

Consumer Focus response to consultation on ticketing and ticket touting

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About Consumer Focus

Consumer Focus is the statutory organisation that champions the interests of consumers across England, Wales, Scotland, and, for post, Northern Ireland.

We were formed through the merger of three organisations – energywatch, Postwatch and the National Consumer Council (including the Scottish and Welsh Consumer Councils).

Through campaigning, advocacy and research, we are the voice of the consumer in private and public sectors by working to secure fairer markets, greater value for money, and improved customer service.

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'You are a dedicated Michael Jackson fan. You have all of his albums, have been to all of his concerts in London and even travelled to one in Germany. You were there at the O₂ to see him in person when he announced his final round of concerts. You took the day off work the day that tickets were released for pre-sale in the UK so that you could devote it to getting some.

The website crashed under the demand and the concerts were sold out by the time you got back onto it. A few hours later tickets with a face value of between £50 and £75 were on e-bay for up to £150 apiece.'

Introduction

In this scenario, the consumer is frustrated by what appears to be an exploitation of the market and gross profiteering. This is clearly not a case of someone trying to off-load their tickets because they can't attend the concert, but someone taking advantage of a dedicated fan base. Should re-sale be stopped altogether?

For the artists and promoters they see that tickets are being on sold at significant mark-ups without any additional returns to them. The market is willing to pay more. Should they just release tickets at what the market will pay – £150?

There needs to be a balance between the need for access to these events by consumers and for tickets to be distributed at a price that genuine fans can afford, while on the other hand enabling benefits from sales, maximising availability and spreading the risk for the organisers.

The proposals contained in the Consultation on Ticketing and Ticket Touting ('the Consultation')¹ aim to move forward a long-running debate that has been made more complicated by technological advances. We welcome the statement that 'the Government believes that the underlying purpose of any examination of the system is to ensure that consumers, the ticket buying public, are offered the best protection and value for money when purchasing tickets for sporting and cultural events'.

While there is some protection on pricing and provision for transparency in the ticket market, there are still concerns about price, fees and disclosure. Support for an enforceable code of principles and better consumer information and service to address the outstanding concerns is needed.

We recognise that there are specific problems associated with secondary sales but as a whole there are benefits for consumers and industry alike in a secondary sales market. Facilitating refunds and exchanges of tickets needs to be given priority before any restrictions are considered. Regulation may be required in the nature of limiting re-sale value but we submit there is no case for prohibiting re-sale of tickets.

In supporting the Government's objective of consumer protection we recommend in this response that further regulation focuses on the following areas:

- Advertising and promotion
- Access and availability of tickets
- Information disclosure
- Model terms and conditions
- Refund and exchange policy
- Complaints procedure and redress
- Re-sale provisions

1. What is a ticket tout?

The term is defined in many ways but has clearly negative connotations. The Society of Ticket Agents and Retailers ('STAR') define it as the resale of tickets in a manner which is inconsistent with the standards set by the primary market.² In Australia and the US it is referred to as scalping. Live Performance Australia in its Ticket Scalping Discussion Paper³ states that 'organised scalping' refers to 'organised sellers and scalpers who purchase tickets to events with the deliberate intention of resale above the original value.'

2. The consumer experience

Consumers are increasingly time poor and make commercial decisions on the basis of convenience as much as price. An Office of Fair Trading Study has found that consumers make decisions on where to buy tickets on the basis of the following factors in order:

- Ease of buying (92%)
- Availability of tickets (86%)
- Ease of collecting (83%)
- Price (73%)
- Advertising (63%)⁴

It is therefore not surprising that ticket agents and the secondary market are thriving, giving consumers buying options and making tickets available when consumers want.

There are some concerns about pricing and practices that lead to effective cornering of the market and consequent over-inflated prices for high demand events. Ticket prices generally are also a concern, particularly in relation to family ticket purchases. There does however seem to be an acceptance about how tickets are currently valued.⁵

Consumer concern about pricing tends to focus on the additional fees involved. Additional fees are not always transparent in advertising or in the process of purchase. They can be levied for administration, booking, processing, credit card use, etc, but may be hidden in the overall price or simply added on at the end of a purchase making it difficult for consumers to shop around and compare outlets. Fees can vary dramatically across and within agents.

