area, the device remained limited by practical issues. Although it was designed to avoid provoking young people from vandalising the vehicle by making it covert, the MMV required a police officer to be on hand in any event, to drive the car and to assess the situation so that the device could be activated. The MMV was also only there to provide temporary relief from ASB problems for the owners of the convenience store until a long-term solution to the problem of young people hanging around outside the shop could be agreed and funded. As discussed and shown in chapter 8 more permanent ways of excluding young people from this area were put in place. This may not have been the only approach to using the devices however as one of the police officers admitted to me that when Merseyside Police first acquired the MMV, in approximately 2007, he and his colleagues would pre-emptively take the MMV to hotspot areas where complaints about youths hanging around were frequently reported (especially at a weekend), just to provide reassurance to regularly complaining shop owners (who had been made aware that the MMV was a police vehicle) that their concerns were being taken seriously. He said that this made sense because they wouldn’t normally have time to address such problems during busy evenings and because the groups of young people that did routinely congregate by a row of shops in some of these areas would only be “sitting on a nearby wall and talking anyway.” He believed this kind of reassurance was very useful in reducing the number of complaints that were received from ASB hotspots, with the MMV not required to be activated to achieve this in many cases.

The participant observation enabled me to experience and witness first-hand how the MTD affected young people and how a public authority was deploying these devices in practice. This provided key analytical insights that challenged some existing assumptions that had been held about the usage of the devices in the UK. By revealing that the MMV was not in fact being used in the way that was described in the protocol documents that were designed to control the operation and deployment of the devices, for example, it was clear that Merseyside Police were adapting the strategy for using these devices for a different purpose – this is explored further in chapter 8. It also encouraged me to expand the investigation and acquire and collate more evidence about how these devices were being operated by other public authorities nationally. By using this opportunity to question Merseyside Police officers about this strategy and the consequences of using these devices, it was also possible to uncover other pieces of information and connect wider theoretical models of governance to the policy context that was being pursued by the CDRP multi-agency strategies. Furthermore, by directly experiencing the device as it was deployed against young people congregated in the area this experience furnished me with a knowledge that enabled me to pinpoint the most relevant aspect of the UK's human rights obligations that needed further investigating regarding the MTD. This link between the MTD and corporal punishment is one that has been missed by regulators with the UNCRC Committee's 2008 concluding observations, for example, going on to discuss concerns about corporal punishment separately after discussing the MTD.

PUBLIC AWARENESS OF MTDS

There has been a considerable media interest and speculation about the abundance of MTDs within the UK with numerous reports and figures suggesting that demand for these devices in the UK has soared (see table 5, below). Within approximately two years of the launch of the MTD, the UK media was reporting that between 3,000-3,500 devices had been sold by the company, CSS. These figures grew to as many as 5,000 in 2009-2010, but increasingly, academic sources have also involved themselves within this kind of speculation. Some have suggested that the devices probably number in the "tens of thousands" (Bowling et al., 2008, p.71) or have quoted figures provided by the manufacturer of the devices that claim over 9,000 devices have been sold as of 2012 (e.g. Little, 2014).

This speculation about the rapid advance of the MTD into UK towns and cities, however, has never been verified. Worse, it has the potential to nurture a perception that young people in the UK are out of control and that massive external regulation (the purchase of these devices) has been required for the return of order to communities. Furthermore, it normalises and legitimises this treatment of

young people with other regulatory measures becoming viewed as insufficient or not severe enough. It has the potential to lead to what is known as risk amplification (Kasperson et al., 1988; Kasperson, 1992; Renn et al., 1992; Kasperson and Kasperson, 1996; Pidgeon et al., 2003), where perceptions of risk are magnified influencing institutional processes as well as the behaviour of individuals.

Table 5: Speculation of the abundance of MTDs in the UK

| Media Publication | Number of MTDs in the UK | Date |
|-----------------------------|---------------------------------|---------------|
| BBC, 2006. | More than 1000 | May 2006. |
| Guardian, 2007. | 70% of 3300 | March 2007 |
| BBC, 2008a. | 3500 | February 2008 |
| Daily Express, 2008. | 3500 | February 2008 |
| Daily Mail, 2008. | 3500 | February 2008 |
| Telegraph, 2008. | 3500 | February 2008 |
| Sunday People, 2009. | More than 5000 | March 2009 |
| Telegraph, 2010a. | More than 3000 | June 2010 |
| Independent, 2010. | Around 5000 | June 2010 |
| Observer, 2010. | 3500 | June 2010 |
| Guardian, 2010. | About 5000 | June 2010 |

HOW MANY MTDs HAVE BEEN SOLD BY CSS IN THE UK?

From the company financial accounts of the manufacturer of MTDs, CSS, it is possible to extrapolate a figure for the number of MTDs that have been sold every year that the company has been trading and a grand total for the number of devices sold overall. The main requirement to accurately calculate such a figure is the proportion of CSS's sales income that is derived from sales of MTDs each year. However, CSS has already provided this estimate when the company director appeared before the public petitions committee for the Scottish Parliament in February, 2012, in response to a petition seeking to ban the devices in Scotland (Scottish Parliament, 2012a). During this testimony the company director for CSS was asked by the panel directly about the proportion of the company's income that was derived from sales of the MTD only. The reply given was "approximately 50%" (Scottish Parliament, 2012a, column 442). The company director also reiterated this point in a

personal communication when contacted, that the MTD “makes up about 50% of our sales” (personal communication, July 17 2014).

With this assumption that MTDs account for 50% of CSS’s sales income and that this has been similar during all years of trading, the total number of devices that CSS has sold as of February 28, 2014, amounts to 749 devices. This total is significantly lower than any estimate of the number of MTD sold that has been reported in the UK media, discussed below. Indeed, even in the event that the sales of MTDs were being deliberately underestimated and were responsible for 100% of all CSS’s sales income, the maximum number of devices sold would still only total 1,497. This is because the sales price of the devices up to 2015 has not changed (personal communication, July 17 2014). These figures of 749 and 1497 represent the possible range, lower and upper, for the number of MTDs sold by CSS in the UK. The international exports of MTDs are handled separately by another company (see chapter 5, section 2, part III).

FINANCE OR REGULATION AFFECTING PUBLIC AUTHORITY PROCUREMENT OF MTDs?

Although MTDs are less widespread than anticipated in the UK it is important to consider the impact of finance on public authority purchasing of MTDs in the UK. The annual financial accounts for CSS, supported by the data disclosed by public authorities that purchased MTDs (table 4), reveal that a decline in the rate of purchases for MTDs occurred within the year 2007-2008, see figure 6 below. This puts the peak sales of MTDs by CSS in the year 2006-2007 - just before the global financial crisis hit (2007-8). Significantly, it also means that demand for MTDs had declined rapidly when local government budgets were actually at their highest between 2008 and 2009 (Hastings et al., 2013). FOI requests of known large purchasers of MTDs, such as City Safe Liverpool, for example, which had procured MTDs at an average rate of three devices per month from December 2006 to June 2008 also stopped purchasing MTDs abruptly from this point (Merseyside Police, personal communication, August 11, 2008). From 2009 onwards public authority budgets declined significantly. In England, local government spending (excluding police, schools and housing benefit) was set to fall by nearly 30% in real terms between 2008 and 2015 (Hastings et al., 2013).

Although budget cuts would have impacted upon the direct availability of public authorities to purchase MTDs, it is clear that the financial situation of public authorities does not explain the decline in demand for MTDs from 2007 onwards. Regulation, however, does more closely match this timeframe. The UK-wide Buzz Off campaign (see chapter 6), launched by Liberty and the Children’s Commissioner for England in February 2008 through to April 2009, for example, was in force during

this period where demand for MTDs appears to have dropped off rapidly. Liberty in particular also had some notable successes achieved prior to 2008 in persuading some private companies and councils to stop using MTDs. Both during the Buzz Off campaign and its aftermath a series of locally targeted campaigns organised against the use of MTDs by public authorities, led by members of the Youth Parliament for England and Wales were also successful in persuading public authorities to remove and then ban the devices (Sheffield Telegraph, 2011). A national petition to ban the devices in Scotland, led by Scottish Youth Parliament members may have also helped to raise the profile of children’s and young people’s human rights vis-à-vis the MTD. Equally, interventions by pan-European institutions such as the Council of Europe and its parliamentary committee that considered the potential impact of the MTD on children and young people in the context of the ECHR may also have had an impact (Wach, 2010), see chapters 4 and 6.

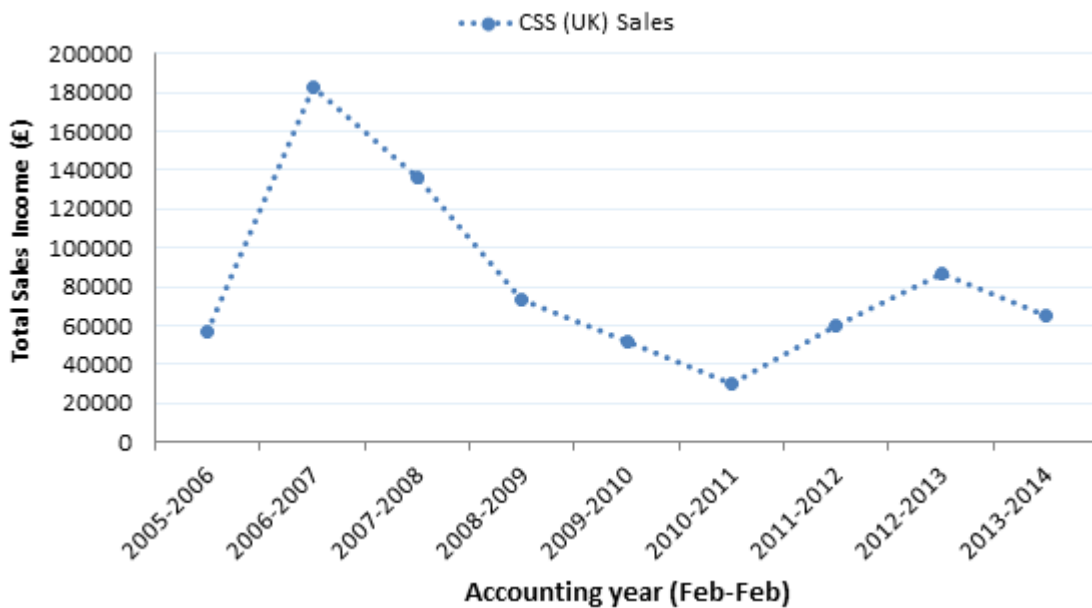


Figure 6: Annual Sales Performance of CSS 2005-2014

The manufacturer, CSS, is convinced that it was the uncertainty created by human rights which has strongly affected sales of the MTD to public authorities.

“With regard to why the local authorities have significantly reduced usage, that’s simple. Pressure from Liberty and the Children’s Commissioner who have together promised anyone who wishes to take us or the organisation using the device to court their full support as in their opinion the device breaches

the human rights act. Obviously only public bodies are bound by the act and they do not want to take the chance of being sued.”

CSS, personal communication, February 3, 2010.

The policy context does tend to support to the notion that CDRPs were overlooking the uses of MTDs since the devices would seem to offer possible solutions for the CDRP policies that were being implemented during this period. Indeed analysis of CDRP strategies suggests that environmental based crimes with a focus on young people loitering remained a priority for CDRPs to address. From 2005-8 CDRPs targeted young people hanging around as a major cause for the fear of crime among residents. In 2011-14, young people in public spaces were also targeted to improve perceptions of safety through the guise of ASB, with various measures adopted in order to exclude or steer them into ‘safe places.’ The policy context therefore suggests that MTDs should not have declined during this period unless there was a clear reason to deter public authorities from purchasing MTDs.

While this may indicate that the resistance campaign to the MTD by Liberty and the Children’s Commissioner was highly effective in raising awareness of young people’s human rights and producing an effective deterrent to public authorities through the threat of litigation. There is another simpler option which is that the public authorities stopped purchasing MTDs because they were actually ineffective and unable to justify the marketing claims made by the manufacturer. This was actually indicated in a series of FOI disclosures where public authorities reported that the devices had proven to be unreliable and dysfunctional. Other public authorities also reported that the devices had been placed into storage because they had been damaged and proved too difficult to repair.

On balance therefore it appears that there are several contributing factors that are able to account for why sales of the MTD declined amongst public authorities in the UK. The resistance campaign to the devices was effective in raising awareness with regards to human rights concerns with the MTD which is indicated in FOI responses. The campaign may also have been successful in establishing a deterrent to public authorities with the threat of litigation under the HRA, as the manufacturer suggested. However, as suggested above, the FOI disclosures also reveal that of the public authorities that purchased at least one MTD, a fifth never actually deployed the devices at all (21%). A third of this total had also disposed of their devices as of May 2015. Clearly, therefore, the MTD had not measured up to expectations at the various locations that the public authorities had deployed them in from car parks to outside shopping centres.

