

# BA Legal Report

November 2014

## Banking & Payment Systems

### Update on regulation of interchange fees

The European Council has almost reached a consensus position to agree caps on interchange fees. This would mean that the proposals can move into the final stage of negotiations – Trialogue – three-way discussion between the Council, European Parliament and Commission. It is hoped that they would agree a final package by the end of 2014. If that happens, and the regulation continues to propose a six month transition period for fee changes to come into effect, UK card fees could be capped by mid-2015. Credit cards would be capped at 0.3%, while debit card fee caps proposals are still being debated, the rate should be no higher than 0.2%. This should have significant benefit for retailers.

### MasterCard & Interchange

The Competition and Markets Authority (CMA) has decided not to progress its interchange fee investigations at the present time. This is in light of the of the European Commission's (EC) proposed interchange fees regulation as well as potential further UK action by the Payment Systems Regulator (PSR). If the CMA did look to take pursue action this would involve a lengthy investigation into fees (raising a Statement of Objections), followed by negotiation with schemes on proposed reductions and with no certainty of agreement. As such, the most efficient route to regulation would be through the EC and then PSR at a UK level. However, in light of the broader regulatory push and the CMA's decision not to pursue action, MasterCard has announced it will take additional actions:

- To reduce the interchange fees applicable to its 'premium' cards down to the level of its 'standard' credit card fees on or before 1 April 2015, regardless of whether the interchange fees regulation is adopted.
- Once the interchange fees regulation enters into force, to implement graduated reductions of its consumer credit interchange rates ahead of the caps that are laid down in the regulation taking effect.

MasterCard will first reduce all UK domestic consumer credit interchange rates, i.e. interchange rates for UK issued consumer credit cards used at UK merchants, to 0.8%. This will be effective either on 1 April 2015 or upon the entering into force of the EU Interchange Regulation - whichever happens first. Following the entering into force of the EU Regulation and based upon the assumption that the EU provides for a one-year period between its entry into force and the effective date of the interchange caps required by the legislation. MasterCard will further reduce these rates every 90 days until the interchange

caps mandated by the EU Regulation become effective. The phased approach as currently proposed, albeit subject to change dependent on the implementation of the EU Regulation: April 2015: 0.80%, July 2015: 0.70%, October 2015: 0.57%, January 2016: 0.44% and April 2016: 0.30%. More details of the proposed graduated reductions will be circulated when publicly available.

### **Government and industry join together to tackle late payment**

Representatives from Aviva, Barclays, Bury Council, City of London Corporation, Fujitsu, Greggs, Skanska and Stort Chemicals will be forming a new advisory board tasked with strengthening the [Prompt Payment Code](#). The Prompt Payment Code sets out principles for businesses to follow when dealing with and paying their suppliers. More than 1,700 businesses and public authorities have so far committed to these principles. The new Prompt Payment Advisory Board will:

- Improve monitoring and enforcement of the Code.
- Promote awareness of the Code.
- Provide advice on whether there is a need to update the Code.

The government is also taking action to curb late payment through the [Small Business, Enterprise and Employment Bill](#) which is currently going through Parliament. The Bill contains proposals to create a duty for large companies and listed firms to report on their payment practices, as well as reforms to public procurement.

## **Companies & Competition**

### **Government Sponsored Voluntary Regulation – a new BRC strategy**

Following a growth in the number of requests from the Government to retailers to sign up to voluntary agreements or regulation, the BRC has published a report it commissioned from two Oxford academics on how to approach Government sponsored voluntary regulation in the future. The BRC proposals encompass a series of tests that retailers should apply when being presented with a proposal from the Government – together with a series of tests that the Government should apply before making any such request. These include an Impact Assessment that sets out the advantages and costs of the voluntary regulation proposal. In addition the proposals recommend that all the usual better regulation principles should be applied including the one-in, two-out requirement and central clearance of all such proposals to avoid the cumulative cost of voluntary regulation being ignored in the context of the overall cost of regulation.

