

Citizen Participation and Public Petitions Committee

13th Meeting, 2022 (Session 6), Wednesday
28 September 2022

PE1919: Ban the sale of high caffeine
products to children for performance
enhancement

Note by the Clerk

Lodged on 11 January 2022

Petitioner Ted Gourley

**Petition
summary** Calling on the Scottish Parliament to urge the Scottish Government to ban the sale of fast release caffeine gum to under 18s for performance enhancement due to risk of serious harm.

Webpage <https://petitions.parliament.scot/petitions/PE1919>

Introduction

1. The Committee last considered this petition at its meeting on [23 February 2022](#). At that meeting, the Committee agreed to write to the Children and Young People's Commissioner Scotland, Scottish Athletics, sportscotland, Cardiac Risk in the Young, and Food Standards Scotland.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from sportscotland, Food Standards Scotland, the Children and Young People Commissioner Scotland, Scottish Athletics, Cardiac Risk in the Young and the Petitioner, which are set out in **Annexe C**.

4. Written submissions received prior to the Committee's last consideration can be found on the [petition's webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the [petition's webpage](#).

Action

The Committee is invited to consider what action it wishes to take.

Clerk to the Committee

Annexe A

PE1919 : Ban the sale of high caffeine products to children for performance enhancement

Petitioner

Ted Gourley

Date Lodged:

14/12/21

Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to ban the sale of fast release caffeine gum to under 18s for performance enhancement due to risk of serious harm.

Previous action

In my capacity as an athletics coach at Giffnock North AC I raised concerns with UK and Scottish Ministers, Scottish Government officials, MSPs and Senior Executives at Sport Scotland, UK Athletics, Scottish Athletics and Parkrun.

No action was taken as the gum is legal with no age restriction on purchasing it. The Children Commissioner's office has passed on concerns about high strength caffeine gum to Government Officials and suggested I consider the Scottish Parliament's petitions process.

Background information

European Food Standards Agency advise single doses of caffeine >3mg/Kg could compromise the cardiovascular system. There have been sudden cardiac deaths at races where caffeine gum was promoted although there were no investigations of any potential link.

Both Scottish Athletics and sportscotland warned of health risks particularly for U18s with undiagnosed medical issues.

The charity Cardiac Risk in Young state 1 in 300 young people have

undetected life-threatening heart conditions. In the UK every week 12 apparently fit young athletes die of undiagnosed cardiac conditions.

The sale of caffeine gum to U18s may well be a violation of the UN Convention on Rights of the Child, a treaty ratified by the government.

Article 3 - “the best interests of a child should be a primary consideration”.

Article 19 – all measures must be taken “to protect the child from all forms of physical or mental violence, injury or abuse”.

Annexe B

Extract from Official Report of last consideration of PE1919 on 23rd February 2022

The Deputy Convener: The next new petition is PE1919, lodged by Ted Gourley, on prohibiting the advertising and promotion of high-caffeine products to children for performance enhancement.

The petition calls on the Scottish Parliament to urge the Scottish Government to ban the sale of fast-release caffeine gum to under-18s for performance enhancement. The petitioner believes that the continued sale of such products puts children and young people at risk of serious harm. He cites examples of where such gum has been distributed widely at races, with the caffeine content exceeding the daily recommended dose for a young person. The petitioner points out that both scottishathletics and sportscotland have previously warned of health risks from consuming high doses of caffeine, particularly for those under 18 who have undiagnosed medical issues.

In its submission, the Scottish Government advised that, from December 2018 to February 2019, a consultation had been held on ending the sale of energy drinks to children and young people, which had provided

“an opportunity for respondents to raise concerns in relation to other food and drink products, such as caffeine gum”,

as

“Chewing gum falls under the definition of food in food law.”

The Scottish Government stated that it is

“currently considering responses to the consultation”,

that it has undertaken to publish a report, and that it will update the committee in due course.

It went on to note:

“In May 2015, the European Food Safety Authority (EFSA) published its Scientific Opinion on the safety of caffeine. It advised that single doses of caffeine up to 200mg from all sources do not raise safety concerns for the ... healthy adult population. For children and adolescents, EFSA’s opinion explains that there is insufficient information available to set a safe caffeine intake. However, EFSA considered that due to children and adolescents

processing caffeine at least at the same rate as adults, the single doses of no concern for adults may also be applied to children as a daily limit.”

