

## Trustees

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Mr Pio Smith  
Consultation Coordinator  
Performance and Delivery Unit  
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21 November 2005

Dear Mr Smith,

## **Consultation: On the Possession of Extreme Pornographic Material August 2005**

On behalf of the Spanner Trust, I am making a formal complaint about the conduct of the above consultation.

The Spanner Trust was established in 1995 and defends the rights of sadomasochists of all sexual orientations and specifically campaigns to reverse the UK court ruling in R v Brown and Others (1992) 94 Cr. App. R 302 CA; [1994] 1 AC 212 HL which made certain SM activities illegal even though all parties consented. The Trust is funded by donations from members of the public interested in Human Rights, sexual liberty and particularly BDSM [Bondage & Discipline, Domination & Submission and SadoMasochism] both in the UK and abroad especially the USA.

This consultation appears to contravene the Cabinet Office Code of Practice on Consultations (summarised in Annex D of the consultation) in a number of ways. In particular:

1. There have been no informal discussions of the content of this document with relevant stakeholders.
2. The Home Office has failed to send the consultation document to appropriate groups.
3. No list of consultees was attached, so it was not apparent who had been consulted and when one of the Trustees telephoned the Home Office to make an enquiry was informed that no one other than the Metropolitan Police had been consulted.
4. If attempts to find consultees are still ongoing (Annex C, 10), the consultation period will be less than the statutory 12 weeks.

5. The consultation does not properly seek to gather evidence, nor does it invite challenge to its premises.
6. The questions asked are leading and alternatives to regulation are not considered.

Firstly, the range of organisations contacted in the consultation process has been ridiculously narrow. I am not aware of any non government organisations who have been involved in informal consultation prior to the release of this document. This is hardly wide consultation 'throughout the process'. In particular, it conflicts with the statements in the Code that

- 1.1 Consultation is a continuous process that needs to be **started early** in the policy development process.
- 1.2 It is important to identify proactively relevant interested parties and those whom the policy will be likely to affect. These groups should be contacted and engaged in discussion as early as possible in the policy development process.
- 1.3 Informal consultation with these stakeholders should be conducted prior to the written consultation period. Not only does this lead to a more informed consultation exercise but it also ensures that stakeholders are engaged early and have a better understanding of the policy.

From Appendix C paragraph 10, the formal consultation document appears to have been sent to a very small range of organisations. Notable exclusions include the Liberal Democrats, Feminists against Censorship, Ofwatch, women's organizations, victim support organizations, gay and lesbian organizations including Stonewall, youth, social, and probation workers academics such as psychologists and psychiatrists notably the British Psychological Society, representatives of the special hospitals such as Broadmoor, Liberty, Amnesty, and other civil rights organizations, BDSM and Fetish organizations such as Spanner Trust, SM Pride, SM Gays and SM Dykes, Skin Two Magazine and any trade magazines that filmmakers and others read.

The Trust only became aware of this consultation after it had been published and reported in the media when one of the Trustees followed up the news report by looking at the Home Office website. However, all of the Trust's details are in the possession of the Home Office. The Trust submitted a response to the consultation document dealing with the Reform of the Law on Sexual Offences entitled "Setting the Boundaries" which was carried out in July 2000 and when the subsequent Sexual Offences Bill was passing through Parliament made a Submission to the Home Office and has subsequently had correspondence on the proposed amendment which the Trust sought to make with Lord Falconer the then Minister of State and his successor Baroness Scotland of Asthal QC.

I have to say that the consultation exercise into the Reform of Sexual Offences in July 2000 was extremely well and professionally carried out and, indeed, I recall that in our opening remark in our response we commended the Home Office. It was a paradigm of how to do a consultation.

The contrast with this consultation on the possession of extreme pornographic material could not be more extreme. This must be the model which should be shown at Civil Servants Colleges up and down the country as to how not to conduct a consultation process. Some of my fellow Trustees are absolutely incensed that the

Trust was not consulted and I would very much like to know whether this was due to downright incompetence on the part of the civil servants concerned or whether it was a deliberate decision not to inform us knowing that the Trust would certainly oppose the proposals in the very strongest possible manner.

The Code requires that the Home Office:

2.6 Provide a list of consultees as an annexe to your consultation document and ask for suggestions of other interested parties who should be consulted. It may also be helpful to refer to any earlier or informal consultation.