## **Consumer Protection**

### **Government developing a consumer strategy plan for 2015**

The Department of Business, Innovation and Skills is developing its consumer strategy proposals for the next period. These are based on a number of themes: the digital age; market issues; public and ex public sector; awareness and understanding; redress and enforcement; B2B – treating small business as consumers; empowerment; dealing with stakeholders. Following some major changes to online and offline selling as a result of the Consumer Rights Directive (which came into effect in the summer) and the UK Consumer Rights Bill (currently going through Parliament), retailers are looking for a period of consolidation rather than further change (though the European Commission President has signalled his desire for further reform). The BRC will continue to engage with BIS officials and has already submitted the EuroCommerce consumer agenda, which the BRC heavily influenced, to them. This sets out an approach based on an understanding that a consumer strategy should not be about protection per se but how best to provide consumers with an effective choice in the goods and services they want through promoting competition and the single market – and recognising that protection must focus on ensuring safe goods and access to redress when things go wrong.

### **EU Parcels European Parliament study**

The IMCO (Internal Market) Committee of the European Parliament (EP) discussed the EP study “Discrimination of Consumers in the Digital Single Market”, that was published last year. Professor Dr. Hans Schulte-Nölke, European Legal Studies Institute Osnabrück, gave a presentation and answered the questions (amongst others on Article 20.2 Services Directive) asked in the Committee. Here is a short summary, from EuroCommerce, of the presentation and discussion.

Link to the study “Discrimination of Consumers in the Digital Single Market”:

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/imco/dv/discrim\\_consumers\\_/discrim\\_consumers\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/imco/dv/discrim_consumers_/discrim_consumers_en.pdf)

Link to the presentation by Professor Schulte-Nölke:

[http://www.europarl.europa.eu/meetdocs/2014\\_2019/documents/imco/dv/ppt\\_descrimination\\_consumers\\_/ppt\\_descrimination\\_consumers\\_en.pdf](http://www.europarl.europa.eu/meetdocs/2014_2019/documents/imco/dv/ppt_descrimination_consumers_/ppt_descrimination_consumers_en.pdf)

### **TSI Business Companion**

TSI have launched their new £300,000 taxpayer funded website to guide business on trading standards enforced legal requirements. It can be found at:

<http://www.businesscompanion.info>

Business Companion provides information for businesses and individuals that need to know

about trading standards and consumer protection legislation. Trading standards and consumer protection laws look at three broad factors:

#### **What and where you sell or trade**

For example, a plumber supplies *goods and services off-premises*. A licensed corner shop sells *age-restricted products on-premises*. An accountant may supply *services* that are sold *online*.

#### **How you treat your customers**

All consumer-facing businesses must comply with rules on unfair trading, pricing and contracts, including when you must give a refund, or offer a repair or replacement.

#### **Specific business activities**

Trading standards legislation also covers topics such as product safety, food composition etc as well as certain aspects of running your business.

#### **Note**

There signpost links in each guide, highlighting important topics or related items. The site delivers guidance by default for England, traders in Scotland or Wales should choose their location using the drop-down list at the top of the page. This is because some laws are different, or are differently enforced, in those countries.

## **Copyright & Piracy**

### **Consultation on proposals to reduce the duration of copyright in certain unpublished works**

The Government has launched a consultation on proposals to reduce the duration of copyright in certain unpublished works which are subject to transitional provisions set out in Schedule 1 of the Copyright, Designs and Patents Act 1988. Full details of the consultation can be found at <https://www.gov.uk/government/consultations/reducing-the-duration-of-copyright-in-certain-unpublished-works>.

Due to these complex transitional provisions, some very old unpublished works are still protected by copyright in the UK, even though their authors may have died hundreds of years previously. In 2013 Parliament approved powers to remove these complex rules so as to reduce the duration of copyright in certain unpublished works. This will simplify copyright law in the UK and encourage and enable the publication of previously unpublished works. The Government now intends to bring forward Regulations to implement this change and bring much needed clarity to one of the most obscure aspects of UK copyright law. Under these regulations no works will receive a shorter term of protection than set out in the EU Term Directive. The consultation will run for 6 weeks and the closing date for responses is Friday 12th December 2014. Responses can be submitted by letter or email to the addresses provided in the consultation document.