Do members have any comments?

Alexander Stewart: The petition has some merit. There is no doubt that caffeine has had and continues to have an effect on young people. The petitioner has identified some of the concerns. It would be useful for us to keep the petition open and seek some more advice and information from stakeholders, who could include the Children and Young People’s Commissioner Scotland, scottishathletics, sportscotland, Cardiac Risk in the Young and Food Standards Scotland. All of those organisations would be more than willing to support us and give us some information on the difficulties that caffeine intake causes. That would give us a much more balanced approach to where we can take the petition in the future. If we keep the petition open and ask for that information to be submitted, we can make a judgment and a response on the basis of that.

The Deputy Convener: Do we agree to keep the petition open and write to the relevant stakeholders?

Members indicated agreement.

Annexe C

sportscotland submission of 1 April 2022 PE1919/C – Ban the sale of high caffeine products to children for performance enhancement

Thank you for your letter regarding the petition submitted by Ted Gourley calling for a ban on the sale of fast release caffeine gum to under 18s for performance enhancement due to risk of serious harm. **sportscotland** is aware of the petitioners concerns about this issue and has communicated with Mr Gourley over a number of years to explain the role and position of **sportscotland**.

sportscotland unreservedly condemns the use of performance enhancing drugs and fully supports UK Anti-Doping's (UKAD) vision for a world where athletes can compete in a doping-free sporting environment through the Clean Games Policy.

sportscotland's role is to support the implementation of UK Anti-Doping's policies, primarily through education and promotion. We work with our partners including UK Anti-Doping and Scottish Governing bodies of sport, to ensure that athletes – including our young athletes - and support staff have access to anti-doping education and information enabling them to make informed decisions. We are not directly involved in the delivery or monitoring of anti-doping.

With regards to legal 'supplements' (which is a very broad term), **sportscotland** follow UKAD in our approach to clean sport - assess the need, the risk and the consequence. Within high performance we do not give blanket advice, instead it is taken on a case-by-case needs analysis in conjunction with a multidisciplinary team approach with clear performance measurement outcomes.

Specifically in relation to caffeine, for in-competition use remains on the [World Anti-Doping Agency \(WADA\) Monitoring Program](#) in 2022. As set out in the World Anti-Doping Code, this means that caffeine is not on the Prohibited List, but WADA wishes to monitor in order to detect potential patterns of misuse in sport. In short caffeine use by athletes is not currently prohibited by WADA.

sportscotland does not encourage recreational athletes to experiment with caffeine supplements.

Through our performance nutrition team and the sportscotland Institute of Sport, we provided some advice to Scottish Athletics to inform their guidance to members on caffeine. We note that the [scottishathletics Caffeine Guidance for Performance Athletes](#) concludes that “**scottishathletics** recommends that athletes do not use caffeine products, particularly young athletes and those with any health concerns”.

In December 2019, **sportscotland** highlighted to Mr Gourley the Scottish Government consultation on the sale of energy drinks to Mr Gourley, noting that it was open for responses until February 2020. We are not aware whether Mr Gourley submitted a response to this consultation. However, if Scottish Government are minded to consider a ban on the sale of caffeine gum to under 18s, it would seem sensible to do so in the context of their consideration of next steps following that consultation.

Finally, we note that Mr Gourley’s petition calls for the ban of sales of fast release caffeine to under 18s specifically for use as a ‘performance enhancement’ in a sporting context. It is unclear to **sportscotland** how a ban on the sale of a product for specific purposes could be implemented. If a ban was to be introduced, it would only seem practical on the basis of a general ban on sales to under 18s regardless of purpose.

Food Standards Scotland submission of 4 April 2022

PE1919/D: Ban the sale of high caffeine products to children for performance enhancement

Thank you for your letter regarding the above petition and the request from the Committee that sought Food Standards Scotland (FSS) views on the action called for in this petition and the measures taken by the Scottish Government (SG).

As a non-Ministerial office of the Scottish Administration, FSS provides science-based independent advice to Ministers regarding food/feed safety and hygiene and nutrition. As such, we have supported SG led

work in this policy area through providing advice on the safety and nutritional aspects of energy drinks.