This has not been done, nor has a name and telephone number to direct responses been supplied as required in 2.8 of the code. It is not clear if you perform this role as well as being a general consultations coordinator.

The Code also says:

1.8 Some stakeholders, for example small businesses, children, consumers and those from minority communities, may be particularly difficult to reach. It is important to engage proactively with individuals, organisations and trade associations. Written consultation is not the only or even always the most effective means of consultation. Other forms of consultation may help in this process. These might include:

- stakeholder meetings;
- public meetings;
- web forums;
- public surveys;
- focus groups;
- regional events; and
- targeted leaflet campaigns.

It appears that the Home Office has made no attempt to reach people involved in the wide range of consensual activities that may fall under or be affected by this legislation. It should be noted that making viewing of one, poorly-defined, category of material illegal will have knock-on effects on businesses providing similar but legal material, because of the fear factor involved. As such people have been completely ignored, the partial Regulatory Impact Analysis is totally inadequate.

Such methods would need to have been used to reach those in minority communities, such as pornography viewers, actors and actresses and vendors, attendees of fetish clubs, vendors of BDSM equipment, and the wider BDSM community. While these people engage in activities that some find distasteful, this is no reason for not consulting them about the effects legislation may have on consenting, private activities. There are UK BDSM web communities such as <http://www.informedconsent.co.uk> which could have been approached as well as events such as the monthly London Fetish Fair as well as organizations which meet regularly such as SM Gays and SM Dykes who no doubt could have led your colleagues to other means to access these minority BDSM communities who are impacted by your proposed policy.

It is also not apparent what attempts the Home Office has made to reach a representative range of individuals in the entertainment and internet industries or 'wider business community' such as the Adult Trades Association or Ann Summers or Harmony, etc.

The consultation document itself admits that the list of contacts is not complete despite the 12 week consultation period having commenced. This is not acceptable as future contacts will have less than 12 weeks to compose a response.

Finally, paragraph 11 of Annex C says that:

“The consultation process should help develop the evidence base for the options outlined in the proposal.”

The questions being asked are clearly leading and do not encourage other options to be explored or for assumptions to be challenged. This is in breach of the Code of Practice, which states:

2.1 Ask focused questions, and be clear about the areas of policy on which you are seeking views. Responses that do not refer to the specific questions asked should still be accepted. Encourage respondents to provide evidence, where appropriate, to support their responses.

2.2 Explicitly state any assumptions made about those who are likely to be affected by the proposed policy. Encourage respondents to challenge these assumptions.

2.3 As far as possible, consultation should be completely open, with no options ruled out. However, if there are things that cannot be changed because, for example, they are part of a European Directive or due to prior Ministerial commitments, then make this clear. The risks and consequences of doing nothing should be outlined.

In particular, alternatives to regulation are not considered.

This conflicts with the Five Principles of Good Regulation, which state that regulation should be:

**Proportionate:** Regulators should only intervene when necessary. Remedies should be appropriate to the risk posed, and costs identified and minimised.

**Accountable:** Regulators must be able to justify decisions, and be subject to public scrutiny.

**Consistent:** Government rules and standards must be joined up and implemented fairly.

**Transparent:** Regulators should be open, and keep regulations simple and user friendly.

**Targeted:** Regulation should be focused on the problem, and minimise side effects.

Options ignored here would include:

- an educational campaign for parents to keep internet access in public areas of their home, and what to teach their children to keep them safe on the net
- education for the public on not clicking on everything they see on their screens
- work with ISPs and internet monitoring companies to combat spam emails and rogue pop-up software
- work with credit card and money transfer companies internationally to combat trade in images of crimes,

- actions to help police clamp down on non-consensual actions that are then put on the internet, cf 'happy-slapping'

Given these serious failures in enabling stakeholder involvement in formulating policy, I request that you

- a) extend the deadline for this consultation until an appropriate range of stakeholders have been consulted and have had time to respond
- b) supply me with the list of those government organisations and non government organisations and individuals who have been involved in negotiation on this subject to date
- c) supply me with the full list of people to whom this consultation document was initially sent by the Home Office of their own volition.
- d) supply me with the evidence the Government has used to decide legislation is necessary, including any evidence that there is any demand/supply cycle as alleged in the consultation document.
- e) explain why the Trust was not included in preliminary informal consultations.

Thank you for your consideration.

Yours faithfully

John Pandal  
Chairman  
The Spanner Trust