THE POLICY CONTEXT FOR PUBLIC AUTHORITIES AND THE MTD

Analysis of the 18 CDRP tri-annual strategy documents from 2005-2008 and 2011-14 (see chapter 5 section 2, part IV) revealed some important trends about the changing content of CDRP strategies. The results of these analyses are contained in table 6 and table 7. These tables include the CDRP strategies that were sampled from each period, whether an authority within the CDRPs area is known to have used a MTD (up to 2014), the raw data results of the key word analysis that was undertaken and lastly, in order to provide a material context to these analyses, each local authorities corresponding rank from their average in the table of indices for multiple deprivation published in 2007 and 2010 by the Department for Communities and Local Government (DCC, 2014; TNA, 2014).

Table 6: Content Analysis of CDRP tri-annual strategies 2005-2008

| CDRP Strategy | Have used MTD? | Frequency of Use | | | | | | | Average Rank from Indices of Multiple Deprivation, 2007 ⁶ (out of 353, where 1 = most deprived) | |
|---------------------|----------------|------------------|--------------|------|------|------|---------------|------------|--|------------|
| | | ASB | Young People | Risk | Harm | Fear | Neighbourhood | Vulnerable | | Education |
| West Cumbria | Yes | 28 | 10 | 20 | 4 | 11 | 12 | 3 | 8 | 119 and 79 |
| Blackburn w/ Darwen | No | 37 | 26 | 11 | 6 | 4 | 9 | 8 | 19 | 27 |
| West Norfolk | No | 16 | 4 | 10 | 2 | 7 | 1 | 4 | 1 | 134 |
| Surrey Heath | No | 30 | 17 | 4 | 1 | 22 | 7 | 4 | 8 | 352 |
| Wokingham | No | 27 | 28 | 4 | 3 | 21 | 11 | 3 | 10 | 353 |
| Manchester | No | 69 | 29 | 17 | 5 | 20 | 9 | 7 | 17 | 4 |
| Hartlepool | No | 16 | 7 | 1 | 7 | 5 | 4 | 0 | 0 | 35 |
| Chorley | No | 18 | 24 | 1 | 2 | 9 | 12 | 4 | 9 | 208 |
| Bolton | No | 8 | 21 | 13 | 8 | 3 | 2 | 3 | 8 | 65 |

Table 7: Content Analysis of CDRP tri-annual strategies 2011-14

| CDRP Strategy | Frequency of Use |
|---------------|------------------|
|---------------|------------------|

⁶ The Department for Communities and Local Government (DCC, 2014; TNA, 2014) produces the Indices of Multiple Deprivation to provide an understanding of the scale and type of deprivation experienced by people in different areas across England. The indices measure a number of factors including income, employment, health, education, barriers to services, the environment and crime. Data available from 2007 and 2010.

| | Have used MTD? | ASB | Young People | Risk | Harm | Fear | Neighbourhood | Vulnerable | Education | Average Rank from Indices of Multiple Deprivation, 2010 (out of 327, where 1 = most deprived) |
|----------------|----------------|-----|--------------|------|------|------|---------------|------------|-----------|---|
| North Tyneside | No | 27 | 6 | 4 | 7 | 0 | 2 | 11 | 2 | 124 |
| Peterborough | No | 28 | 1 | 5 | 4 | 9 | 25 | 13 | 3 | 79 |
| Manchester | No | 53 | 10 | 4 | 4 | 1 | 12 | 10 | 5 | 4 |
| Canterbury | No | 23 | 28 | 3 | 5 | 3 | 22 | 5 | 2 | 163 |
| Derbyshire | Yes | 33 | 11 | 39 | 13 | 2 | 5 | 15 | 5 | 176, 221 and 232 |
| Stevenage | No | 61 | 22 | 7 | 5 | 7 | 25 | 7 | 7 | 158 |
| Hillingdon | Yes | 38 | 11 | 2 | 12 | 6 | 9 | 3 | 1 | 130 |
| Rochdale | Yes | 73 | 43 | 18 | 18 | 1 | 11 | 9 | 11 | 29 |
| Hackney | No | 32 | 16 | 16 | 11 | 2 | 3 | 7 | 3 | 1 |

While table 6 and table 7 reveal degrees of variability amongst the content of the individual CDRP strategies from each period, when the two tables as a whole are compared there is evidence of an increased use of the terms ASB, risk, harm, neighbourhood and vulnerable between the two periods and the reduced number of references to young people, fear and education. This can be seen from the mean usage of these words which has been calculated for each of the key words and is provided in table 8. Table 8 also contains the results from a basic statistical analysis which was used to compare the raw data of the key words found in the CDRP strategies from both periods. The results of this analysis suggest that five of the key words are significantly different between the two time periods and that these variations cannot be explained by random chance (when $p < 0.05$). The five words are ASB ($p=0.04$, $n=617$), harm ($p=0.02$, $n=117$), fear ($p=0.01$, $n=133$), vulnerable ($p=0.01$, $n=116$) and education ($p=0.03$, $n=119$). It is important to note, however, that even though use of the terms young people ($p=0.35$), risk ($p=0.46$) and neighbourhood ($p=0.14$) were not statistically significant in terms of their changing use from 2005-8 to 2011-14, all these terms, young people ($n=314$), risk ($n=179$) and neighbourhood ($n=181$), still featured well over 100 times throughout the total sample and are therefore strongly reflected within the CDRP strategies although no significant change in emphasis has been observed over these periods.

Table 8: Statistical significance for mean frequency of words used in both strategy periods

| Mean word frequency in CDRP strategies | | | | | | | | |
|--|--------------------------|------------------|-------------------|--------------------------|--------------------------|-------------------|--------------------------|-------------------------|
| Period | ASB | Young People | Risk | Harm | Fear | Neighbourhood | Vulnerable | Education |
| 2005-8 | 27.66 | 18.44 | 9.00 | 4.22 | 11.33 | 7.44 | 4.00 | 8.88 |
| 2011-14 | 40.88 | 16.44 | 10.88 | 8.77 | 3.44 | 12.66 | 8.88 | 4.33 |
| Statistical Analysis | P= 0.038 ** | P= 0.357 * | P= 0.464 ** | P= 0.023 ** | P= 0.006 ** | P= 0.145 ** | P= 0.006 ** | P= 0.034 * |
| Total Words (n) | 617 | 314 | 179 | 117 | 133 | 181 | 116 | 119 |

*1-Tailed T-Test (raw data was normally distributed)

**Mann-Whitney 1-Tailed Test (raw data was not normally distributed)

The analysis also revealed only a small content of the CDRP strategies related to either gender or race. The word 'women' was the only gender relevant term to feature as a potential keyword, with 27 uses in the 2011-14 strategies. This term did not feature in the 2005-8 sample group. The two race relevant terms to feature was the word 'race' which featured 34 times in the 2005-8 strategies only, and the term BME meaning 'black and minority ethnic' which featured 28 times in the 2011-14 strategies only. For any word to feature as a potential keyword they had to number at least 20-times (n=20) within the content of the 9 CDRP strategies from either period (2005-8 or 2011-14). Because the increases or decreases in the use of these terms were starting from a very small base, these changes were not numerous enough to be considered as keywords.

The way that young people as a group are described and constructed in these policy documents is nevertheless consistent across both periods. Young people were depicted as both victims and as perpetrators of crime: a group that is vulnerable to harm but also potentially harmful to others. Young people were described as impressionable and susceptible to being involved with risky behaviours that carried negative outcomes for themselves and others. Young people were considered to have poor decision-making abilities and to lack awareness about the consequences of numerous issues including unhealthy lifestyles, drug taking, alcohol misuse, fire safety, road safety, sexual relationships and how they were perceived by other groups. Young people were also considered particularly vulnerable to bullying, discrimination and sexual abuse. Material considerations were rarely mentioned as potential risk factors for young people, confirming the decontextualisation thesis- that the social, political and economic factors relevant to young people's offending are routinely ignored (Goldson and Muncie, 2006a; Liebenberg et al., 2015).

THE POLICY CONTEXT 2005-8

The key word differences observed between the CDRP strategies from 2005-8 and 2011-14 in table 8 indicate different policy approaches and targets for action between 2005-8 and 2011-14. However, there was actually little different between the strategies from each period in terms of their aims or content. In 2005-8 there does appear to be more emphasis on quick fixes and short-term goals such as fear of crime which is informed by surveys from local residents. However in 2011-14, the targets are more generally linked through the themes of harm, vulnerable and ASB. A more subtle difference between the strategies from both periods is how the CDRPs approach their targets suggesting central government retains a significant degree of control over CDRPs. The CDRPs in 2011-14 do nevertheless appear to have more flexibility and autonomy, with fewer government guidelines requiring CDRPs to address specific areas of crime. This may be a consequence of the change of government in 2010 with the replacement of the New Labour administration (1997-2010) with a coalition of Conservative and Liberal Democrats (2010-2015) that significantly reduced public expenditure.

In the 2005-8 strategies, the specific targets imposed upon CDRPs as a national priority took the form of public service agreements (PSAs). These PSAs were referred to within all of the CDRP strategies sampled from this period, the main one of which was PSA2 which required authorities:

“To reassure the public, reducing the fear of crime and ASB, and building confidence in the Criminal Justice System without compromising fairness” (cited from West Norfolk CDRP, 2005-8, p.13).

The emergence of the fear of crime as a principal target for the CDRPs explains why the word ‘fear’ is a frequently used keyword within the strategies from this period and why it subsequently declines (table 8). As a defined target for the CDRPs, however, it was linked largely to youth nuisance through annual fear of crime surveys of residents which had indicated young people hanging around was a priority that residents would like their CDRPs to address. In particular, groups of young people were found to be particularly intimidating to residents by virtue of them hanging around on streets, even if they were not engaged in any criminal behaviour at all.

“Over 70% of respondents felt that juvenile nuisance was either a very big problem or fairly big problem, with the majority also raising ASB and class A drugs as big problems and a top priority.”

Bolton CDRP, 2005-8, p.16.

To combat the problem of young people hanging around, however, CDRPs do not appear to have resorted to MTDs - in fact MTDs are not mentioned in any of the strategy documents sampled even though the number of the devices used by public authorities increased greatly during this period (2005-8), see table 4. Instead public authorities favoured a mixed approach to addressing ASB focusing on parenting contracts with the threat of a withdrawal of welfare support to uncooperative parents and diversionary schemes aiming to steer young people away from the opportunities for offending particularly during school summer holidays. Furthermore the use of enforcement solutions for young people through the use of Acceptable Behaviour Contracts (ABCs) and ASBOs are commonly used as it is assumed they can responsabilise young people and make them change their behaviour. Some of the CDRPs, however, were more inclined to proceed with a massive expansion in the use of enforcement powers in order to combat the fear of crime. This is despite each ASBO costing approximately £4,800 to secure, not including appeals or subsequent breaches (Lemetti and Parkinson, 2005).

“We will increase the number of Anti-social [sic] behaviour contracts (ABC’s) in West Cumbria from the 2004/05 figures of 90 to 270 and the number of ASBO’s from 30 to 90 by 2007/08. That is, we will triple the current totals for both ABC’s and ASBO’s in three years.”

West Cumbria CDRP 2005-8, p.15.

An alternative approach that was adopted by a few of the CDRPs was to target hotspot areas that were recorded to have a high concentration of specific types of crime or ASB. Chorley CDRP (2005-8, p.22), for example, suggested using (i) neighbourhood wardens to identify hotspots and to provide a visible deterrent to young people; (ii) to work with relevant agencies to ‘design out’ problem areas; (iii) and to use enforcement powers such as ABCs and ASBOs to discourage ASB as a last resort for persistent offenders with dispersal notices and parenting orders used when appropriate. It is within this context illuminated by Chorley CDRP that it is possible to see the change in role for MTDs that is emerging. By working with different groups and residents in order to design-out the possibility of young people hanging around, MTDs can be used to empower residents and shopkeepers to undertake a community role as enforcers of public space, reducing dependency on the police. In effect, it is a process of responsabilising residents and businesses to take responsibility for their areas own ‘safety’ (Garland, 1997), but also of trying to responsabilise young people to prevent them from congregating in these spaces, something that is discussed in more detail in the next chapter.

THE POLICY CONTEXT 2011-14

Risk has proven to be an enormously influential concept within government policy and its approach to young people and this is apparent from CDRPs in both periods. Informed by a succession of green and white papers, in the early new millennium, government has trumpeted the need to identify children at risk from an early age in order to intervene in their family lives to prevent crime and ASB later. The Every Child Matters (HM Government, 2003, p.17) green paper, for example, suggested “the risk of experiencing negative outcomes is concentrated in children with certain characteristics and experiences.” The Youth Crime Action Plan (HM Government, 2008, p.27), similarly, suggested that although a “vast majority of young people grow up happily and successfully,” a “small ... minority ... become prolific and serious offenders ... People in this group ... can often be identified early when problems begin to manifest themselves.”