FSS would therefore support the detail contained within the SG's submission of 19th January to the Committee which referenced the European Food Safety Authority's (EFSA) scientific opinion on the safety of caffeine. Advice from FSS to consumers continues to be based on the EFSA 2015 opinion.

Additionally, guidance for consumers has been published on the Food Standards Agency (FSA) [website](#) and referenced on our own [website](#) pages for food additives. We are currently looking to enhance our own guidance around food additives, including caffeine and energy drinks, and will be developing this part of our website over the next few months.

The SG response to the petition also reference labelling rules for high caffeine drinks and foods. In addition to the information provided by SG, it is important to highlight that the requirements of Regulation (EU) No. 1169/2011 (now retained in UK law) requires specific labelling for high caffeine foods where it has been added for a physiological effect. This labelling helps consumers identify foods with high caffeine content in those products where they may not expect to find it. Additionally, the label must state 'Contains caffeine. Not recommended for children or pregnant women'. This must be in the same field of vision as the name of the food along with the amount of caffeine in mg per 100g.

We understand SG are considering the responses to their consultation and evidence, and FSS officials will continue to engage and support SG policy leads in this space to ensure this includes relevant aspects of food safety and nutrition policy advice, for which FSS has responsibility in Scotland. FSS are aware there may be some products on the market that do contain caffeine which, if consumed in one sitting by children and adolescents, would be above the levels deemed to not raise safety concerns by the EFSA 2015 advice. Noting the labelling requirements above and subject to further discussions with SG officials, FSS could consider whether there is merit in reviewing the risk management decisions that were based on the EFSA advice, as part of the overall piece of work being led by SG.

Should the Committee have any further questions, then I would be more than happy to discuss further with them as required.

Children and Young People Commissioner Scotland submission of 4 April 2022

PE1919/E: Ban the sale of high caffeine products to children for performance enhancement

Thank you for inviting us to comment on the above petition. We note that the Scottish Government have provided the Committee with an outline of the legislative background, together with the existing evidence (or lack thereof) on caffeine safety. In particular, we note the European Food Safety Authority (EFSA) opinion on the safety of caffeine¹. Our submission therefore concentrates on the human rights contexts for such a ban.

The UNCRC gives children the right to the highest attainable standard of health and to healthy food (Article 24). The UN Committee on the Rights of the Child recognise, in General Comment 15, that certain foods and drinks can be associated with adverse health outcomes including cardiovascular disease². These include foods and drinks that are high in fat, sugar or salt and drinks containing a high level of caffeine.

In the General Comment, the UN Committee calls for the marketing of these to be regulated and their availability in schools and other places controlled. Some states choose to prohibit advertising of certain products to children, and we note that although regulation of advertising is a reserved matter, the Scottish Government has been able to prevent energy drinks from being available in Scottish schools.

States also have a duty to protect children from substances harmful to their health and, for example, most governments legislate to restrict the sale of alcohol and tobacco products to children, in line with the robust evidence of the harm these do to children's health.

The right to healthy food requires the State to ensure its safety, availability (including affordability) and to promote awareness of healthy eating. It is not intended to require the state to prevent children or their parents from making occasional (or even regular) unhealthy choices, however the State does have a duty to ensure parents and children have access to appropriate information about healthy eating.

¹ European Food Safety Authority. 2015. [Scientific Opinion on the safety of caffeine](#)

² UN Committee on the Rights of the Child. 2013. [General Comment 15 on the right of children to the highest attainable standard of health](#)

Any decision to regulate high caffeine products must be proportionate to the potential harm to children from those products. For example, it is very unlikely to be proportionate to ban the sale of tea or common soft drinks to children based solely on caffeine content, given the lack of evidence of harm from consuming small amounts of caffeine. A balance must be struck, based on the available scientific evidence such as that outlined by the EFSA.

We note that the Scottish Government are still considering their response to their 2020 consultation. Whilst that consultation was focussed on high caffeine drinks, we suggest that the Scottish Government should also consider foods with equivalent quantities of caffeine in their proposals.