## **Orphan copyright works licensing scheme launched**

The Government has launched the orphan copyright works licensing scheme. This is available at: <https://www.gov.uk/apply-for-a-licence-to-use-an-orphan-work>.

Information about how to use the scheme to apply for a licence on a copyright work is available on the site above. This includes an overview of the scheme, guidance on performing the diligent search, guidance for returning rights holders and tools to help you decide if you are eligible to use the European Directive on orphan works. If anyone wants to use a copyright work they must (with a very limited number of exceptions) seek the permission of the right owner/s. This is often through gaining a licence to make use of the work. However where no rights owner can be found, this means that no licence can be issued - therefore making any use of the work unlawful. A copyright work is known as an "orphan work" where one or more right holder is unknown or cannot be located. With a licence granted under the new scheme, these works can be reproduced on websites, books and TV without breaking the law and ensuring protections and remuneration for the people who own the rights in case they come forward. The UK licensing scheme will be administered by the UK Intellectual Property Office and is part of the wider programme of work to modernise the UK's copyright system following the Hargreaves Review. Users will pay a fee to obtain a licence to use the work which will be held in trust for the copyright owner should they come forward.

## **[Mike Weatherley Publishes Report on Intellectual Property Education](#)**

Mike Weatherley, Intellectual Property Adviser to the Prime Minister and the Conservative Member of Parliament for Hove and Portslade, has published his third IP related report entitled 'Copyright Education and Awareness', which examines IP education and aims to help reinforce on the public the importance of respecting IP and paying a fair price for content. [Copyright Education & Awareness](#)

## **[FEP president Pierre Dutilleul: his first interview](#)**

Pierre Dutilleul did not hesitate for a second before naming copyright as the top priority for his two-year term as president of the Federation of European Publishers (FEP). Dutilleul said reform of copyright in the European Union was already on the table, but that the issue had taken on a new dimension. This is because responsibility for copyright policy is being switched from the Internal Market to the Digital Economy and Society portfolio in the new European Commission (EC), which will take office on 1st November. Günther Oettinger, who will be in charge of digital affairs, has already told the European Parliament that the reform is slated for 2016, but he has given no details about how he sees the system shaping up. Dutilleul, who hopes to meet him shortly, believes reform "would be useful, provided it is balanced".

### [Mollet: EC's digital drive 'plays into hands of US platform companies'](#)

PA chief executive Richard Mollet has warned that the new European Commission's drive to impose a digital single market risks undermining Europe's cultural diversity and will play into the hands of US-based platform companies. Giving a keynote speech at the Westminster Media Forum earlier today (Tuesday 4th November), Mollet told delegates: "The new Commission, with its stated aim of imposing a digital single market on all creators in the EU, has its priorities the wrong way around. The result of a top down removal of territorial licensing across Europe would be an erosion of diversity as markets became homogenised, and a further weakening of copyright."

### [Bookseller's Digital Census Predicts End to Territoriality](#)

Publishers are confident their digital sales will continue to increase, but at a slower rate than in the past, The Bookseller's 2014 Digital Census has found. However, over three quarters of publishers think digital will lead to a collapse of territoriality and there continue to be concerns over the use of DRM and digital royalty rates.

## **Employment**

### **New Acas Shared Parental Leave Guidance**

The new law on Shared Parental Leave will be introduced on 1 December (subject to Parliamentary approval). Parents whose children are due to be born or placed for adoption on or after 5 April 2015, and who satisfy eligibility criteria related to their working status, will have access to a fully flexible system of parental leave. Parents will be able to take up to 50 weeks of Shared Parental Leave in total, and can share it as they want. This newly published guidance is designed to help employers and employees understand the upcoming changes in more detail.

[Acas Guidance](#)

[Acas Shared Parental Leave Training Courses](#)

### [Holiday pay ruling – what does it mean for small businesses?](#)

Holiday pay must now reflect the worker's actual normal earnings rather than just basic salary. If a worker's earnings vary depending on the amount of work they do or the times that they carry out that work, their holiday pay should now be based on an average of their actual earnings calculated over a 12-week reference period. Lawyer Alexandra Mizzi explains what a landmark tribunal decision on holiday pay could mean for SMEs.