Indeed, the Youth Crime Action Plan (HM Government, 2008, p.1) also provides some indicators of how to identify these problem children or young people:

“[W]e will offer non-negotiable intervention to the families at greatest risk of serious offending. These are the families whose children are disrupting our classrooms – or worse, roaming the streets committing crime.”

The streets remain an important feature of crime control for the CDRPs in 2011-14 with references to vulnerable areas, places, neighbourhoods and premises commonly deployed alongside references to the harm posed to communities by ASB, crime and substance misuse. Many of the CDRPs reiterated the importance of improving perceptions of safety across neighbourhoods and spaces in general. The broken windows theory (Wilson and Kelling, 1982), for example, was highly influential in this respect with its emphasis on environmental ASB a touchstone for CDRPs. This is the criminological theory that suggests the impressions and reactions of a community to symbolic low-level criminal behaviour, such as a single broken window, can, if ignored, signal to potential criminals that nobody cares and becomes an invitation to crime. The broken windows theory has been extensively critiqued and criticised by academics, yet it remains highly influential for policy makers (see Sampson and Raudenbush, 2001; Goa and Pratt, 2010).

In many ways the influence of the broken windows theory provides continuity between the two strategy periods. Acting as a proxy for risk, the escalatory nature of the broken windows theory means it can be deployed in many different contexts to support a raft of different objectives for the CDRPs.

It worked hand in hand with the fear of crime in the 2005-8 strategies to target ASB and operates in a similar way with other initiatives to improve perceptions of safety in the 2011-14 strategies. In both cases it is areas of public space and young people's place within them which have become the target for action under the guise of ASB.

"People want to feel safe in their neighbourhoods. If an individual or a group are causing persistent problems or if a place is blighted by graffiti, litter, substance misuse, noise or fly-tipping it can have a negative effect on the people living nearby. ... Often the person, place or premises is of interest to several agencies and working together in partnership is the best way forward to target problems quickly and effectively."

Canterbury, CDRP, 2011-14, p.23.

"SoSafe will endeavour to help residents to achieve local neighbourhood environments that they feel safe in. We will respond swiftly to environmental ASB, paying particular attention to those areas of Stevenage identified as hotspots."

Stevenage, CDRP, 2011-14, p.21.

"Within these priorities, activity will be focused upon the most vulnerable neighbourhoods in the city. Listed below are those wards, by crime type, that are considered to be the most vulnerable."

Peterborough, CDRP, 2011-14, p.10.

Perhaps the biggest change between the two strategy periods, however, lies with the measures adopted to exclude and deter young people from congregating in public spaces. There is little focus in the 2011-14 strategies on enforcement measures, such as ASBOs, which had dominated responses from the CDRPs in the 2005-8 period. This may relate in part to the significant cuts imposed upon the budgets of public authorities since 2009, with the costs involved in administering these enforcement solutions judged prohibitively expensive (Lemetti and Parkinson, 2005). The preoccupation with young people and space, nevertheless, means that there remains a significant opportunity for devices such as MTDs to play a major role in CDRP strategies for regulating space, especially when the devices compare much more favourably in terms of cost to other enforcement solutions (the devices costing £495 per unit).

The CDRPs nevertheless show a clear preference for an array of alternatives solutions from the use of after school patrols, stop and account schemes, diversions, triage programmes as well as various situational crime prevention strategies.

“Operation Staysafe which identified and intercepted those young people that may have been ... at risk of committing crime or ASB and removed them from the street to a safe place.”

“After School Patrols which were targeted at areas known as youth ASB hotspots and, by their presence, prevented or reduced incidences of crime and disorder.”

“Street Based Teams (Targeted Youth Support Service) which identified and worked with young people on the streets, diverting them into other activities where appropriate.”

North Tyneside CDRP, 20011-14, p.5.

Despite the modest policy changes between the two periods, young people remain at the centre of the crime control programme. However, some of the CDRPs have bemoaned this problem of public perception and have suggested that concerns about groups of young people, expressed in resident surveys, are not reflected in the crime audits conducted for the area.

“Many of Hackney’s residents and community groups perceive that there are problems with gangs, gun and knife crime. This perception invariably influences the fear of crime in general, and impacts on inter-generational cohesion; the perception is that young people contribute heavily to the problem even if this is not always borne out by the facts, hence the perception that ‘youths hanging around’ are a big problem.”

Hackney CDRP 2011-14, p.11

CONCLUSION

FOI requests from public authorities in England revealed that the devices are used by just over a quarter of the 132 public authorities contacted. The majority (69%) of these authorities purchased the devices before 2008, although one-third had disposed of their devices as of May, 2015, with some suggestions that the devices are ineffective, unsuitable or easily damaged. A small number of public authorities contacted claimed to have never purchased a MTD despite evidence to the contrary in the

form of previous FOI disclosures and media articles in the public domain. By analysing the financial accounts of the manufacturer, CSS, it has been determined that media reports about the total number of MTDs in the UK have actually been greatly exaggerated with demand for the devices falling rapidly from 2008 onwards. This was before public authority budgets were affected by the UK governments cuts to public services from 2009 (Hastings et al., 2013). CSS, the sole manufacturer, suggested that fear of litigation about human rights is the primary reason why public authority demand for MTDs has declined.

Analysis of crime control policy documents published by CDRPs from 2005-8 and 2011-14 revealed that young people remain a significant part of the public authority plans to reduce crime and disorder. Although there was evidence of statistically significant increases in the usage of the terms harm, vulnerable and ASB and a reduction in the usage of the terms fear and education, there was very little evidence of any changes in approach by the CDRPs towards young people over this period. The public authorities in both periods portrayed young people as poor decision-makers with a general lack of awareness about the consequences on numerous issues from unhealthy lifestyles, drug taking, alcohol misuse, and sexual relationships. Young people were also considered particularly vulnerable to bullying, discrimination and sexual abuse. CDRPs in both periods prioritised plans to reduce environmental ASB and to improve perceptions of safety often linking the incidence of low-level nuisance behaviours with more serious crimes. In many cases, it was clear that the broken windows theory (Wilson and Kelling, 1982) remained influential on policy makers despite its numerous critics (Sampson and Raudenbush, 2001; Gau and Pratt, 2010). Targeting young people to remove them from the streets and public spaces was prominent in policies from both periods with the decline in use of the MTD unlikely to affect the implementation of this strategy.

The manufacturer of the devices and the public authorities are also two principal stakeholders for MTDs analysed in the course of this chapter. The manufacturer of the devices, CSS, featured in chapter 2 attempting to promote formal regulation for the MTD in law, through a petition and claiming corporate responsibility by selling the devices to public authorities only. In this chapter, however, it is clear that the manufacturer has been keen to project an image that demand for MTDs has always been strong by providing figures to the media for the number of MTDs sold in the UK that are inaccurate and exaggerated.

The public authorities as stakeholders were initially big purchasers of MTDs up to 2008 and now appear to use the devices as short-term fixes for preventing the congregation of young people in various private and public spaces while longer-term and sustainable solutions can be considered. However,

some public authorities justify using MTDs permanently in specific areas where they believe young people should not be at any time. In these cases, the devices operate continuously in places such as the stairwells of car parks. The consequences of these decisions and denying young people access to space will be considered in the next chapter.

CHAPTER 8: GOVERNING YOUNG PEOPLE: TECHNOLOGIES AND PRACTICES

In the previous chapter it was revealed that themes such as education and fear had declined in the content of the tri-annual strategies of CDRPs while the notions of harm, vulnerable and ASB had increased significantly. In this chapter, through the theoretical lens of risk, governmentality and responsabilisation, it is suggested that practical measures to target area based problems, linked to crime and ASB, by groups of young people have been deployed through devices such as MTDs to provide temporary relief while long-term measures are put in place to exclude them from these spaces

permanently. Conceptualisations of risk-anxiety for young people underpin these practices, viewing young people as both potentially harmful yet also vulnerable to harm. Risk in this context is used to mask the lack of engagement, investment in facilities and opportunities available for young people leaving them with nowhere else to go but to congregate within these spaces.

THE DANGERS OF RISK

The potential for risk to serve as a master frame for targeting and ordering social problems has long been a concern to sociologists (Giddens, 1990; Beck, 1992; 1999). Risk has the capacity to be used as a seemingly neutral method of categorisation and regulation which masks the operation of power - imposing and reproducing unequal power relations. The attribution of risk is therefore highly ideological and conceals political objectives, moral values and cultural outlooks (Thompson, 1990; Douglas, 1992; Lupton, 1999a; Rose, 1999; Arnoldi, 2009; Rosa, 2010; Wilkinson, 2010).

“The great merit of a social constructionist approach to risks is the insight that defining, or constructing, risks equals power. There is political power in playing a leading role in social amplification processes, and political actors seek to shape such amplification processes to maintain their interests.”

Arnoldi, 2009, p.160.

Devoting an entire chapter to “the danger of risk,” in his book, Wilkinson (2010, p.79-97), urges sociologists to be especially wary of a ‘technocratic brand of sociology’ that privileges risk debates and closes down opportunities for critical thought and reflection. The danger is that sociologists fail to consider the extent to which agendas of risk are determined by sectional interest groups and how issues of social benefit and technological progress should be defined. By doing so, sociologists can inadvertently reinforce stereotypes of risk about marginalised groups. They can also obscure the more significant risks and criminal behaviours associated with the middle and upper classes (Tombs and Whyte, 2007; Hillyard, 2009; Coleman and McCahill, 2011), corporations (Tombs, 2013; Tombs and Whyte, 2015), and state-corporate crime (Kramer et al., 2002; Whyte, 2015).

“The privileging of risk within our terms of analysis involves us either as unwitting accomplices or as willing agents in moral standpoints and political projects that produce social inequalities.”

Wilkinson, 2010, p.79.

The attractiveness of grand theoretical models of risk to explain contemporary social problems may have contributed to a malaise of critical studies on risk by distracting scholars from alternative analyses of risk through the lenses of class, power and violence (Mythen, 2014, p.140-141). They also assume rigid, Western-centred conceptions of risk that lack empirical rigour (Mythen, 2014, p.135-138). By focusing on the effects of risk on populations at large, the main theoretical approaches to risk tend to depict the individual citizen as an ideal type that consistently conforms to particular attitudes, values and behaviours which are unrepresentative (Walklate and Mythen, 2010). Although theoretical discussions of risk are useful for understanding the diversity and complexity of risk as a general concept, in and of itself this is not particularly meaningful. Risk makes sense by the way that it is deployed to regulate, manage and shape human conduct “in the service of specific ends and with definite, but to some extent unforeseen, effects” (Dean, 1999b, p.132). In the governmentality perspective, risk is mobilised in order to make populations governable. By attachment to specific behaviours, attitudes or even social groups, risk becomes a tool to steer citizens away from undesirable subject positions for political and economic objectives. One of the well documented uses of risk by the state has been as a means of establishing or reinforcing social control through a process known as governmentality.

GOVERNMENTALITY AND RESPONSIBILISATION

Governmentality is an active process of reconditioning, whereby individuals are encouraged to adopt self-governing behaviours (O’Malley, 1992; Rose and Miller, 1992; 2008; Rose, 1999; 2000; Dean, 1999a; Lupton, 1999a). A departure from forms of social control where individuals are externally and directly policed by agents of the state, in the neo-liberal capitalist societies governmentality supposes that individuals are ‘activated’ to voluntarily discipline themselves through their own desire for safety, continual self-improvement, happiness and healthiness (Gordon, 1991; O’Malley, 2004, p.73-74). Individuals therefore assume responsibility for the management of their own lives and personal exposure to risk. In doing so individuals are depicted as rational, risk aware and probabilistic thinkers that shape their lifestyles, relationships and environments to prevent or to minimise the potential effects of risk to both themselves and their families (Castel, 1991; Dean 1999a; O’Malley, 2004).

The reconditioning of individuals has also an important economic and political objective as the relationship between citizens and the state is transformed from one of dependence on the state for protection, education and welfare, to one that is dominated by individual choices and their personal consequences (Rose and Miller, 1992; Rose, 1999; Lupton, 1999a). Risk-avoiding behaviours have

emerged as an important component of lifestyle construction within neo-liberal societies and are held up as a proxy for responsible adulthood and full and active citizenship (Rose, 1999; 2000). Groups, such as young people, are also expected to participate within the contours of late modernity by building up their capacity to be reflexive (Giddens, 1990; 1991).

