

# BA Legal Report

November 2013

## Banking & Payment Systems

### UK Interchange Fee Reform

The European Commission has proposed regulation of interchange fees, including price caps, which could significantly affect retail costs and operations. The UK Government has proposed a Payments Regulator, intended to promote competition in payments. The Prime Minister presented a Business Task Force Report – [“Cut EU Red Tape”](#) – to the European Heads of State Council meeting that outlines progress of interchange payments reform as a key EU priority.

## Consumer Protection

### Consumer Report on trustmark

The European Consumer Centres Network, [ECC-Net](#), has published the report "[Can I trust the trustmark?](#)" The report examines how online trustmark schemes achieve their objective of guaranteeing that their members offer good commercial practices, security and privacy for consumers. Confirming that consumers value trustmarks but lack knowledge about their characteristics and reliability, the report recommends that trustmark operators develop pan-European best practices and provide consumers with [more information](#) on their schemes. Moreover, with a number of different schemes already existing in member-states, the report suggested that a uniform code of conduct (with minimum criteria) for trustmarks on a European level would further improve consumer trust in shopping online.

### European Parliament adopts Report on Misleading and Comparative Advertising Directive

The Parliament has adopted, in plenary, the own-initiative report on [Misleading and Comparative Advertising Directive](#) (MCAD). The report includes: the establishment of a mutual cooperation network between national enforcement bodies to improve the implementation of the Directive in cross-border cases, better exchange of information between Member States, and the establishment of national focal points for businesses to obtain information, help and expertise. However the report also includes several issues that EuroCommerce does not support, namely the possibility of an EU-wide black list of misleading practices, and, if practicable, of companies who have been repeatedly convicted for such practices. The Commission is working on the revision of the MCAD Directive and will most likely release a proposal in late 2013 or early 2014.

## **Employment**

### **National Minimum Wage**

National Minimum Wage rates increased on 1 October to £6.31 per hour. The rates can catch some employers out - there were 500 employment tribunal claims last year. The Acas helpline on 08457 47 47 47 has further advice and Acas also has a [new tool](#) to help employers work out the right pay for their staff.

### **Equality Act**

Another change that came into effect on 1 October was the repeal of the third party harassment provisions in the [Equality Act 2010](#). Employers still need to take steps to prevent employees being harassed by customers/clients and other people an employee may come into contact with as a consequence of doing their job - see Acas [updated guidance](#) to help employers and employees deal with harassment in the workplace.

### **Apprenticeship Funding Consultation**

The Government has recently consulted on proposals to reform [Apprenticeship funding in England](#). Following retail member engagement, the BRC submitted a response to the consultation which welcomed employers taking a bigger role in leading and shaping Apprenticeships but raised concern about the proposal to adopt only one new model for employers to access Apprenticeship funding.

### **Commission Launches Skills Portal**

ESCO, the classification of European Skills/Competences, Qualifications and Occupations, and the [ESCO Portal](#) has been launched by the Commission. ESCO will serve as a common language facilitating cooperation and dialogue between education/training and labour market stakeholders. Operating in 25 European languages, ESCO will offer an opportunity to further European cooperation in training and employment policy areas. ESCO will be discussed in the framework of the European Sector Skills Council for commerce.

## **Environment & CSR**

### **Commission Proposal on Plastic Carrier Bags**

The European Commission has published a [proposal on plastic carrier bags](#), with the general objective to limit their negative impact on the environment, in particular in terms of marine littering, to encourage waste prevention and a more efficient use of resources. Through individual national reduction targets, member states are obliged to take measures of their choosing to reduce the consumption of lightweight plastic carrier bags i.e. plastic bags with a thickness of less than 50 microns (0.05 millimetres) which are supplied to consumers at the point of sale of goods or products. Possible measures include the use of

economic instruments (e.g. taxes and levies), as well as marketing restrictions such as bans. Such reduction measures should take into account the current consumption levels of plastic carrier bags within the member state. At a later stage, the establishment of an EU-wide reduction target could be considered. It is currently unclear if this proposal will be adopted before the elections of the European Parliament next year.