## **Gender Equality in The Workplace**

Women earn 20% less on average than men, despite efforts to remove barriers in the workplace. Companies can still do more to make sure their employees are treated fairly. The Think, Act, Report campaign enables a company to show commitment to gender equality in the workplace. By signing up, companies pledge to:

- Think: identify any issues around gender equality.
- Act: take action to fix those issues.
- Report: on how your business ensures gender equality.

Signing up enables companies to:

- Show commitment to gender equality by adding the Think, Act, Report logo to your website.
- Use the [Think, Act, Report framework](#) to identify ways to close the gender-gap.
- Encourage change in an organisation's culture to value the best talent, irrespective of gender.
- Establish the company as a best employer by reporting your practices and progress.
- Demonstrate that the company is a leader in the sector.

Read [case studies](#).

To join [hundreds of companies](#) and millions of employees who have committed to treating their colleagues fairly by signing up to Think, Act, Report, [sign up](#).

## **Retail Apprenticeship Standard**

Following the 2012 Richard Review into reform of the Apprenticeship system the government has initiated a number of 'trailblazers' in which employers work together to develop clear and easy-to-understand apprenticeship standards for their sector. Following feedback from the Department for Business, Innovation and Skills, the first of the new retail apprenticeship standards was submitted at the end of October. The Trailblazer Group is now turning its attention to possible Standards for retail supervisors and managers. The aim is to have standards ready for submission to BIS in February.

## **Environment & CSR**

### **England carrier bag charge - Defra still aiming for Oct 2015**

Defra has confirmed that it still intends to lay the order before Parliament by 17 December 2014 and that **it is still aiming for an implementation date of October 2015**. If Defra is unable to lay the draft order before Christmas, it can still lay it in January 2015 in time for approval in March 2015. Retail concerns at the delay in confirming concrete details submitted to Defra include:

#### Carrier bag purchasing arrangements

- Major UK retailers will typically plan for purchase of items such as carrier bags up to two years in advance. Carrier bag orders and purchasing decisions from October 2015 onwards will have factored in the England carrier bag charge. Assumptions will have been made that the amount of single use plastic carrier bags required will fall and budgets will have been adjusted accordingly. If the date of the introduction of the charge was to shift to e.g. April 2015, retailers will need to procure additional bags and find a budget for this.
- Retailers are also considering what quantities of various types of bags to order and purchase, the precise contents of the forthcoming Regulations may influence these decisions and retailers will need adequate time to advise suppliers of any changes in orders and make sure that suppliers have time to plan their production and ensure they have capacity.

#### Allocation of the proceeds

- Retailers will be having detailed discussions internally on how allocate the net proceeds of the charge.

#### Confirmation of details such as exemptions and arrangements for on line purchases

- Retailers are keen to have confirmation of the regulations on areas such as online purchases. For example, retailers may be working on the basis that on line grocery orders will be charged an average price for bags (e.g. 30 pence). If this is not the case, they may need to develop new systems.

#### Assumption that the charge will not apply to additional retailers

Retailers are working on the assumption that the delay is not due to potential fundamental changes to the proposed charge. If there are fundamental changes (e.g. the inclusion of all retailers and/or all single use carrier bags), those retailers who are not currently affected by the charge would need to know as soon as possible.

### **Carrier Bags Europe Update**

In indirect feedback from the first Trilogue between the Commission, Council and European Parliament, the BRC understands that both the Council and the EP acknowledged that the baseline data for setting targets is inconsistent; it is therefore not possible to set credible targets. The BRC expects the Council's review clause to be agreed instead which will oblige MS to report on reductions achieved and the Commission to assess progress and put forward new legislation if appropriate. No decisions have been taken on the replacement of very lightweight bags with biodegradable, compostable or paper bags.



## **Loss Prevention**

### **ICO CCTV Code of Practice**

The Information Commissioner's Office (ICO) has published its revised [CCTV Code of Practice](#). The ICO's guidance explains the requirements of the Data Protection Act to all sectors using surveillance cameras in the UK. It sets out what operators should consider when installing and using CCTV, as well as the steps organisations should take to ensure information is held securely and destroyed once it is no longer required. The updated Code is intended to complement the provisions in the [Surveillance Camera Code of Practice](#), which applies to police forces, local authorities and PCCs.