This process of reconditioning individuals is loosely defined as responsabilisation (or responsabilization), and has become an integral part of modern day youth governance (Garland, 1996; Gray, 2005; 2009; Goldson and Muncie, 2006a; 2006b; Kemshall, 2008; 2010). Responsibilisation nevertheless has been conceptualised in a range of different contexts (see Phoenix and Kelly, 2013). There is responsabilisation as the reconfiguration of the field of governance, such as community involvement in crime control - a sphere which was formerly reliant on the police and criminal justice system only (e.g. Garland, 1996; 1997; 2001; O'Malley, 2004). There is also responsabilisation in terms of extending the reach of governance, such as the targeting of specific groups or individuals (Rose and Miller, 1992; 2008; Rose, 2000) e.g. younger and younger young people for interventions. Responsibilisation is also a strategy for the ethical reconstruction of a subject for governance, such as the transformation of individuals into 'prudential citizens' (O'Malley, 1992; Rose and Miller, 1992; 2008; Garland, 1996; 1997; 2001; Rose, 2000; Hannah-Moffat, 2001; Corcoran, 2006; 2013).

There is some overlap between the various interpretations and configurations of responsabilisation and the MTD does not fit neatly or exclusively inside any one of them. It is the way that public authorities conceptualise young people and have used the devices that can connect this technology with these interpretations of responsabilisation, to differing degrees and at various points in time. In this chapter, the principal aim was to understand how and why the devices have been used by public authorities to serve these particular strategies. As will be shown below, different objectives and approaches could have been adopted for the deployment of MTDs. The standardised use of these devices throughout England by public authorities suggests some common context for MTD use, which has also changed with time. By observing

RESPONSIBILISATION AND THE MTD

The MTD as the title of the device suggests is a deterrent. By design, it is not an inclusive device as the manufacturer has already indicated in chapter 2. Although the deployment of this technology contrasts sharply with the idealised vision of governmentality entailing the active consent of individuals and awareness for the practical benefits of personal responsibility as they are 'activated,' the MTD can still form part of a strategy to responsabilise young people. Through its coercive capacity,

for example, it could be argued that the MTD activates young people by its effect on them, challenging their decision to be in a particular place at a particular time or whether their activities in a particular place are productive and the best use of their time.

Analysis of the data collected about public authority use of the MTD showed that it has been used in distinctly different ways during the period 2005-2008 and 2008 to the present day. Although the mosquito protocols (guidelines developed by individual public authorities see chapter 5, section 2, part IV) analysed were clear that the device was not deployed with the primary purpose of responsabilising young people, it is in the broader policy context that this use of the MTD emerges most clearly. Up to 2008, the MTD was deployed in response to fear of crime targets as young people congregating in the vicinity of residential or business properties provoked concerns for public safety. From 2008, the devices have been deployed as exclusionary devices to limit young people’s access to particular spaces. The participant observation for example revealed that the MMV was relatively effective in its use as a repellent device, although it had only a fairly limited range with young people as they tended only to move beyond the zone within which they could hear the devices rather than the wider area completely. This was a different approach to how the use of MTDs and the MMV had been described in the protocol documents that were designed to control the operation and deployment of the devices, see below. This was also confirmed by freedom of information requests from other public authorities.

MTDS AND PUBLIC AUTHORITIES: UP TO 2008

The intended use of MTDs by public authorities as outlined in documents known as mosquito protocols contain a number of similar proposals which when analysed suggested that MTDs were not intended to either target young people’s behaviour in general or their access to space. For example the relevant provisions from three protocols analysed that support this conclusion have been summarised below in table 9. More information and details about all the mosquito protocols that have been analysed can be found in chapter 5, section 2, part IV.

Table 9: Examples of key provisions from the Public Authority produced mosquito protocols

| | | |
|---------------------|---------------------|----------------|
| Metropolitan Police | City Safe Liverpool | Leicestershire |
| 06/2008* | 03/2006 | Police 11/2006 |

| | | | |
|--------------|---|---|---|
| Evaluation | “The Partnership will review the continued deployment of the device at least every 3 months.” | “The police/neighbourhood management team will not supply the device as a permanent fixture to the premises, unless the recipient decides to purchase the unit following evaluation.” | “The police will not supply the device as a permanent fixture to the premises.” |
| Duration | Switch-off “as soon as is practicable after the group have dispersed from the area.” | | |
| Restrictions | 1. Deployment of the devices should consider the likely degree of “collateral intrusion” affecting “bus stops/seating areas, premises used by young people nearby such as a youth club or residences nearby.” 2. Consideration must be given to “the time of day during which the device may be used.” | 1. Deployment should consider “collateral intrusion” where activation might affect “bus stops/seating areas, where persons may lawfully wait, or premises lawfully used by young people such as a youth club.” 2. Consideration must be given to the “time of day the device is to be used.” | |
| Behaviour | “The operator may only activate the device when a group of 3 or more youths have gathered within the effective zone” and are “behaving in an anti-social manner.” | “The device should only be used at times when groups of 4 or more youths habitually gather together and actively” cause ASB. | |

*This protocol was undated but received in June 2008.

The analysis of the full sample of MTD protocols revealed there were five provisions that suggested MTDs were not intended to limit young people’s access to particular spaces.

1. The protocols state that MTDs are not to be provided as permanent fixtures. This particular requirement is the clearest indication of all that MTDs were not intended to exclude young people from accessing particular spaces or places because if they had been the MTD would have been installed permanently.

2. The protocols also contain instructions that the duration of the devices be curtailed and switched-off as soon as practicable after a group of young people have dispersed from an area. However, there are different ways to interpret the intent of this provision.
3. The use of the word, dispersed, as the point the devices are to be switched-off is also instructive. Disperse, meaning to spread out over a wider area is not the same as to displace, for example, which would have a clear purpose: to exclude.
4. A comment towards the end of each of the mosquito protocols, which is emphasised in all of these protocols, suggests that 'displacement' of young people was a possible side-effect from using MTDs and that this outcome would require monitoring. It implies that the displacement of young people was not a desirable outcome.
5. Finally, although not phrased in the same way in all of the protocols, it is suggested that in order to be effective MTDs must be combined or supported with other measures. Although no examples are given of what these other measures may be, the protocols go on to say that the devices were "unlikely to solve the problem permanently if used in isolation" (CitySafe Liverpool, 2006, p.3; Leicestershire Constabulary, 2006, p.2; Merseyside Police, 2007, p.3; Metropolitan Police, 2008, p.3).

Although MTDs were not intended to be used to limit young people's access to space, there was one proposal in all of the mosquito protocols in the sample that suggested MTDs were not intended to target the behaviour of individual young people either- even if they were behaving anti-socially. As seen in table 9, above, the mosquito protocols suggest that activation of the MTD should only occur if the target group of young people is of a certain size and acting anti-socially. This requirement, that there be a minimum of 3 or 4 young people congregating within a particular area before the devices can be activated suggests that using an MTD was not considered to be an appropriate response to an individual or pair of young people even if they were behaving anti-socially within a particular area. This one provision suggests that MTDs were not intended to target young people's behaviour in general: just in very specific circumstances.

The other requirement contained within the mosquito protocols before activation of the MTD could take place is that groups of young people must be "actively causing alarm, harassment or distress at that particular time to members of the public or in response to such an ad hoc occurrence," (Citysafe Liverpool, 2006, p.2; Leicestershire Constabulary, 2006, p.1-2; Merseyside Police, 2007, p.2; Metropolitan Police, 2008, p.2-3). However, this is unlikely to have been a difficult threshold to satisfy. In chapter 3 of this thesis, it was shown that the administration of ASBOs was also defined for the

purposes of preventing “alarm, harassment and distress” (1998 Crime and Disorder Act §1). Yet it was also shown that there were numerous examples when multiple, severe and impractical restrictions were imposed upon children and young people through an ASBO when the alleged behaviour was arbitrary or trivial (Burney, 2005; Millie et al., 2005; MacDonald, 2006; Donoghue, 2007). Critics of the concept and its definition have suggested that almost any activity could be qualified as an act of ASB (see Burney, 2005; Millie et al., 2005; MacDonald, 2006; Donoghue, 2007).

Because the intended use of the MTD by public authorities did not aim to limit young people’s access to particular locations and places, nor target the behaviours of young people in general, except for groups of young people behaving anti-socially, there is little to support the idea that the MTD was intended by the public authorities to responsabilise young people. Although Rose (2000, p.322) has suggested that crime control policy is an amalgam of “hesitant, incomplete, fragmentary, contradictory and contested” elements, a better explanation for the intended purpose of the MTD was to meet public authority targets in relation to the fear of crime. In chapter 7 of this thesis, it was shown that a principal target for CDRPs was to prevent and reduce the fear of crime in their areas during 2005-8. The CDRP strategies that were analysed from the same period that was covered by the protocols, consistently report that resident surveys had indicated that young people ‘hanging around’ was the main problem that citizens would like their CDRP to prioritise. It is within this context that the purchase and deployment of MTDs to target groups of young people was justified as an attempt to reduce and prevent the fear of crime. A document provided by Hillingdon Borough Council, entitled ‘Application for Mosquito Unit,’ dated June, 2006, prepared by the Metropolitan Police also reveals that MTDs had this aim:

“Whitby Road is subject to ASB from youths on a regular basis and has been for a number of years. Youths are congregating in large groups along the parade of shops as well as the flats to the rear which are privately owned or rented. Traders are concerned that such ASB is deterring customers and in particular residents of the flats are increasingly worried about their own personal safety and that of their children. There is a notable increase in littering, under-aged drinking and the use of foul and obscene language. Youths are also urinating at rear of shops.” Furthermore “[t]he dispersal area has expired in the area. The ASB in the area calms down when there is police presence but as soon as officers move out the area it begins again” (Metropolitan Police, 2006, p.1).

Despite the concerns expressed about young people hanging around, this view was not shared universally by the CDRPs that were analysed from this period. The Surrey Heath CDRP tri-annual strategy 2005-8, for example, stood out as an exception by stating that although more than a quarter of residents in their ‘fear of crime’ survey had indicated major concerns about young people, it was a

mistake to target what was normal behaviour by young people and which only caused minor problems.

“Many young people enjoy socialising with their friends, away from parental control and public places such as parks, open spaces and shopping areas provide an appropriately neutral meeting place. Many young people were unaware of the impact their presence had on others around them. For many local residents this activity had become an issue in their neighbourhood. A group of young people gathering in a public place or in a residential area was found to be intimidating to local residents of all ages. Whilst this behaviour was neither new nor unique and seemed to be an essential part of growing-up, it was evidently intimidating to individuals of all ages, irrespective of time of day and location. However ... only one in ten residents had experienced verbal or aggressive behaviour arising as a consequence of passing or confronting a group of youngsters.”

Surrey Heath CDRP, 2005-8, p.5.

MTDS IN PRACTICE: POST 2008

With no further mosquito protocols produced or updated by public authorities since their initial development between 2006 and 2007, it has been necessary to uncover and analyse the use of MTDs in practice by the public authorities in order to identify the aims and agenda for their deployment up to the present time. Evidence collected from the disclosures from public authorities through the FOI Act, participant observation, photographic evidence and the logbook analysis point to an emerging change in the role for MTDs when compared to the initial aim of the devices provided by the protocols. MTDs in practice were not used in accordance with the same aims, were not triggered by the same behaviours or evaluated in the same ways that had been suggested by the mosquito protocols, listed in table 9, above. In fact the MTDs have been operated as exclusionary devices that specifically target and interfere with young people’s access to particular places and locations. In this way, MTDs have been used as both a temporary measure and as a permanent fixture to support these aims.

“[‘P]ractices’ don’t exist without a certain regime of rationality ... If I have studied ‘practices’... it was in order to study [the] interplay between a ‘code’ which rules ways of doing things ... and a production of true discourses which serve to found, justify and provide reasons and principles for these ways of doing things.”

Foucault, 1991, p.79.

Although it is unclear when a change of approach for MTDs may have occurred, a Home Office (2007) publication from July, 2007, 'Cutting Crime: A New Partnership 2008-2011' outlining new government targets and ideas that CDRPs would be expected to implement in their next three-year strategy period (2008-2011) was illuminating. In this document of 52 pages, there are just two references in total to the fear of crime. Yet as a focus of future effort there are various policy commitments that have some potential for influencing applications for MTD. There is a section that requires a renewed crackdown on ASB (Home Office, 2007, p.22-24), a section that requires a renewed focus on young people and early interventions including a recognition that young people are victims as well as offenders (Home Office, 2007, p.29-33), and the importance of situational crime prevention (Home Office, 2007, p.33-36).