### **Carrier Bag Charges in Wales**

The Welsh Government has recently published an [Environment Bill White Paper](#), with a consultation deadline of 15 January 2014. The paper contains proposals to extend the Welsh Ministers' enabling powers under the Climate Change Act 2008 in relation to carrier bags as follows:

- To enable the Welsh Ministers to extend the 5 pence carrier bag charge to reusable plastic bags if evidence shows that such charges are necessary.
- To enable the Welsh Ministers to require sellers to apply the net proceeds of the charge to any good causes rather than to environmental good causes only.

The White Paper states that this power would only be exercised if further research and evidence proves that it is necessary, and would only affect those sellers not currently passing the net proceeds of the charge on to good causes. At this stage, consideration is also being given to other, non-legislative, options in order to encourage more retailers to sign up to the voluntary code.

### **LGA Reuse Commission**

The Local Government Association (LGA) has established a [Reuse Commission](#) to take forward a series of measures that would lead to an increase in the proportion of waste that is reused. The Commission is anticipated to develop a better understanding of:

- The key barriers to and opportunities to increase the proportion of waste material reused.
- How an approach to mainstreaming reuse could provide additional value.
- The means for increasing the value and income for reused materials.

The BRC has been invited to join this Commission and it will report its findings by early 2014. The first meeting will consider the following:

- Opportunities and barriers associated with increasing demand and commercial viability of the market in reused products.
- Tax breaks to incentivise reuse.
- Discussion of the options on reuse product standards.
- Case studies and successful models.

## **Retail Energy Efficiency Taskforce**

The Department for Energy and Climate Change has approached the BRC and its retail members to participate in a Retail Energy Efficiency Taskforce. The taskforce will look at ways of accelerating deployment of energy efficient technologies within the participants while also examining the opportunities and barriers in enhanced action in energy efficiency in the retail sector. The BRC will be looking at key barriers that impact upon further investment in energy efficiency and how to overcome them as well as looking to government to support further action in the sector.

## **Loss Prevention**

### **Shoplifting Clause in the Anti-Social Behaviour, Crime and Policing Bill**

The shoplifting provisions (Clause 144) in the [Anti-Social Behaviour, Crime and Policing Bill](#) will make shop theft of goods worth £200 or less a summary-only offence in a bid to speed up prosecution of such offences. The Government has now tabled amendments to the Bill to ensure that PACE powers enabling shop security staff to make a citizen's arrest will continue to apply to the summary-only shop theft offence. The Home Office and Ministry of Justice will be working with the BRC on development of the accompanying guidance over the next few months.

### **Launch of the Serious and Organised Crime Strategy**

The Home Office has launched the National Crime Agency and published a Serious and Organised Crime Strategy, alongside research into the impact of organised crime and cyber crime. The key relevant points are summarised below.

#### **The Serious and Organised Crime Strategy**

- In addition to the new National Crime Agency, local organised crime partnership boards will be established provide support to local policing.
- The Strategy promises to share more data and threat information with the private sector, especially in relation to cyber crime.
- There will be a new Counter Fraud Checking Service in the Cabinet Office to bring together known fraud data from the public and private sectors.
- It recognises that Action Fraud and the NFIB need to improve their ability to receive and analyse reported cyber crime, including offering more feedback to the private sector. It says 'a programme is in hand to deal with this'.

The Strategy can be found [here](#).

#### **Research into the Costs of Organised Crime**

- The total social and economic costs of organised crime in the UK are at least £24

billion per year.

- Organised fraud costs to the UK are estimated to be £8.9 billion.
- Organised acquisitive crime costs an estimated £1.8bn, including cash and valuables in transit crime of £27m.

The full report can be found [here](#).

#### **Cyber Crime- A review of the evidence**

- To improve estimates of the cost of cybercrime, a new external working group will be set up by the Home Office.
- The report highlights the problem of underreporting and the difficulty in understanding the scale of it.
- It quotes the BRC E-Crime report finding that e-crime costs retailers £205m.
- One-third of all reports received by Action Fraud between January and December 2012 related to cyber-enabled fraud- 47,980 reports.