### **Launch of FALCON police fraud team**

In October the Metropolitan Police officially launched their new FALCON (Fraud and Linked Crime Online) team. FALCON will eventually have up to 500 specialist officers, representing a significant increase in the capacity of the police to tackle fraud and cyber-crime in London. The Metropolitan Police Commissioner Sir Bernard Hogan-Howe has established the new team in response to the growing number of fraud offences committed online, particularly against businesses. Retailers in London should continue to report fraud via Action Fraud in the first instance and the National Fraud Intelligence Bureau will disseminate viable reports to FALCON for investigation. Businesses will be able to contact FALCON directly for Calls for Service, such as when there is a crime in progress.

<http://content.met.police.uk/Site/falcon>

### **London Business Crime Change Board**

A Business Crime Change Board has been established in London to oversee delivery of the MOPAC Business Crime Strategy. The Board, which will meet quarterly, will be chaired by the Deputy Mayor for Policing and Crime or Metropolitan Police Deputy Commissioner. In July the Mayor's Office for Policing and Crime (MOPAC) published a strategy to prevent and reduce crime against businesses in London. The strategy includes action to deliver a measurable improvement in the response to online fraud, analysis of business crime hot spots and creation of a Business Crime Resilience Centre. The Business Crime Change Board will have three sub-boards, led by representatives from business, dedicated to the detailed aspects of the strategy. These are retail crime; night-time economy and cyber-crime and fraud.

## **Property & Rates**

### **[BRC Seeks Commitment to Future Fundamental Business Rates Reform in Chancellor's Autumn Statement](#)**

The BRC has highlighted the consensus across the business world that the business rates system is in need of fundamental reform and is seeking a statement of intent that the Government plans to go beyond the steps it has already put in place to make the system fairer. Business recognises that fundamental reform of the business rates system will take time, and the BRC's submission outlines how commitment from Government now, along with immediate action to extend the one year cap, extension of small business rate relief, and of the discounts announced in the 2013 Autumn Statement, would help businesses to start to take action on job creation, high streets, and inward investment. It also highlights steps critical to the success of the on-going review into the system's administration including the removal of small businesses from the burden of rates and more regular valuations.

### **BRC Campaign Website**

The BRC business rates campaign webpage is now live. It has been updated it to make it look and feel more like a campaign webpage, which now includes a template letter for those interested in reform to send to their constituency MP. Please do draw the attention of interested parties to its existence – the more traffic and signatories the better.

<http://www.brc.org.uk/reformrates/showyoursupport/>

### **Business Rates Party Conference Roundup**

[Labour conference: are business rates fair and fit for the future?](#)

[Time to scrap 'broken system' of business rates, bosses tell Lib Dems](#)

[Poor design of business rates system affects employment rates, leaders claim](#)

### **Revaluation in 2017**

The next Business Rates revaluation is due to come into effect in England, Wales and Scotland in April 2017. Revaluation usually takes place every five years to reflect changes in the property market, although in this case the most recent revaluation was 1 April 2010. The antecedent valuation date, used as the basis for the exercise, will be April 2015. At revaluation, the multipliers (poundages in Scotland) are revised so that the overall national business rates bill only changes in line with inflation. Changes in rateable value relative to those of other properties will lead to a change in bills. This can lead to significant changes in companies' business rates liabilities. The BRC will shortly be writing to retail members to ask whether they would be willing to share information in confidence about the anticipated impact of revaluation on their companies.

### [Eric Pickles shelves town hall plans for new taxes on families' weekly shop](#)

The government will not support additional business rates on supermarkets and large shops. Local Government Secretary Eric Pickles stopped plans for new taxes suggested by a number of town halls.