"Situational crime prevention aims to reduce opportunities for crime. It focuses on highly specific forms of crime, changing the way the immediate environment or target of the crime is managed or designed so that the risk or the effort required to commit the offence is increased, the rewards are reduced, or the triggers removed from the environment. We all have a responsibility to design out crime and deprive offenders of easy opportunities. As individuals we must use the locks provided on our front doors and cars, report crime to the police, and not buy stolen goods. The police and Crime and Disorder Reduction Partnerships ... need to identify 'hot spots' and exert pressure on the managers of those locations to introduce preventive measures."

Home Office, 2007, p.33.

Public authorities have deployed MTDs around (and sometimes within) a variety of different buildings and areas, public, private and residential in order to deter young people from congregating within surrounding areas (table 4). For example this was evident in Liverpool through the use of the mobile version of this device (MMV) trialled by Merseyside Police during 2007-2011. The MMV was used as a short-term, temporary measure while long-term, alternative remedies (or situational crime prevention strategies) could be identified and introduced. As can be seen these measures were usually designed to exclude young people from spaces and areas permanently. An example of this was the Quix convenience store where fences were erected in order to prevent access to a wide open, public space that adjoined the store. A before and after photograph of this location is shown in figures 7 and 8.



Figure 7: The ASB ‘hotspot’ where the participant observation took place. Image provided by Google Street Maps from September, 2008.

In the second photo it can be seen that access on each of the three sides has become secured through alley-gating and railings. What the photographs do not show, however, is that the same measures were also adopted and implemented on the opposite side of the road that was directly facing the Quix store, which had an identical layout in terms of design and access to another large area where young people could meet. This area was similarly fenced off to prevent access to this space which included a green space which could have been used for various activities as well as a surrounding concreted area.



Figure 8: Fenced off, the same site in September, 2012. Image provided by Google Street Maps.

Photographs from three other premises within the Liverpool area where the MMV was also deployed revealed that the two options favoured for preventing young people from congregating in particular areas involved not only the use of physical barriers but also increased external lighting. The use of more floodlights was consistent in all of these cases, so too was the use of fences and shrubs (or tall, cubic containers of plants) to reduce opportunities for young people to hang around. One of these premises, a residential home at Turner Close, Liverpool (see figure 9), used a mixture of shrubs, a wall and guard rails to provide not only assistance to elderly residents and visitors but also to form a barrier to young people that had been congregating in this surrounding area.



Figure 9: Turner Close, Liverpool, 2007 left and 2011 right. Pictures from Google Street Maps

In Horsfall Street, Liverpool (see figure 10), which centres on a convenience store, 'the Brunswick,' which is adjoined to several residential properties, small boundary fences were erected along the road in order to prevent young people from congregating in close proximity to these buildings.



Figure 10: Horsfall Street, Liverpool, with 2007 left and 2011 right. Pictures from Google Street Maps

A series of shrubs were also used to prevent young people from potentially sitting on a raised, previously grassy, roadside embankment that was within two metres of the store entrance. In the other location, Long Lane, Garston (figure 11), which features a row of shops, the main hotspot area in front of the 'Direct News' store, later renamed 'RMS News and Wine,' physical barriers to limit young people's access to the store were not used. The main alteration was made to external lighting, with 3 additional floodlights installed to illuminate the area outside of the store. The other observable changes in the area related to the buildings themselves (other than an added litter bin outside of the liquor store) and were largely superficial and presentational with windows replaced (one of which was pictured broken), new security alarms and more advertising signs.



Figure 11: Long Lane, Liverpool, with 2008 left and 2014 right. Pictures from Google Street Maps.

The use of features like improved lighting, the use of shrubs and containers of plants to provide barriers is designed not only to prevent young people from congregating in particular areas, but to indicate a sense of 'belonging' and 'territoriality' encouraged by strategies of situational crime prevention (Clarke and Mayhew, 1980; Clarke, 1992; 1995; 1997). These measures aim to encourage more use of public spaces by members of the public and by the presence of more adults, natural and informal surveillance of the area is increased (Cozens et al., 2005). The deployment of the MMV in these areas was therefore exclusionary, assisting with the removal of young people from these spaces until long-term measures were introduced to exclude young people from these spaces permanently.

Other public authorities have also used the conventional MTDs as temporary exclusion devices while alternative solutions for young people hanging around are investigated. Hillingdon Borough Council, for example, has provided a document produced by the London Metropolitan Police (Metropolitan Police, 2010) entitled 'Application for Mosquito Unit,' dated June, 2010, in which details of the

problem and justification for the deployment of a MTD is explained. It describes a series of problems in one particular area, a private car park, where a group of youths have been fighting, used the undercover area of the car park to drink alcohol and smoke drugs, had sprayed graffiti and littered the car park, played football there late at night and had damaged the roof. The document suggested that although a police presence could deal with the problem, the use of a MTD was much more cost-effective solution while other long-term measures were considered:

“Patrols by Police SNT has not led to a reduction in youth activity as the Police cannot be there all the time. CCTV in the undercover car park area has been vandalised by the youths. Other measures such as secure fencing are being investigated but this will take time to arrange quotations and raise the necessary funding.” The Mosquito will be located in the undercover car park which is private property, isn’t clearly lit, where youths should not be congregating. It will be located in a place where young persons should not be able to remove it.”

Metropolitan Police, 2010, p.1-2.

Indeed while some public authorities may have set out to use MTDs as a temporary solution, for others this proved prohibitively expensive and a problem for the devices themselves.

“The Mosquito devices were initially deployed on a temporary basis at private residences, the locations of which cannot be disclosed. Later, they were also used at business premises where the deployment benefitted the local community.” ... “Repeatedly installing and removing the Mosquito devices is costly and evidently risked them becoming inoperable. One device has been left at its last deployment location as it is required to remain indefinitely. The last has been donated to another public sector organisation that has a permanent need for it.”

Suffolk Coastal District Council, personal communication, April 30, 2015.

Consequently three public authorities used the devices as a permanent strategy to exclude young people from particular spaces indefinitely. Southampton City Council had used 5 of their 8 MTDs in the stairwells of a multi-storey car park (personal communication, May 5, 2015); Havimg Borough Council installed 2 MTDs in the foyer/stairwell of two residential tower blocks (personal communication, May 14, 2015); and Carlisle City Council which purchased ‘at least’ 5 MTDs and installed them on community centres in the Carlisle district (personal communication, April 21, 2015).

As a coercive device, to responsabilise young people, the MTD was capable of two different approaches in the way it was used to affect young people (see table 10 below). The MTD was used as a ‘punitive device,’ where it targeted the behaviour of young people, so that the device was switched-on in order to punish ‘undesirable’ behaviour by young people within a particular area (and then switched-off when that behaviour improves). This approach at least had the benefit of enabling young people to continue to use space which is important to their identity formation (Valentine, 1996; Massey, 1998; Holloway and Valentine, 2000; Kintrea et al., 2010). However, the MTD was increasingly used to target young people’s access to space and displace them from areas either permanently or during certain hours. In this way, young people were forced out of these spaces with potential implications for navigating new and less familiar areas that may have been considered risky and otherwise avoided (France et al., 2012, p.46-48).

Table 10: Applications of MTDs

| | Punitive device targeting Behaviour | Removal device targeting Space |
|------------------------------|--|--|
| Aim of MTD | Device used when young people are not behaving as desired. | Device used to displace and exclude young people from an area. |
| Responsibilising rationality | Young people learn what behaviours are suitable or unsuitable for this area. | Young people learn to avoid spaces they are not welcome in. |

Although the initial MTD protocols of public authorities were not intended to either target young people’s behaviour in general or their access to space, the deployment of the MTD in practice has had this effect. In one way, therefore, it could be considered that targeting groups of young people and extending the role of governance through the temporary use of MTDs, in order to put measures in place that exclude them from space, means that ‘responsibilisation’ is in practice the primary aim of MTD deployment (Rose and Miller, 1992; 2008; Rose, 2000). But of course, as discussed above, risk-avoiding behaviours are expected from mature and responsible adult citizens (Rose, 1999; O’Malley, 2000) and young people are also expected to develop these skills through reflexivity (Giddens, 1990; 1991). Young people, however, are simultaneously constructed in policies as being responsible for placing others at-risk yet are also vulnerable and at-risk themselves.

RISK-ANXIETY

The concept of risk-anxiety (Scott et al., 1998) which has been used to understand the relationships between adults and children in the late-modern society is a useful tool that can help to explain the

use of the MTD by public authorities for young people since approximately 2008. Risk-anxiety encapsulates the view that young people are both potentially harmful and must be regulated (for the protection of others), yet are also potentially vulnerable and must be regulated (for their own protection). This binary construction where young people are depicted as “devils and angels” (e.g. Fionda, 2005) or as perpetrators and victims has fuelled a series of criminal, legislative, cultural and technological measures to further regulate the lives of young people.

“Risk anxiety is primarily expressed as fear for children – worries about their safety and well-being – but also as a fear of children, of what children might do if they are not kept within the boundaries of acceptable childish conduct.”

Scott et al., 1998, p.691.

The principal source of risk-anxiety for the public authorities lies in the conceptualisation of young people by the CDRPs which was outlined in chapter 7. Young people were perceived as being highly susceptible to making poor decisions due to their lack of awareness and knowledge of issues such as sexual relationships, road traffic, fire, alcohol and drugs, and their ignorance of how other groups (of all ages) perceived them and their activities as intimidating, especially after dark. It is this propensity for bad decision-making that makes young people a perceived risk to businesses and residents, but more importantly, to other young people. This was also reflected in government guidelines issued to CDRPs which had not been replaced by the time that the 2011-14 CDRP strategies formed.

“Young people are often victims of crime, in the home, at school or in the wider community or neighbourhood. ... Victimisation in childhood and adolescence can have serious detrimental effects on development. There has been relatively little explicit focus on young people as victims (responding to their needs, and reducing their likelihood of being victimised) in the past ten years, and we will increase our focus in this area. Our response must take into account the fact that much youth victimisation is by other young people. Equally, many young offenders have also been victims: being a victim at age 12 is a significant predictor of offending at age 15. Intervening with young victims should therefore reduce the risk that young victims go on to enter the cycle of offending and further victimisation.”

Home Office, 2007, p.31.

The use of MTDs therefore to exclude and steer young people away from particular places based on strategies of situational crime prevention was not only to mitigate the potential disruption caused by

young people hanging around in the future but it may also have been to protect them from the potential dangers associated with unsupervised spaces that have little or no adult surveillance. By simultaneously removing young people from particular spaces and encouraging more adult use of these spaces through the significant improvements made to external lighting, for example, which occurred in most cases where MTDs were deployed, it is less likely that young people will congregate in these areas or undertake risky activities that would lead to harm. Turner Close (figure 9), for example, is a blind corner for traffic to enter from the road and young people congregating in this area would have been at risk of causing or being involved with an accident collision prior to the erection of the wall and guard rails. There are also a multitude of potential dangers to young people from the private car park that was discussed, for example. Public authorities that use MTDs in permanent positions to exclude young people from particular spaces can also legitimise the use of these devices on the grounds of safety for young people as in the case of Southampton City Council, which deployed MTDs in a stairwell of a multi-storey car park (personal communication May 5, 2015).

INCONVENIENT TRUTHS MASKED BY TECHNOLOGIES OF RISK

The deployment of risk in the exclusion of young people from places they frequently congregated conceals, in many ways, the social worlds of young people, particularly from poorer areas, that have been described in research. Children and young people have unique social maps and understandings of community and place that structure their social relationships and everyday life (Holloway and Valentine, 2000; Valentine, 2004). Lacking in opportunities to join clubs and societies outside of school and without places to go such as youth clubs due to funding cuts, young people are often left with 'nothing to do' as they are priced out of leisure pursuits such as going to the cinema, ten-pin bowling or sporting events (Hall et al., 2008). As a result, being on the street and hanging around at bus shelters, parks, shopping precincts or street corners has a symbolic meaning for young people and their peers with moving around public spaces a way to generate something to do (Robinson, 2010).

Many of these public spaces, however, are being actively reconstructed as 'adult spaces' (Valentine, 1996; Massey, 1998), driven by discourses that young people are responsible for crime and disorder (Goldson, 2002; Hancock, 2006a). Through schemes of urban renewal and regeneration, local authorities have placed a premium on safety, cleanliness and order in attempts to market their localities and secure inward investment (Coleman, 2003; Raco, 2003). By rebranding and adapting public spaces to attract wealthier visitors, tourists and shoppers, the regulation and removal of 'riff-

raff' elements from public space becomes as highly prioritised an objective in the symbolic rebranding of an urban area as genuine economic transformation (Jones and Wilks-Heeg, 2004).