This report can be found [here](#).

#### **NFIB offer to identify suspicious use of business names**

[The National Fraud Intelligence Bureau](#) (NFIB) has offered to carry out some proactive work for BRC retail members to identify potentially fraudulent use of company names/web domains, with a view to having them closed down. The NFIB would run company names through their systems to ascertain whether web domains have been bought for potentially fraudulent activity, such as those with very similar names to genuine UK retailers. The NFIB would notify you if a suspicious name is identified and if necessary, a request that the domain registrar takes it down. Similar searches would be conducted for email addresses suspected as being used to deceive people into thinking they are in contact with the genuine retailer. If you would like the NFIB to carry this out for your business, then please get in touch with our Single Point of Contact, Detective Sergeant Lara Xenoudakis: [lara.xenoudakis@cityoflondon.pnn.police.uk](mailto:lara.xenoudakis@cityoflondon.pnn.police.uk). In order for her to assist, she will need details of the appropriate contact within your business i.e the fraud team, so that she can be in contact if suspicious activity is identified.

#### **BRC to meet Cabinet Office one-identity**

The BRC is working with the Cabinet Office and Assure UK to explore solutions for online proof of identity. The Government and private sector lacks a universal, common or consistent approach for how best to prove identity and/or status online. For retail, this can result in issues related to online age related sales, the impact on consumers and brand reputation.

## [Victims to tell courts impact of crime](#)

Victims will have a louder voice in the Criminal Justice System as they are given the entitlement for the first time to read their Victim Personal Statement out in court. The new, simple [Victims' Code](#) will make sure that for the first time victims can choose to explain personally to the court how a crime has affected them physically, emotionally, financially or in any other way. The judge will then take this into account when determining the sentence. For the first time give businesses, who are victims of 9.2million crimes committed each year, will be able to have their say by writing an Impact Statement to explain to the court how a crime has affected them.

## **Property & Rates**

### **BRC appoint EY as Business Rates Project Partners**

The BRC announced the appointment of tax experts EY to support a rigorous process of examining the options for reform of Business Rates. The research is looking to address a number of core concerns. The cost of operating on the high street is now increasingly out of sync with the economic reality and changing consumer preferences. The research will examine a number of options, model outcomes and support the case for reform. The BRC are now in the process of finalising the governance structure while continuing to engage with a wide range of members and stakeholders. The BA has offered assistance and input.

### **Future of Retail Property**

The BRC is undertaking a project to examine the future of retail property and how government policy can help to support vibrant local economies. The BRC is looking for property leaders within membership to help throughout the project to feed in expertise and experience. The BRC will be looking at where retail property has innovated and what we collectively consider to be the future of retail property both on our high streets and in larger out of town development.

## **Taxation & VAT**

### **Commission calls for applications for high level experts on digital taxation**

The European Commission will set up a [high-level reflection group](#) on adapting the current taxation rules for the digital business. The group will be comprised of up to seven members who will be experts on the digital economy and on taxation. The aim of the group will be to identify the key problems with digital taxation from an EU perspective and present a range of possible solutions. The Commission will then develop any necessary EU initiatives to improve the tax framework for the digital sector in Europe. The group will be active between December 2013 and summer 2014.

### **Commission presents proposal on standard VAT return**

EuroCommerce welcomes the Commission's proposal to create a [standard VAT return](#) which, according to Commission's figures, has the potential to cut costs for European businesses by €15bn per year. Ideally, the EU should have one single VAT return form. However, with different VAT systems among Member States, this is currently an unrealistic prospect. VAT returns in all EU languages, as stated in the proposal, will already reduce the administrative burden on companies, especially SMEs, resulting in significant cost savings and efficiency of resources. However, as the standard VAT return will become mandatory, EuroCommerce warns of significant indirect costs for companies by having to adapt their IT infrastructure and forms to comply with the new standards.