### **Revitalising Town Centres (Scotland)**

Progress on regenerating Scotland's town centres has been outlined in a report on the Scottish Government's Town Centre Action Plan. The *Town Centre Action Plan – One Year On* report highlights a range of milestones that have been reached, including:

- Agreement between the Scottish Cabinet and COSLA on the Town Centre First Principle, where Government, public bodies, businesses and communities put the health of town centres at the heart of decision-making.
- An expansion of the Fresh Start business rates relief scheme to pubs, hotels and restaurants.
- Record numbers of business properties in Scotland benefiting from an extension of the Small Business Bonus Scheme, an increase of almost 4,000 properties since last year.
- Growth in the number of Business Improvement Districts (BIDs) helping to support economic growth in town centres- there are currently 27 BIDs.
- Recognition of the role of town centres in the new National Planning Framework 3 and Scottish Planning Policy.
- A share of £2.75 million in funding awarded to seven projects under the Town Centre Housing Fund, creating 82 units for affordable housing.
- A £186,000 grant to strengthen the role of the Scotland's Towns Partnership (STP) as the 'go-to' body for advice on town centre development.

Publication of the report coincides with an announcement of two other initiatives. The first is a programme of town centre planning pilots, which will see the Government provide nine local authorities with a share of £119,000 over two years to fund pilot schemes under the proactive planning theme. The other will see a grant of approximately £160,000 provided to the Scottish Business in the Community (SBC) to set up Business Hubs in four local authorities, including Angus, Ayrshire, Borders and Moray.

**Link to report:** <http://www.scotland.gov.uk/Topics/Built-Environment/regeneration/town-centres/review/action-plan/one-year-on-report>

**Small Business Bonus Scheme:** Business Bonus

Scheme: <http://news.scotland.gov.uk/News/Tax-relief-extended-to-over-96-000-properties-11d0.aspx>

**Business Improvement Districts:** <http://www.bids-scotland.com>  
<http://news.scotland.gov.uk/News/Revitalising-town-centres-11ee.aspx>

## **Sales Promotion**

### **CAP Consultations Sales Promotions and Distance Selling**

CAP and BCAP are consulting on the extent, if at all, to which they wish to continue to reflect distance selling legislation in the Advertising Codes. The proposals relate to pre-contractual information requirements and post-contractual matters. One consultation proposes amendments to some of the rules in Sales Promotion section of the CAP Code. The majority of the proposed amendments are aimed at achieving greater consistency with the CPRs. The other consultation is dealing with Distance Selling rules in the light of the Consumer Contract Regulations, 2013. The Sales Promotion consultation will run for 6 weeks, while the Distance Selling consultation will run for 10 weeks.

[Open Consultations](#)

## **Taxation & VAT**

### **[Commission investigates transfer pricing arrangements on corporate taxation of Amazon in Luxembourg](#)**

The European Commission has opened an in-depth investigation to examine whether the decision by Luxembourg's tax authorities with regard to the corporate income tax to be paid by Amazon in Luxembourg comply with the EU rules on state aid. The opening of an in-depth investigation gives interested third parties and the Member States concerned an opportunity to submit comments. It does not prejudice the outcome of the investigation.

### **[Minister promises VAT changes](#)**

Italian culture minister Dario Franceschini said that Italy will use its presidency of the European Union to create uniform VAT rates for print and digital books. Speaking at an event sponsored by the Italian Publishers Association (AIE) at the Frankfurt Book Fair, Franceschini said: "Only a very bureaucratic mind could think of separating the different formats of books. Thus we are doing our very best to complete the documents of the Council of European Ministers of Culture to find a unanimous position, or at least as unanimous as possible, to equalise the VAT rate on e-books and the rate for paper books."

### **[E-book prices may rise as VAT law kicks in](#)**

Publishers and retailers will aim to prevent e-book prices from soaring when a new European-wide VAT law on digital products is introduced on 1 January 2016. Following a European Commission ruling dating back to 2008, e-books and other digital services—including broadcasting and telecommunications—will be taxed in the European member state in which the consumer is located, as opposed to the country from which the product

is sold. The move prevents Amazon, Nook and Kobo from applying a low 3% tax on e-books sold to European countries, because their headquarters are in Luxembourg. Instead, the e-book retailers will have to apply the standard UK VAT rate (20%) to e-books sold into the UK. It threatens to raise the price of UK e-books on Amazon, Kobo and Nook websites come January, and begs the question of who will carry the burden of the extra VAT charge those retailers will have to pay.