In the context of young people in public space, attachments to risk have helped to obscure the power-relations in play as young people's status in public space are diminished by visions of neo-liberal, entrepreneurial rule (Coleman, 2003; 2004). In addition, risk has enabled the state to adopt wide-reaching and often punitive regulatory instruments for the social control of risky groups that would not have been politically sustainable e.g. ASBOs for young people, control orders for terrorists etc (Goldson, 2000; Squires and Stephen, 2005a; Squires, 2008; Goldson and Muncie, 2006a; Mythen et al., 2013; Petrie, 2013). The growing expressions of intolerance towards young people remains deeply rooted in the social divisions and inequalities which flow from economic restructuring. These conditions replicate, re-work but always sustain the 'cultural injustices' that have been perpetrated against the urban poor since the emergence of the modern city in the 19th Century (Hancock, 2006b). With young people viewed as 'citizens in becoming' (Sharkey & Shields, 2008, p. 40) rather than full and contributing members to society, they have little influence over what constitutes the acceptable use of public space and are frequently viewed as illegitimate users of it (Massey, 2008).

CONCLUSION

Governmentality and responsabilisation is a useful way to understand policies concerning young people and how the MTD has been used. At first sight when analysing the public authority developed protocols for usage of these devices it seems that this was not the intention. However, examination of how MTDs have been used show that they have been deployed to exclude young people from space until long-term measures can be put in place to permanently exclude them. This way of 'responsibilisation' reflects the ambivalent notions of young people as being both dangerous and vulnerable. By excluding them from space young people are being prevented from harming others or themselves. It is assumed that, in effect, experiencing these exclusions will assist reflexivity and understanding of their development towards becoming responsible citizens. Those who don't become excluded from space, but from society as a whole are not capable of being responsabilised. The MTD is therefore a stepping stone in the process of organising those who are capable of reflexivity and those who are not. It is an example of a form of policy intervention and technological development that does not take due account of the lived realities of everyday life.

In this chapter it has been shown, through an analysis of MTD protocols, that notions of regulation and risk in the context of the MTD have been utilised by the public authorities to target groups of

young people in particular locations rather than individual behaviours of young people. This is in response to objectives imposed upon the CDRPs to reduce the fear of crime in their areas as young people hanging around dominates resident concerns for CDRPs. Even though the fear of crime as an objective for the public authorities receded from 2008, notions of risk and regulation have remained focused on young people in space. Developing strategies to exclude young people from areas that the public authorities cannot easily monitor and into spaces that have more adult surveillance, it is hoped that young people will be less inclined to attempt risky behaviours.

CHAPTER 9: SYNTHESIS OF KEY FINDINGS

At the beginning of the thesis I described how my interest in this topic had been stimulated by a growing awareness of how policies and legislation impacted on human lives, and by listening to young people talk about their resistance to the MTD at a seminar in February, 2009. At the outset of this PhD the concept of resistance was considered important. The role of human rights and young people's personal experiences about the devices were a crucial part of the campaign against the use of MTDs. After all, the aim of the national Buzz Off campaign against the devices was not only to raise awareness about the devices but to press for a ban of the devices in the UK. However, as the research continued it became clear that as an issue attracting opposition and media publicity, the profile of the MTD had diminished even though some smaller and localised campaigns persisted for a time. As a result, the focus of the study changed in order to understand what had happened to the MTD, why and what the implications were. Consequently regulation and risk emerged as the dominant themes.

The methodology selected was that of a case study so that a number of areas of interest could be examined. These included the role of the main stakeholders for the devices: the manufacturer of the devices, the youth advocacy groups that opposed the MTDs and the public authorities. Using a mixed methods approach an analysis was undertaken to understand the status of the MTD in the UK and in law. An analysis of regulation examined the compatibility of the MTD with the UK's human rights obligations, and representatives from the two organisations that spearheaded the national Buzz Off campaign against the use of the MTD, Liberty and the Children's Commissioner for England, were interviewed. An analysis was also undertaken on the annual financial accounts of the sole manufacturer of MTDs to investigate the sales performance of the devices over time. Freedom of information requests sent to 132 UK public authorities were also used to investigate how widespread MTD use was amongst the public authorities and the role of crime control policy documents produced by 18 CDRPs from 2005-8 and 2011-14. Mosquito protocol documents were also obtained from four of public authorities revealing how the MTD was intended to be used. In addition, a more detailed analysis of one public authority's usage of a MTD was also undertaken which included a participant observation of a mobile version of the MTD deployed in a hotspot for ASB in Speke, Liverpool. As a result I was able to gain some unique insights into the usage of these devices and to experience the sounds of the MTD first-hand. The collection of the logbook for this device also provided some useful information which was used to build up a picture of the places and locations of ASB hotspots in Liverpool where this mobile MTD had been used. This also provided an opportunity to study what changes to these environments were subsequently made by the CDRPs in following years.

In chapter 2 of this thesis, a like-for-like comparison of the sales performance of the company that sells MTDs internationally with the UK equivalent suggested that the MTD is a uniquely British phenomenon. It was also suggested by the manufacturer of the devices that it was the public authorities that were the main purchasers of the devices. This is despite uncertainty about the health effects of the devices on children and young people some of whom might be more acutely affected than others.

A review of regulation and risk in the context of young people in chapter 3 revealed that they are frequently portrayed negatively not only in the media but also in government policy. Young people were often visible in news content as either victims or perpetrators of crime but were unrepresentative of young people in general. Although public concern about young people and crime in the UK can be traced historically, since the 1990s government policy around youth justice has hardened consistently reflecting a zeal for punishment instead of the welfare principles that had dominated youth justice in the 20th century. The development of highly restrictive civil injunctions

known as ASBOs, for example, have disproportionately been applied to young people. Reviews of ASBOs found that young people with learning disabilities featured prominently as recipients with no limit on the number of restrictions that could be applied for a minimum period of two-years. These restrictions could limit young people's access to various places, from meeting up with their friends, from engaging in particular activities, limiting their use of public space to certain times of the day and were sometimes impractical for young people to observe. Breaching the terms of an ASBO was automatically determined to be a criminal offence and was considered to have led to a large expansion of the criminalisation of young people, sometimes for behaviours that were not even considered criminal in the first place. ASBOs have helped to construct a perception that young people are out of control in the UK

Regulation by law, however, is also a factor that has affected the use of the MTD. The use of human rights, for example, which are enshrined into UK law through the 1998 HRA is a legal mechanism that can apply pressure to the public authorities using the devices. The HRA and the 1950 ECHR upon which it is modelled guarantee a series of rights that were designed principally for the protection of adults following WWII and the holocaust rather than children and young people. However, due to the almost worldwide ratification of the 1989 UNCRC, the courts have increasingly applied a doctrine that in cases involving children and young people, the rights provided within the HRA or ECHR must be interpreted through the rights and standards that have been recognised and enshrined within the UNCRC.

The main theoretical perspectives of risk that have dominated the social sciences were also considered. Governmentality was chosen as the preferred theoretical lens to understand and interpret the deployment of these devices. Governmentality promotes the values of self-governance and assumes that it is the role of the state to steer people, including the young, into the realisation that they must take control of their own lives (O'Malley, 1992; Rose and Miller, 1992; 2008; Rose, 1999; 2000; Dean, 1999a). This process of responsabilisation is considered the only route to happiness, prosperity, security, education, good health and so on (Gordon, 1991). While this attitude is often evident as the motivation for educational and volunteering programmes, it became clear that there is an emerging role that technologies such as the MTD have in this model of governance.

Chapter 6 of this thesis applied the potential effects of the MTD to children and young people in the UK to Article 3 ECHR which prohibits torture, inhuman and degrading treatment or punishment. The case-law involving Article 3 and the use of noise was used as a possible test case against which the use of the MTD could be analysed and a potential breach of Article 3 ECHR considered. Chapter 6 also considered the application of the UNCRC to the MTD in relation to the UN Committee on the Rights of the Child's general comments regarding corporal punishment. It revealed that the MTD does meet

the definition of corporal punishment provided by the Committee which was declared unacceptable in any form. Consequently, it is considered that the MTD would likely be considered a violation of Article 3 ECHR and Articles 19 and 37 UNCRC.

Despite consideration that use of the MTD by public authorities would constitute an infringement of children and young people's human rights, no court action has ever been brought against a public authority using the devices, private users or the manufacturer of the devices to date. In all cases, Liberty revealed that private companies or public authorities preferred to settle and voluntarily remove the devices to avoid litigation. The threat of legal action did nevertheless form the basis of negotiation for the removal of the devices by youth advocacy groups and local campaigns set-up and led by young people in opposition to the devices.

The threat of regulation by law does appear to have been relatively successful in limiting the sales of MTDs by the manufacturer of the devices, CSS. In chapter 7, it was shown that the sales income of CSS had declined rapidly from 2008 onwards with the manufacturer singling-out human rights as the main reason public authorities were no longer willing to purchase MTDs. The reduced procurement of the devices occurred long before public authority budgets were impacted by the global financial crisis from approximately 2009 (Hastings et al., 2013). It was also revealed through the annual financial accounts of CSS that the number of MTDs that had been sold in the UK was far fewer than had been reported widely by the UK media. The less than expected use of the devices may explain why young people's resistance to the devices declined and interest in the MTD as a technology seemed to evaporate. However, the question remained why did the MTD emerge as a useful technology for the public authorities in the first place?

Analysis of crime control policy documents published by CDRPs from 2005-8 and 2011-14 revealed that young people remain a significant part of the public authority plans to reduce crime and disorder, with resident surveys consistently reporting concerns about young people hanging around. Despite statistically significant increases in the use of the words vulnerable, harm and ASB, however, there was very little evidence in a change of approach by the CDRPs towards young people from 2005-8 to 2011-14. The public authorities from both periods described young people as both impressionable and susceptible to being involved with risky behaviour due to poor decision-making abilities and a lack of awareness about the consequences on numerous issues from unhealthy lifestyles, drug taking, alcohol misuse, and sexual relationships. Young people were also considered particularly vulnerable to bullying, discrimination and sexual abuse.

The influential but contested broken windows theory (Wilson and Kelling, 1982) was also apparent in CDRP plans to reduce environmental ASB and to improve perceptions of safety. Many of the CDRPs discussed various different initiatives that were similar and equivalent in many ways to MTDs. Young people on the streets and in public space were main targets for the reduction of ASB suggesting that the MTD may have been initially attractive for these purposes and that the decline of the devices will not necessarily affect the implementation of this strategy. The MTD may also have been attractive because it was a covert method of control for targeting young people, although the devices were not always effective and were considered too costly to maintain for some of the public authorities.

Chapter 7 also showed that approximately a quarter of the public authorities contacted in this study purchased a MTD with the vast majority of these devices being acquired prior to 2008. It suggests that the MTD was not as widespread as anticipated notwithstanding media reports suggesting there were more than 5,000 devices in operation in the UK and claims made by the manufacturer that there were twice as many devices in operation. There are in fact between 749 and 1497 devices in operation in the UK (see figure 12 below).

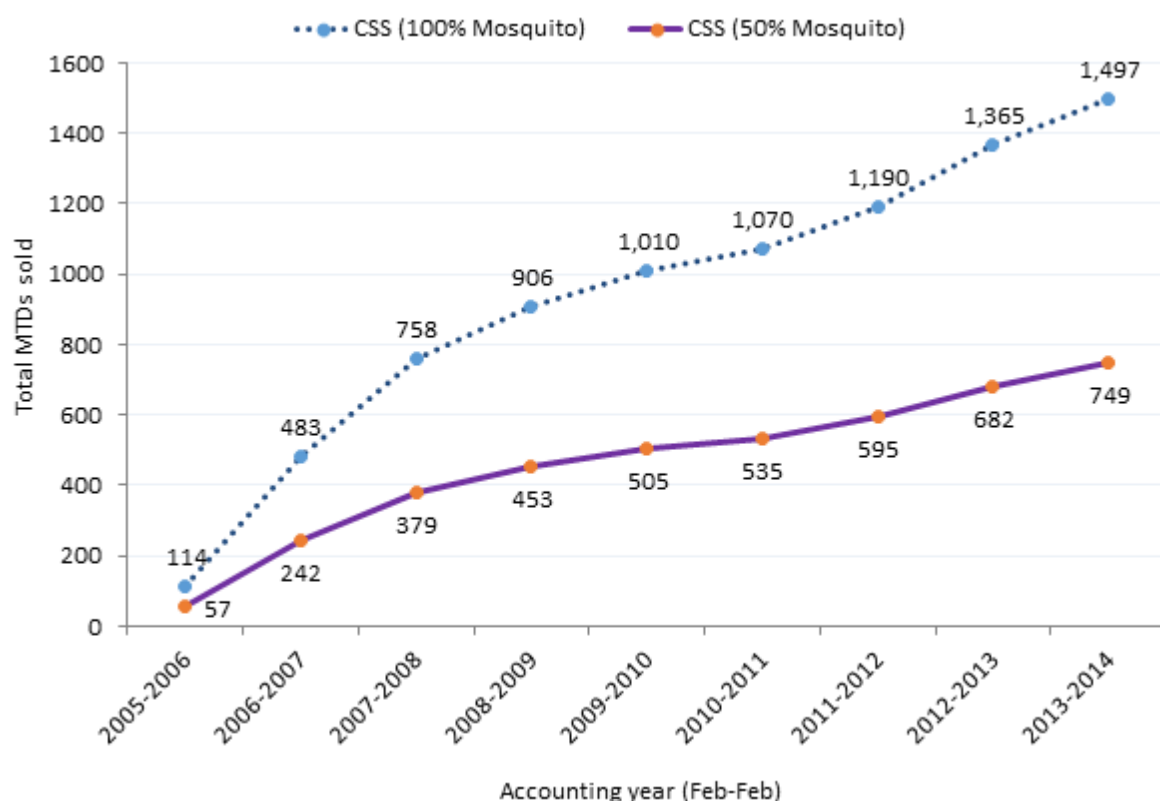


Figure 12: Total number of MTDs sold domestically by CSS as a component of time

Chapter 8 showed that the way in which MTDs have been used by the public authorities has changed. Documents produced by public authorities in the form of mosquito protocols had suggested that public authorities initially intended to target groups of young people with MTDs rather than targeting young people in general. However, analysis of the devices since approximately 2008 suggests that these devices operate as part of a broader strategy aimed at excluding young people permanently from various spaces and locations. The public authorities accomplished this through long-term deployment of MTDs in some locations or more commonly as a short-term measure until permanent situational and environmental measures could be put into place to prevent or limit young people's access to these spaces.

