

## Ofcom's response to the Home Office consultation

### *Paying the Price: a consultation paper on prostitution*

Ofcom welcomes the opportunity to respond to the Home Office consultation paper "Paying the Price". Ofcom is the converged regulator for the UK communications industries. Ofcom has responded and commented solely on the issues of carding in public pay telephones and call barring.

#### **Summary**

- Ofcom's involvement in these issues stems from the nuisance of carding. A number of stakeholders have advocated the need for regulatory measures with respect to telecommunications providers to prevent this nuisance.
- Ofcom supports the measures that have been taken to make carding illegal. Ofcom considers that this offence, together with voluntary initiatives by the telecommunications providers, offer the best means of deterrence.
- Ofcom does not consider that specific regulation of telecommunications providers would be beneficial. This is an area where the legal framework is very complex. Even if regulation could be introduced, a combination of other factors is likely to mean that telecommunications regulation itself would not be effective.

#### **Background**

The Home Office consultation refers to the practice of placing in public pay telephones of cards advertising services by people involved in prostitution ("carding"). Ofcom, and its predecessor Oftel, have had discussions on this subject over many years with a range of stakeholders.

Carding is a nuisance, not only because there is concern surrounding the carding itself, but also because of the undesirable activities which may be linked to that carding. Problems include a negative impact in terms of general social disorder and the cards expose the public, including children, to sexually explicit images and can cause offence. Children facing abusive situations use a public pay telephone as the safest option to reach help and counselling, but may instead be faced with pictures of sex for sale.

Cards in public pay telephones are a tool for those involved in organised crime. They cover up safety information displayed in public pay telephones and cause litter problems. Organised carding leads to pay telephone cleaners and the public being subjected to threats and violence from 'carders'. Tackling carding represents a real cost to providers of public pay telephones.

#### **The Criminal Justice and Police Act 2001**

As explained in the consultation, section 46 of The Criminal Justice and Police Act 2001 makes carding an offence which carries a sentence of up to six months imprisonment or a fine of up to £5,000 on conviction.

Ofcom worked closely with the Home Office when they devised the new offence. Ofcom welcomes the news that BT is working closely with the Metropolitan Police and Westminster City Council to enforce the legislation (Operation Playa).

Ofcom also welcomes BT's initiatives in this area, for example introducing a number of technical measures to reduce the level of carding in its public pay telephones, including anti-stick solutions and CCTV. Ofcom participated in the carding research commissioned by BT Payphones (Jill Dando Institute of Crime Science) and looks forward to receiving a copy when it is published.

### **Call barring and BT's TRAP process**

There has been considerable debate in the past on the issue of call barring which it has been suggested would help reduce or eradicate the problem of carding.

Ofcom is aware that BT operates the Targeted Recording and Processing (TRAP) process of monitoring numbers associated with carding, warning subscribers, applying in-coming call barring and, if problems persist, eventually taking the number out of service. Ofcom has received no complaints or enquiries regarding BT's TRAP process.

### **Barring calls to the number being used by a person involved in prostitution**

Some stakeholders have suggested that there is a need for additional telecommunications regulation to deal with the issue of carding. Ofcom does not consider such an approach would work. Ofcom considers that there are legal issues as to whether regulation is permissible in this area and, in any event, that other factors are likely to make any regulation that was imposed ineffective.

A number of stakeholders have sought additional regulation with respect to barring calls to a number used by a person involved in prostitution who has regularly been found to have advertised their services via cards in public pay telephones. Call barring is however a complex issue, not least due to the legal right to 'universal service' with respect to telephony services. This right stems from European law – the Universal Service Directive.

There is no doubt that a person involved in prostitution is entitled to the provision of telephony services, including the ability to receive calls. For BT and Kingston, as designated universal service providers, the issue therefore is whether, on a case-by-case basis, there can be any restriction placed upon people involved in prostitution to receive calls from people who wish to call them for this purpose.

Ofcom was involved in discussions with the industry about a voluntary pan-industry call barring system. These discussions floundered however because of a second major issue – it is very unclear given the nature of the industry that such measures would work.

Consumers, including people involved in prostitution, can move easily between communications service providers. This is known as 'number portability'. Any regulatory initiative on call barring is unlikely to deter carding; a person involved in prostitution is likely to be able to obtain a new number very quickly and will soon be advertising that

number rather than the number that is barred. Call barring would be rendered ineffective in these circumstances.

Ofcom considers that the solution to carding lies both in the wider measures to tackle the problems associated with people involved in prostitution and with the continued prosecution of those guilty of the offence of carding, together with voluntary initiatives by the industry in which Ofcom would be happy to participate. Ofcom would encourage self regulation in this area. However, any self regulatory initiatives must be effective and durable and comply with the law.

If the Home Office wishes to discuss any aspect of the response, the relevant policy contact at Ofcom is Neil Paterson (Tel: 020 7981 3854, e-mail:

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