Scottish Athletics submission of 28 July 2022

PE1919/F: Ban the sale of high caffeine products to children for performance enhancement

In response to your letter dated 1 March 2022, Scottish Athletics is aware of the concerns raised by the petitioner and has communicated with Mr Gourley over at least the past 5 years.

During that time, Scottish Athletics has published a paper on [‘Caffeine for Athletic Performance’](#) in which our position is made clear – *“scottishathletics recommends that athletes do not use caffeine products, particularly young athletes and those with any health conditions.”*

This paper was produced in consultation with the **sportscotland** Institute of Sport.

We are aware that the petitioner has also contacted many other sporting organisations, anti-doping bodies and food standards organisations to raise concerns.

Scottish Athletics works closely with UK Athletics to maintain compliance with the new UK Anti-Doping Assurance Framework in line with the UK National Anti-Doping Policy. We follow the anti-doping rules as laid out

by the World Anti-Doping Agency, World Athletics, UK Anti-Doping and UK Athletics.

Regarding Mr Gourley's request, it would appear to us that banning the sale of high caffeine products to children solely for performance enhancement would be difficult to implement. If action were to be taken it would seem more practical to impose a ban on all sales to under 18s.

Having reviewed the measures taken by the Scottish Government it would seem appropriate that this is kept under review as new evidence emerges regarding the impact of high caffeine products on children.

Cardiac Risk in the Young (CRY) submission of 2 September 2022

PE1919/G: Ban the sale of high caffeine products to children for performance enhancement

Firstly I would like to clarify that I do not believe I have sufficient expertise to comment specifically about the petition *PE1919: Ban the sale of high caffeine products to children for performance enhancement* as I am not familiar with the products or how they are used by children for sports enhancement.

Every week in the UK 12 fit and healthy young people die suddenly from undiagnosed cardiac conditions. The current European recommendations are that all young people should have cardiac screening (including an ECG) prior to participation in sport. The UK National Screening Committee does not support this position and therefore those young people at risk of potentially life threatening heart conditions are not routinely identified, are unaware they have a heart condition, and are therefore unable to take precautionary action (such as decisions to modify their lifestyle) in order to reduce the chance of suffering a cardiac arrest. 80% of young sudden cardiac deaths occur with no prior symptoms and when symptoms (such as breathlessness, chest pain, passing out, dizziness) do present they are easily dismissed by health professionals.

Currently CRY provides cardiac screening to approximately 30,000 young people age 14-35 each year in the UK. Approximately 10% will be elite athletes where cardiac screening is either recommended by their governing body or required for international competition.

CRY is not currently in a position to comment on the health impact of high doses of caffeine for performance enhancement when taken by children in the general population. However, 1 in 300 young people screened by CRY will be identified with a potentially life threatening cardiac condition. In the case that a young person is identified with a potentially life threatening cardiac condition they may be advised to avoid certain drugs and medications, and may be advised to avoid stimulants.

Therefore, I would be concerned about the impact of intense exercise whilst taking performance enhancing drugs or medications (such as high caffeine doses) for young people with undiagnosed cardiac conditions. This would be just one of many reasons why CRY advocates a position where all young people should have the opportunity to have their heart tested, and why we support the position that all elite/ competitive athletes should have regular heart screening.

I would therefore advocate a position where more research needs to be conducted to evaluate the impact of these products on young at-risk individuals.

Petitioner submission of 5 September 2022

PE1919/H Ban the sale of high caffeine products to children for performance enhancement

Thank you for inviting me to respond to the submissions to the petition calling for a ban on the sale of fast release caffeine gum to U18s for performance enhancement.

I am pleased Scottish Athletics (SA) mentioned the paper on 'Caffeine in athletics' but am surprised they overlooked my contribution to the paper. As a coach at Giffnock North Athletics Club, I worked with SA on this paper and I drafted the initial paper as requested by the then Chief Executive, Mark Munro, after I brought it to his attention that high

strength caffeine gum was handed out to hundreds of recreational runners, some as young as 15 years of age, at the Grangemouth 10K. It was a concern the gum was given out just a few days after a meeting with the Chief Executive and Chair of SA, at which assurances were given that SA would not allow high strength caffeine gum to be promoted at events.