PROBLEMS AND SIGNIFICANCE

The rapid development and uptake of new technology in modern society has been transformative for many people's livelihoods. However, such is the speed at which technology becomes widely established it is also inevitable that it poses significant regulatory challenges to authorities. This is because the risks and harms that can be produced by technology are not always readily apparent and do not necessarily materialise quickly. In a worst case scenario, irreversible harm can be caused by a new technology that is not well understood and needs time to be analysed and investigated after it has already become widespread. Indeed, a technology that affects only children and young people such as the MTD provides a unique opportunity to examine just how the UK's regulatory regimes, such as public institutions react to young people, particularly as the issue of young people loitering in public space is politically very sensitive.

One of the key regulatory issues that has dominated discussions about the MTD is its uncertainty with regards to human rights that is the central complaint made by young people that have been affected by the devices and oppose their use. The uncertainty in part stems from the variable legal status of the MTD across Europe as various countries and how their domestic regulatory systems have reacted differently to the devices. Moreover, various institutions at different levels, national, international and pan-European have offered different interpretations to the use of the devices and its effects. For example, a parliamentary vote in the Council of Europe supported a European-wide ban of the devices although the vote had no legal authority. The EU Commission directed that each country would have discretion to deal with the devices as they saw fit. There is also uncertainty as to why no individual human rights case has been brought against the MTD in the UK if this is a major concern of children and young people. There is therefore an opportunity to investigate why no human rights case has

been brought against the MTD and what this tells us about the value or relevance human rights has for children and young people.

Since 2000 UNICEF has been comparing the wellbeing of children across a range of developed countries. Initially these focused on material wellbeing and poverty, but from 2007 expanded to include an extensive list of indicators including children's health, educational attainment and subjective wellbeing. These publications have consistently shown the UK to be ranked lowly in league tables (and on one occasion lowest overall e.g. UNICEF, 2007) with respect to other developed countries including some with significantly smaller economies and less resources to spend on children and young people (UNICEF, 2007; 2013; 2016). The reports highlight major problems with the way that children live and develop in the UK that sets them at a significant disadvantage to their peers in other developed countries. Public policy regarding children and young people is therefore a critical area to investigate and the governance of young people more generally in the UK, particularly in relation to crime and ASB. The use of the MTD by public authorities, for example, raises fundamental questions about how children and young people are conceptualised in relation to public space, risk and regulation. It is unclear what the consequences of excluding or penalising young people in this way from utilising public space may be and whether this is in fact desirable or not and the consequences for them.

With the introduction and deployment of new technology, the governance of young people has become a rapidly changing area of social life that requires constant review and analysis. Recent advances such as social media for example may have led to marked changes in lifestyles, attitudes and behaviours for young people as well as wider society (HM Government, 2014). Although new technologies provide new opportunities, they also create new risks, producing a risk-benefit trade-off. It is the role of sociological research to critically understand these trade-offs for the benefit of public information and policy, to promote public debate about the assumed value or social benefits arising from the use of new technologies, and to examine the influences and decision making processes that underlie their implementation in the interests of the general public.

THE INVESTIGATION

A case study methodology was determined to be the most appropriate and suitable approach for studying the MTD. The case study provided a large degree of flexibility which was required to gain as much information in as many different areas as possible about a technology that was still relatively new and largely unknown. Through the course of this multi-method investigation the problems and

tensions linked to this technology became clear and exposed the interplay of two themes to the devices use: regulation and risk crystallising three research questions for this study to be refined and developed. The research questions the study addresses are:

- d. What is the relationship between young people and notions of regulation and risk?**
- e. How have different stakeholder groups interpreted and approached the MTD as a technology?**
- f. How have notions of regulation and risk been deployed and mobilised in the context of the MTD?**

In order to understand the motivations behind the development and marketisation of the MTD, it was vital to understand the historical perspective that informs social attitudes and policies towards children and young people today and how they have developed and changed over time. Indeed these social and cultural attitudes to children and young people, how they are socially constructed, are very much shaped by the prevailing socio-economic and cultural conditions of particular periods in the UK. This is explained in chapters 2 and 3 of this thesis where the first research question is answered with respect to the clearly changing regulatory practices in relation to young people as a result of notions of risk.

The focus on the stakeholder groups in the second research question ensured full examination of each of the groups involved with the MTD in order to provide an overall and fully informed picture of the devices use in the UK. This included a rigorous analysis of the manufacturer's financial accounts in order to understand how numerous and widespread these devices were in the UK, their role in trying to defuse human rights concerns about the devices. In addition substantial data was collected from public authorities in order to establish how public crime and disorder policies and their responsibilities to uphold legislative requirements to protect young people would affect their use of these devices. Finally the youth advocacy groups that opposed the use of MTDs were consulted to understand how young people had tried to use human rights concerns and the law to try and influence the use of these devices. This second research question is generally answered throughout the thesis in no particular order or sequence in moving between the different stakeholders. The contribution of the stakeholders was covered in the methodology, chapter 5, when the means by which data was collected and analysed to inform the thesis is examined. The way that each stakeholder reacts to the MTD is a reflection of how they perceive risk in relation to space and young people.

The final research question is closely linked to the second research since it is how these stakeholders use the MTD that reveals how notions of risk and regulation operate at different levels. To explore

this question fully it was necessary to analyse public authorities and those authorities using MTDs in particular, more closely, in order to understand the underpinning trends or motivations. Indeed it was useful to identify how the rate of purchasing MTDs changed with time in line with the role that MTDs appeared to perform for the public authorities themselves. This was analysed in conjunction to crime and disorder strategies that public authorities operate on 3 yearly cycles from two different periods. Due to the City of Liverpool's prominence with the development of MTDs, a particular focus was brought to bear on how the MTD was being operated and managed by public authorities there as well as more broadly on a national basis. These notions of risk that heavily influenced public authority policy were manifested through means of excluding young people from public space.

REVIEW OF RESEARCH QUESTIONS

In the course of this case study on the MTD, this thesis has aimed to illuminate and provide answers to three research questions. The first question is what is the relationship between young people and notions of regulation and risk?

Young people are often viewed as 'adults in becoming' as they are in a stage of life that is located in between childhood and adulthood. In the course of the analysis it became clear that regulation was manifested in different ways and was largely influenced by the dominant social construction of young people held by the public authorities. There was regulation in law through the criminal justice system established to govern children and young people, although the human rights of children and young people also offered a means to regulate the MTD. Evidence of risk-anxiety (Scott et al., 1998) also emerged. Young people as a social group were constructed as a risky group that is dangerous and as a group at risk because they are vulnerable to exploitation. The rise of this risk-anxiety paradigm reinforces and shapes many regulatory practices for children and young people. Indeed, the MTD was also used to control children and young people for their own safety as well as for the safety of others by excluding them as illegitimate users of public spaces. However, young people are also legally defined as children in the UK until aged 18 and the relationship between young people and notions of regulation and risk can be understood in the way that young people as a group have been socially constructed historically as a consequence of the socio-economic and political conditions of the time.

Second how have different stakeholder groups interpreted and approached the MTD as a technology? The company that invented and is the sole manufacturer of the MTD, Compound Security Systems (CSS), believed that the threat of the regulatory challenges to its continued deployment affected their sales. Yet despite these threats of legal action against users of MTDs and the likely finding that the

devices would be considered a violation of young people's human rights, litigation has not been brought against a single user of these devices. Youth advocacy groups that oppose use of the MTD reveal this has been used as leverage for negotiation and the voluntary removal of the devices through local campaigns led by young people. Although the number of MTDs may have declined, CDRPs still target young people as a key group for reducing ASB with many CDRPs favouring alternatives to MTDs that achieve similar objectives, to limit young people's access to space.

And last how have notions of regulation and risk been deployed and mobilised in the context of the MTD? Using the concept of governmentality, the use of the MTD by the public authorities can be understood as a technology of responsabilisation, but also in terms of limiting the availability of choices for young people by permanently excluding them from particular spaces. In a sense the MTD is part of a broader strategy to target those young people that do not embrace these self-governing ideals and is intended to steer them away from spaces they shouldn't be in and that the public authorities cannot easily monitor. By forcing young people away from some areas into spaces that have more adult surveillance, it is hoped that young people will be less inclined to attempt risky behaviours and may be persuaded to return home instead. There is nothing, however, to stop young people from simply finding other spaces that may be unsafe and less familiar to young people.

IMPLICATIONS

MTDs are interpreted by public authorities as a negative measure of last resort for groups of young people that persistently congregate in public space. The devices reinforce the perception that young people are harmful to others and require displacement from areas for the protection of property and social life within the community. They do appear nevertheless to be incompatible with some of the strategy aims of CDRPs which encourage public authorities to identify persistent offenders at the earliest possible opportunity so that appropriate diversions and interventions can be put in place to prevent and reduce the prospect of further ASB or criminal behaviour. Therefore, MTDs for many public authorities are likely deployed in locations where natural surveillance is not possible and that authorities cannot easily monitor.

In 2008, new government guidelines for CDRPs were produced in the publication '*Cutting Crime: A New Partnership 2008-2011*' (Home Office, 2007). This document which had not been replaced by the time that the 2011-14 CDRP strategies had formed, included national targets for CDRPs to address around four main themes: early intervention, situational prevention, enforcement and reducing offending. These included requirements to (1) reduce young people from becoming offenders through

the application of risk factors while also recognising that young people are often victims of crime which itself is associated with subsequent offending. (2) Designing-out crime from local areas by reducing opportunities for offenders to commit crime. (3) Detection and appropriate punishment for committing crime, particularly around ASB, were a combination of robust enforcement measures and the use of supportive interventions is deemed to have been successful. (4) Ensuring resources are focused on prolific offenders responsible for the bulk of crime and ASB. Through comparisons between the CDRP strategies from 2005-8 and 2011-14, it has emerged that the assumptions made about young people have actually changed very little within this time frame.

The CDRP strategies in 2011-14 have increasingly internalised the use of risk factors to identify likely young offenders and the use of early intervention programmes and diversionary schemes, to steer young people away from the possibility of offending or reoffending. Yet these aims are not compatible with the deployment of MTDs because the devices are exclusionary and do not assist with the identification of young people which would enable public authorities to intervene. More recent developments have seen central government commit CDRPs to long-term planning approaches of 'designing-out' crime and ASB from locations that are considered hotspots or opportunities for crime and ASB. 'Designing out crime' does deny young people access to a green space that may have been an important meeting place, where young people could spend their leisure time and enjoy the company of their friends. By excluding young people from the area, they have to look for another place to meet. As such, this is a kind of ASB shuffling, simply pushing young people out of one space for another. Material considerations were mentioned just twice in total as potential risk factors for young people, confirming the decontextualisation where social, political and economic factors relevant to their offending are ignored (Muncie, 2006, Goldson and Muncie, 2006a)

THE STUDY OF POWER, PRAXIS AND VALUE RATIONAL QUESTIONS

"No intellectual orientation that seeks to illuminate concrete praxis in the contemporary world can be judged adequate if it fails to confront questions concerning the character, dynamics, and tactics of power and domination."

Bernstein, 1983, p.156.

