

# BA Legal Report

August 2014

## Banking & Payment Systems

### BRC Payments Lobbying

European regulation to cap interchange fees is progressing positively, however other Member States are now taking more immediate action to implement domestic caps. The implementation of the European Commission's proposed cap to the UK – 0.2% or 7 eurocent (whichever is lower) for debit cards and 0.3% for credit cards – would mean £500 million savings per year to UK retailers. However, while this is not yet adopted, the UK is falling behind other countries who are already implementing more immediate national caps. The BRC is planning to meet the Economic Secretary to the Treasury and leadership team of the Payment Regulator to call for the more immediate introduction of UK interchange fee caps and to take the necessary action now to ensure it can bring in UK fee caps when it becomes effective 1 April 2015.

## Consumer Protection

### [Consumer Rights Directive Guidance](#)

The Commission recently published guidance for the Consumer Rights Directive. Please note that UK guidance and regulations would take precedence in the event of any divergence or conflict. Commission pages for the: [Consumer Rights Directive](#) & [Guidance](#). Chapter I defines the **scope** of the Directive, which is all contracts concluded between a "consumer" and a "trader" and also provides for **definitions** of terms. Chapter II contains core **information** to be provided by traders prior to the conclusion of consumer contracts, which are not distance or off-premises contracts. Chapter III lays down the **information requirements** for distance and off-premises contracts, including information about the functionality and interoperability of digital content. It regulates the right of **withdrawal**, including a standard withdrawal form that must be provided by traders and may be used by consumers to notify the withdrawal from the contract. Chapter IV provides for rules on **delivery** and **passing of risk** applicable to contracts for the sale of goods as well as certain rules applicable to all types of consumer contracts. These include rules on the **fees for the use of certain means of payment** (e.g. credit or debit cards) and regarding the charges for calling **telephone hotlines** operated by traders as well as a prohibition to use **pre-ticked boxes on websites** for charging extra payments in addition to the remuneration for the trader's main contractual obligation. Chapter V contains **general provisions**, e.g. on enforcement and penalties.

## **Consumer Rights at Point of Sale**

The Government is consulting informally on whether to introduce an amendment to the Consumer Rights Bill to require businesses to display consumer rights information at every point of sale, as requested by Citizen's Advice with the support of Which?. The BRC has opposed any attempt to introduce a compulsory requirement on the grounds it would either be far too long to be accurate, or so short it would not say anything worthwhile. A compromise might be to signpost the CAB helpline or to have a requirement to advise consumers on their rights, but leave it to businesses how and when to do this e.g. if they have a complaint. There could also be an agreed voluntary form of words which could be used.

### **[Shoppers must get fair deliveries](#)**

Shoppers living in some of the most remote parts of the UK are to get more transparency on delivery charges for their online purchases. The principles set out best practice for businesses - including couriers, e-retailers and parcel delivery firms - on how they can make sure that delivery charges for consumers in remote communities are clearer and more transparent. It will mean shoppers buying online will be charged a fair delivery price, be given delivery cost information upfront and get clear directions to the terms and conditions. Online retailers should also make sure that their pricing policies do not discriminate against consumers on the basis of location. The principles will apply across the UK and a copy of the guidance can be found at [Parcel deliveries: best practice guide](#).

## **Copyright & Piracy**

### **[IFFRO takes issue with Kroes proposals on copyright change](#)**

Rainer Just and Olav Stokkmo, respectively President and Chief Executive of IFFRO, have written an open letter to Neelie Kroes, European Commission Vice-President, criticising her speech at the IViR conference in Amsterdam earlier this month, when she suggested that Canada's changes to copyright law were an example to follow. "We agree that the copyright system needs to promote creativity and innovation, and remunerate and reward creators. We fail to see that the measures proposed in your intervention would achieve that. You use Canada as an example of successful changes to copyright rules; but these changes have recently been criticised heavily by Canadian authors at an event at WIPO," Just and Stokkmo wrote.

## [UK Creative Industries and ISPs Partner in Major New Initiatives to Promote Legal Online Entertainment](#)

Representatives from the UK's creative industries and major Internet Service Providers (ISPs) have come together with the support of government to launch **Creative Content UK**, a ground-breaking new partnership that will boost consumer awareness of the wide array of legitimate online content services and help reduce online copyright infringement. Creative Content UK will comprise two key components. The first, which will launch before Spring 2015, will be a major multi-media education awareness campaign, led by content creators and part-funded by government, that aims to create wider appreciation of the value and benefits of entertainment content and copyright. The second component is a subscriber alerts programme that will be co-managed and co-funded by ISPs and content creators and due to begin at a later date. Participating ISPs will alert and advise subscribers when their accounts are believed to have been used to infringe copyright. Account holders will receive an alert from their ISP, advising them unlawful filesharing may have taken place on their connection and offering advice on where to find legitimate sources of entertainment content.

**Richard Mollet, Chief Executive, Publishers Association**, said: *"Tackling online copyright infringement effectively is a joint enterprise, requiring the involvement of rights holders, internet service providers and government. It is great that all these parties are now coming together to create a campaign which will make clear the importance of intellectual property to creators and the wider economy, and ensure that the internet delivers, not detracts value from the creative industries."*

## [Dutch Publishers Unable to Shut Down Used eBook Website](#)

Dutch Publishers have failed to convince a court to shut down a popular used eBook website. The Amsterdam District Court ruled that website [Tom Kabinet](#) can stay open for business during a legal battle against the Dutch Publishers Association. The publishers believe Tom Kabinet infringes on copyrights. The Dutch courts have ruled in favor of Tom Kabinet because of the 2012 decision by the Court of Justice of the European Union (CJEU), which ruled in a dispute between Oracle and UsedSoft [that the trading of "used" software licenses is legal](#) and that the author of such software cannot oppose any resale. This verdict also applies to ebooks, according to Tom Kabinet.