I objected to changes that SA subsequently made to the caffeine paper where they stated athletes should trial caffeine in training before using in competition. I was concerned this could put young athletes at risk particularly those with an undiagnosed heart condition. This is backed up by the submission from Cardiac Risk in the Young (CRY) who stated that 80% of sudden cardiac deaths present with no prior symptoms and that they *“would be concerned about the impact of intense exercise whilst taking performance enhancing drugs or medications (such as high caffeine doses) for young people with undiagnosed cardiac conditions.”*

Furthermore, it supports my original concerns about the caffeine trials at a parkrun event approved by the parkrun Research Board where high caffeine doses were given to participants. It is my understanding these participants didn't undergo cardiac screening and therefore may have been unaware of having a potentially life-threatening heart condition. I understand the doses administered in the parkrun caffeine trials were at the low end of the effective doses for enhancing performance (300mg), but still exceeded safe caffeine levels for a typical healthy adult. I would emphasise that European Food Standards Agency (EFSA) state that the minimum caffeine dose to reduce the rated perceived exertion (RPE) during exercise is 4mg/kg bodyweight or 280mg of caffeine but warn that this can have potential adverse health effects.

As a novel food supplement promoted widely to runners, it is important to know what (if any) safety trials have been carried out on the adverse effects of the rapid absorption of high doses of caffeine into the blood stream shortly before or during intense physical exercise. Mars Wrigley carried out research on caffeine gum before relaunching their product in 2017. I understand Mars Wrigley have withdrawn the product for a second time and have since stopped selling it altogether. It would be interesting to know the reasons.

I fully support CRY in calling for more research into these products on young at-risk individuals and would ask the Petitions Committee to look at existing research, including the parkrun research in terms of the caffeine doses required to enhance performance and the scientific study conducted by Mars Wrigley. It might be useful to compare recommendations made by Mars Wrigley on the safe use of caffeine gum with way it is marketed to recreational and club runners.

From extensive discussions with the former Chief Executive of SA, I know he shared my concerns about the risk of children and adolescents overdosing on caffeine popping caffeine tablets or gum.

In response to SA and **sportscotland**'s point that it would be difficult to ban the sale of high caffeine products for performance enhancement, I would suggest that if sold for performance enhancement then these products could be regulated as medicines and not food supplements, in the same way caffeine pro plus tablets are sold as a medicine. This might address the concerns raised by Food Standards around inconsistencies in the labelling of certain products where it may be dangerous for young athletes to consume the specified caffeine doses in a single ingestion particularly during intense physical exercise.

It is my understanding SA have raised concerns about caffeine gum with various sporting organisations including **sportscotland**, UK Athletics (UKA), UK Anti-doping and parkrun, and I understand it was also raised with the former Minister for Public Health, Joe Fitzpatrick. I would encourage SA to make any relevant information available to the Petitions Committee, particularly the responses from parkrun and UKA.

I appreciate the Scottish Government's position that there is presently no evidence young people overconsume caffeine from products such as caffeine gum, however it's likely some will be tempted to experiment with high caffeine products if widely marketed for performance enhancement or endorsed and promoted by sporting organisations.

I welcome **sportscotland**'s statement that "*it does not encourage recreational athletes to experiment with caffeine supplements.*"

The Children and Young People Commissioner's response stated the UNCRC gives children the right to the highest attainable standards of

health and to healthy food (Article 24). This would suggest the rights of a child should take precedence over whether a substance is prohibited by World Anti-Doping Agency – therefore challenging the justification given by those promoting or giving caffeine gum to children.

The following [evidence from the European Society of Cardiology](#) should concern everyone involved in athlete welfare and child safeguarding:

“Caffeine is a prime example of a natural substance that is considered safe,” said first author Dr. Paolo Emilio Adami of World Athletics, the global governing body for track and field. *“While caffeine improves performance, particularly aerobic capacity in endurance athletes, its abuse may lead to fast heart rate (tachycardia), heart rhythm disorders (arrhythmias), high blood pressure, and in some cases sudden cardiac death.”*

“Unfortunately, it is common practice for athletes to ignore dosing recommendations and use multiple drugs simultaneously.”

If it is widely known that drug use is common practice in sport, then it's imperative the governing bodies and clubs risk assess stimulants, and put in place robust child safeguarding procedures.