If we aspire to develop a sociology and social science that deliberates about value rationality and praxis for society which are the hallmarks of an Aristotelian *phronēsis* suggested in chapter 4,

considerations about power are essential (Bernstein, 1983). Questions about power should be fully integrated within any approach to a phronetic social science (Flyvbjerg, 2001). In fact Flyvbjerg has suggested that it should be included as one of four value rational questions that are essential to providing practical solutions to problems that exist in concrete situations. He suggests researchers ask within their studies of social problems:

1. Where are we going?
2. Who gains, and who loses, by which mechanisms of power?
3. Is it desirable?
4. What should be done?

The mechanisms of power that Flyvbjerg has in mind are clearly based around the ideas and influence of Michel Foucault (1991) and his interests in studying a diversity of strategies and struggles for power which are grounded in history and specific contexts and places. This, Flyvbjerg interprets is an example of Foucault's commitment to *phronēsis* - an approach that is continuously questioning what is principally good and bad for society as a whole. This is also evident from Foucault's commitment to genealogy which rejects the enlightenment notion that history is both linear and progressive. The assumptions of history and what is commonly taken for granted as the truth are simply historical constructs underpinned by specific social and political agendas while alternative historical narratives have been suppressed or ignored (Flyvbjerg, 2001, p.100).

Flyvbjerg rejects interpretations of power that are based around consensus such as those favoured by Jürgen Habermas that have a preoccupation for rules, systems and conventions that apply independent of context to all situations and people equally. This Flyvbjerg (2001, p.101) suggests is an example of *epistēmē* and despite its attractive qualities its underlying assumptions do not stand up to scrutiny from empirical investigation. Habermas' appeal to the force of the better argument, for example, which is a crucial mechanism as the means to pacify disagreeable groups and reach consensus is rarely in evidence, so much so that courts are required to settle arguments in favour of one side. Moreover, Flyvbjerg (2001, p.95) is also highly critical of the idealism of *epistēmē* in assuming that man is both moral and good.

For the conduct of social science studies, around which there remains significant debate in the social sciences, I have suggested that the approach suggested by Flyvbjerg and colleagues offers a useful way to pursue the aims of social science research by reflecting critically on four value rational questions. What are studied as 'social problems' must be understood within their unique socio-

historical context and with appreciation of the expert knowledges and relations of power that reproduce them (Flyvbjerg, 2001; Schram and Caterino, 2006; Flyvbjerg et al., 2012).

UNACCEPTABLE TREATMENT OF CHILDREN AND YOUNG PEOPLE

Despite concerns expressed about MTDs by the Committee on the Rights of the Child (2008) in their concluding observations, the CCSE from the Council of Europe (Wach, 2010) and the Equality and Human Rights Commission (2011), the UK government has not intervened to regulate the devices. It is therefore abundantly clear that the concerns and treatment of children and young people, even when supported by authoritative legal institutions is of little concern to the UK government. This has remained the case even though three different political parties have held office in the UK during the lifetime of the MTD (a Labour government, a coalition government and a Conservative government).

There has also been disagreement, nevertheless, between each of the key human rights bodies about what ECHR or children's rights provisions are infringed by the MTD. The UK Committee on the Rights of the Child (2008) suggested children and young people's freedom of movement and assembly was at stake as the 1989 UNCRC has an equivalent provision to Article 11 ECHR. The CCSE (2010) suggested that MTDs were a 'soft' infringement, but would be considered degrading treatment (Article 3 ECHR) for children and young people nonetheless. Meanwhile the Equality and Human Rights Commission (2011) did not even consider Article 3 ECHR within their analysis of the devices. They suggested that the devices could be justified in certain cases for the prevention of crime when a history had been established in an area, although usage of the devices for other purposes would be considered an infringement of Article's 8 and 11 ECHR. This is despite children and young people arguing that the devices are a form of unacceptable treatment and pressing to have the devices removed and banned at an international, national and at a local level. There was also an unwillingness from the Children's Commissioner for England to be drawn into making these arguments suggesting that the organisation is nervous about taking confrontational positions with government that may jeopardise its public funding and leave it open to political attack.

From my own experience of the sounds produced by the MTD, summarised briefly in chapter 7, the devices are unquestionably harmful and could seriously impact upon the quality of life for children, young people and even young adults exposed to the devices for any extended period of time. The devices are capable of causing pain, despite claims to the contrary, with a ringing-ears sensation persisting long after my own exposure of 15 minutes to the devices. The effects from these devices is not only physical, causing nausea and disorientation, they are also psychological causing paranoia and

anxiety. The impact of the devices made it difficult for me to concentrate and perform simple tasks both during and after my exposure. It is not inconceivable that with repeated exposure to the devices psychological problems could develop. Indeed some media articles claim that some children and young people say that devices have prevented them from playing outside, causing sickness and of being unable to sleep at night (BBC, 2008b; Telegraph, 2010b; Merrill, 2013).

AN UNCERTAIN FUTURE FOR RIGHTS

As children's rights are not incorporated into UK domestic law, they lack a powerful system of enforcement (Balton, 1990; Kilkelly, 2001). In normal circumstances children's rights would be wholly dependent on the willingness of national government to take criticisms and recommendations seriously. Due to the 1998 HRA and 1950 ECHR however, there is an established mechanism that can draw on children's rights provisions which might otherwise remain a low political priority.

The future of human rights in the UK is nevertheless uncertain due to UK government announcements that it is seeking to repeal the 1998 HRA and withdraw from the 1950 ECHR. The integrity of the ECHR in particular has been consistently undermined by political charges of 'judicial activism,' where it is claimed that the ECtHR has continuously expanded its interpretation of provisions contained within the ECHR to advance a political agenda. In defiance of the ECtHR, a succession of UK governments, since 2005, have also consistently refused to implement a series of judgments handed down by the Grand Chamber, which has now ruled for the fourth time, that UK legislation which requires that all criminal offenders in detention automatically lose their voting rights was incompatible with provisions ensuring the right to free elections contained in Article 3 Protocol 1 ECHR (*Hirst (no. 2) v the UK*, *Green and MT v the UK*, *Frith and others v the UK*, *McHugh and others v the UK*). Similarly, a succession of UK governments has also attacked judgments viewed as preventing the possible extradition and deportation of alleged or convicted criminals because of protections held under Article 8 ECHR guaranteeing, under certain circumstances, a right to a private life.

It was human rights, however, through the HRA and the ECHR that enabled youth advocacy groups and campaigns by young people to negotiate for the removal of MTDs by public authorities. The repeal of the 1998 HRA and withdrawing from the 1950 ECHR therefore will mean that substantial protections for children and young people will be lost in the UK. In addition a valuable enforcement mechanism through which the 1989 UNCRC can be used as an interpretive tool for cases involving children will also be lost (Fortin, 2003, p.53).

Furthermore the way in which MTDs are now being used means resistance is unlikely to emerge because the targeting of young people occurs on a localised basis that is not visible as a national trend. Although human rights legislation does in fact include a provision that protects the freedom of movement and assembly of groups, this only protects assemblies that are formed for a particular purpose. Gathering on a city street for social purposes is unlikely to be protected (McInroy, 2010, p.897). Human rights legislation therefore is not applicable to resist these changes suggesting that children and young people's retreat from the street is likely to become a permanent feature (Crawford, 2009; Akiyama, 2010; Little, 2014).

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APPENDIX 1

The 99 Public Authorities contacted under FOI that had not purchased MTDs

| | | | |
|------------------------|---|------------------------------|----------------------------------|
| Westminster | Royal Borough of Windsor and Maidenhead | Bath and North East Somerset | Borough of Weymouth and Portland |
| Blackburn | Newcastle | Ashfield and Mansfield | Peterborough |
| Sunderland | Manchester | Newham | Medway |
| Essex | York | Dudley | Lincoln |
| Middlesbrough | Broadland | Chorley | Cambridge |
| Salford | Haringey | Newcastle under Lyme | Eastleigh |
| Wiltshire | Walsall | Elmbridge | Allerdale |
| South Yorkshire Police | Portsmouth | Cumbria Constabulary | Hartlepool |
| Stoke-on-Trent | North Hertfordshire | West Suffolk | South Oxfordshire |
| Tameside | Lambeth | Wycombe | White Horse |
| Blackburn | Chelmsford | Stafford | Waltham Forest |
| Borough of Barrow | Barnsley | Braintree | North Yorkshire Police |
| Waverley | Reigate and Banstead | Harrow | Maidstone |
| Wandsworth | Dacorum | New Forest | Borough of Test Valley |
| South Lakeland | Derbyshire County | Redbridge | Basildon |
| Thanet | Surrey Heath | Wealden | Bromley |
| Cherwell | Cumbria | Basingstoke | Mid Sussex |
| Milton Keynes | Ealing | South Norfolk | Arun |
| North Somerset | Breckland | Camden | Wakefield |
| Barnet | West Dorset | Sandwell | Eden |
| Southwark | Canterbury | Coventry | Hackney |
| Norwich | Wirral | Stevenage | Hounslow |
| Nuneaton and Bedworth | Kings Lynn and West Norfolk | Greater Manchester Police | Royal Borough of Greenwich |

| | | | |
|-----------------------------|-----------------------------|------------------------------|--|
| Birmingham | Plymouth City Council* (22) | Borough of Bexley* (5) | Bradford Metropolitan District Council* (at least 4) |
| Sheffield City Council* (7) | Metropolitan Police* (33) | Liverpool City Council* (44) | |

*indicates evidence in the public domain that suggests this public authority has purchased and used MTDs. The number of MTDs alleged to have been purchased and used is in brackets.

APPENDIX 2

MOSQUITO RESEARCH PROJECT

I am a doctoral research student at the University of Liverpool investigating how use of the device known as a “Mosquito” has changed amongst public authorities in the UK.

What is a Mosquito?

The Mosquito is an electronic device which generates high-pitched sounds which only children and young people are able to hear. The devices are manufactured by a private company and sold for approximately £500 pounds to public authorities. The Mosquito is a deterrent designed to force children and young people, believed to be acting anti-socially, away from particular areas, businesses, or places of residence.



The research project:

- As of June, 2008, approximately 3,500 Mosquito devices had been sold and were in use in the UK, yet more recently evidence suggests that public authorities are no longer purchasing Mosquito’s.

- This research seeks to identify and understand the factors which may have influenced decision-makers within public authorities into changing their policies regarding the purchase and use of these devices.



The Research will Involve Consultation with:

- Decision-makers within public authorities. Particularly those that have some involvement or experience in decisions to purchase and use these devices.
- Local councillors, council officials, and police officers.
- Representatives of a Crime and Disorder Reduction Partnership (CDRP) who make recommendations for preventing and reducing crime and disorder within their local area.

If you would like further details about the project or are interested in talking to me (in confidence) about your perspectives or experience in the field. I can be contacted at the following e-mail address: j.maher@liverpool.ac.uk. Please feel free to circulate this information and my details.

APPENDIX 3

Interviews: The Mosquito and its use by Public Authorities

Dear Sir/Madam,

My name is Jonathan Maher and I am a doctoral student at the University of Liverpool. You are being invited to take part in a research project. Before you decide to participate it is important for you to understand why the research is being done and what it will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask if anything is unclear or if you would like more information.

The research project

The Mosquito is a small electronic device designed to produce a very high frequency buzzing sound that only people aged less than 25 years old are able to hear. The purpose of the mosquito is to act as a deterrent to young people and prevent them from 'hanging around' in certain areas. The purpose of these interviews is to find out how Mosquito's are being used by public authorities and if the usage of these devices has changed.

Why have I been chosen? Do I have to take part?

In order to get an accurate picture of the ways in which Mosquito's are used by Public Authorities it is important to sample representatives from a number of public authorities. In particular, people with responsibilities specifically for Mosquito, or much broader overlapping areas such as young people and crime and disorder will be asked to participate in this research project. Your participation in this survey is voluntary and you are able to discontinue participation at any time. If you do decide to take part you will be given a copy of this information sheet to keep.

What will happen to me if I take part?

You will be asked questions about the application of the Mosquito, factors which may have influenced the ways these devices are used, and how they are used. Taking part in this interview will take no longer than 45 minutes. You will not be asked to provide any personal information other than an e-mail address. This will be used for the purposes of sending a copy of the conversation we have to you, which you may then amend or add to as you feel appropriate. Please be aware, however, that our conversation together will be recorded in order to facilitate this process, but any answers you provide will remain strictly confidential and will be destroyed at the end of the study.

I wish to participate in this project (please sign in the box below).

Who do I contact for further information?

-The University of Liverpool.

There are two supervisors of this project at the School of Law and Social Justice:

Dr Stephanie Petrie. Contact Telephone Number

Dr Helen Stalford. Contact Telephone Number

Thank you for taking the time to participate.

More information about this research project and a summary of the final report can be obtained from either Dr Stephanie Petrie or Dr Helen Stalford (contact details above).