## **Employment**

### **Calculation of Holiday Pay**

Employers face the risk of significant additional costs (and potentially large liabilities for backdated claims) as a result of tribunal cases challenging the normal calculation of holiday pay under the Working Time Regulations. The UK Government's interpretation of holiday pay in the UK is currently calculated on the basis of a 'week's pay' – based on basic salary, excluding payments such as working allowances, expenses, overtime, commission and bonus payments that are linked to actions taken when actually in the workplace. This approach has been challenged by cases arguing that additional payments must be taken into account when calculating holiday pay where they are "intrinsically linked" to the duties to be carried out by the employee.

### **Apprenticeship Trailblazer**

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 BIS, the first of the new retail apprenticeship standards will be submitted in September, with an opportunity before then for interested retailers to influence their design.

## **Environment & CSR**

### **England Carrier Bag Charge**

Defra is considering making the following information mandatory through a centralised reporting portal: number of chargeable bags supplied; total amount received from the 5p charge; total VAT; reasonable costs; net proceeds of the charge donated to good causes in England; recipients/uses of the net proceeds. The following information might also be requested but would be voluntary: weight; proportion of virgin material; thickness; split by material types; numbers of bags for life supplied. Defra will provide clarity on whether reporting is required at group level or company/business level and is looking to coordinate reporting with Wales, NI and Scotland. It has been agreed that the portal should include the following features: Access at company level - not personalised; Annual reminders/prompts to complete; Annual reporting with a facility to provide monthly or quarterly data if easier; Ability to save data and return later before submitting; Report function to provide a summary of data submitted (and possibly comparisons to previous years) and proof that data has been uploaded; Possible ability to benchmark against others in the same sector (anonymous); Data validation or prompt facility and FAQs.

### **Scottish Government Communication of the Carrier Bag Charge**

The Scottish Government has confirmed that the public campaign communicating the carrier bag charge will commence on 25th September and will run until a week after the implementation date (likely end date of 27th October). It is going to be a radio and poster campaign and the SG also intends to generate some activity in the printed press. The posters and scripts will be finalised soon and will be shared with the Scottish Retail Consortium for comment before the SG proceeds.

### **[Minister calls on Welsh shoppers to keep up the good work and remember to reuse their shopping bags](#)**

Minister for Natural Resources, Culture and Sport, John Griffiths has reminded shoppers in Wales to keep up the good work and reuse their bags. The Minister's comments follow the latest WRAP UK figures which show that the consumption of single use carrier bags in Wales has reduced by 79% since 2010, and that Wales' 5p charge for carrier bags is widely seen by the Welsh public as being a positive and successful measure.

### **EU Carrier Bag Proposal**

EuroCommerce has discussed the latest developments of the plastic carrier bags proposal with the Italian Presidency of the EU Council and has shared its concerns, mainly on take-back for all packaging, target and pricing measures, and EP proposal to replace very lightweight plastic carrier bags by unproven alternatives. The Italian presidency is keen to reach an agreement resembling the proposal originally published by the European Commission (ie. no mention of specific targets at EU level, leaving Member States to decide on way forward depending on national circumstances). The first exchange of views between Member States will take place on 9 September 2014.

### **Loss Prevention**

#### **London Business Crime Strategy**

[The Mayor's Office for Policing and Crime](#) (MOPAC) has published a strategy to prevent and reduce crime against businesses in London. The strategy aims to ensure that business crime in the capital is tackled more effectively through the police, businesses, local authorities and others working in partnership. Proposals in the strategy include a Business Crime Change Board; measurable improvement in the response to online fraud; mapping of police resources to business crime hot spots; work to understand how much business crime is committed by organised crime gangs; establishment of London's first Business Crime Resilience Centre and a Business Attitudes Survey.

## **Property & Rates**

### **Business Rates: Open Letter To Those Who Responded To The Consultation Paper “Checking And Challenging Your Rateable Value”**

Thank you for your response to the Government’s consultation on “Checking and Challenging your Rateable Value”.

The purpose was to make improvements to the operation of the appeals process by providing greater transparency in how rateable values are established, requiring ratepayers to provide an explanation with a formal challenge, and introducing a formal separation between the proposal stage and appeal stage.

There were over 70 responses to the consultation from a range of local authorities, rating agents, representative bodies and individual businesses. In commenting on the consultation, many respondents took the opportunity to raise views on the broader nature of the current business rates system. Respondents also welcomed the Government’s intention to reform the appeals process but argued that the Government should consider reform in the broader context of the review of business rates administration, which the Chancellor announced in the Autumn Statement 2013.

Having listened and carefully considered those views, and given the interaction between the two, the Government has decided to fold the consideration of reform of the business rates appeals process in to the broader review of business rates administration, which is considering longer-term reform taking effect after the next revaluation in April 2017.

Elizabeth Cowie - Department for Communities & Local Government

## **Taxation & VAT**

### **The Scottish Government’s Tax and Spending Plans**

From next Spring devolved taxes and charges affecting retailers will cover not just the £3 billion non-domestic rates regime, planning application fees, water and sewerage charges, but also new responsibilities for taxes on the buying and selling of commercial property, and landfill taxes. From 2016 the devolved parliament will be responsible for setting a portion of income tax. Devolved spending includes business support, infrastructure, and regeneration. The Scottish Retail Consortium has published [Scottish Retail: Creating Jobs, Investing in Communities, Boosting Growth](#). The document outlines 24 policy recommendations for the devolved administration to include in its upcoming Budget, expected to be unveiled in October.