More significantly, there is real confusion among consumers about what is and is not acceptable/legal in the sale of tickets⁶ and a lack of knowledge and information about

consumers' rights⁷. They are not always sure who they are buying from⁸ because of the blurring of distinctions between the primary and secondary market and in the secondary market between official and unofficial sources. This lack of differentiation can lead to purchases of tickets at higher prices when they still may be available at face value and the possibility of buying forged tickets or non-delivery of tickets from fraudulent operators.

Most consumers consider the right to transfer and/or sell on tickets as reasonable, given that they have purchased the tickets, the tickets should be theirs to do what they want with. However a line is drawn for behaviour that is clearly unacceptable such as over-purchasing and futures selling⁹ and it is these practices that are probably most likely to align with a consumer definition of a ticket tout.

3. A clear code of principles for primary ticket sales

There are both consumer and industry concerns about how the market currently operates and these concerns are aligned on many issues, providing support for the notion that better regulation is needed. Whether this can be achieved through a code will depend on whether the industry players are able to come to some agreement. A code of practice approved by the OFT that covers both primary and secondary ticket agents would provide the best protection to consumers short of external regulation.

While there have been discussions between both The Society of Ticket Agents and Retailers (STAR) and the Association of Secondary Ticket Agents (ASTA) and the OFT on developing a common set of principles and standards since 2006, nothing has resulted to date. There seems to be a need to provide some incentives to, or pressure on, industry to be either involved in self-regulation or subject to external regulation.

If industry regulation is not able to reach Stage 2 of the OFT approval process within a limited amount of time then legislative measures should be considered.

Question 1 – Principles for primary sellers

Q1a: Do you agree that new and tighter principles for primary sales and distribution of tickets are necessary to improve consumer access to an event?

Yes, there are elements of the market that are of concern for consumers that could be addressed through development of consistent standards across the industry and better compliance with current legislation.

Q1b: The following may help ensure safer and fairer distribution of primary ticket sales. Please indicate which you believe would be: i) practical ii) affordable and iii) effective.

	Practical	Affordable	Effective
Named tickets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Credit card as ID	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other technological advances: including bar code scanning or the removal/replacement of paper tickets entirely	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Timing: staggered release of tickets, releasing closer to event	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Issue more tickets at higher or variable prices including auctioning some tickets through primary distribution channels (events organisers or their authorised ticketing agents)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Easier exchanges and returns	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
Returns to include refund of booking fee	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

The requirement for named tickets would be too restrictive. If there is no excessive profiteering involved it does not matter who buys the ticket. If a ticket is named it is more difficult to exchange, costly, and presents practical problems for someone booking on behalf of their friends/family/colleagues because it may be that the group of people don't arrive at venue together and no-one else but the person who booked can pick tickets up.

Credit card as ID is possible and common but limits the way tickets are purchased, discriminates against those who do not have a credit card (particularly where an adult may purchase a ticket for a child) and creates problems for group bookings as above. One in four consumers is excluded from mainstream credit and so this does not present a realistic option.

Q1d: Do you agree that STAR is the right organisation to manage and develop a code of principles for the events and ticketing industry? What might be an alternative?

STAR may be able to manage a code of principles for the events and ticket industry if it could show that it was both truly representative of the industry and had the mechanisms in place to monitor and secure compliance. However, the failure to come to agreement on a code after many years of talks is not encouraging.

Our preferred approach is a code of practice approved by OFT which provides consumers with remedies in terms of refunds and compensation alongside model contract terms and conditions.

4. Secondary sales

While further work needs to be done to make consumers aware of existing rights and to ensure compliance with current regulation there is no specific concern about the secondary market. In fact, the secondary market provides a range of benefits and options to consumers including:

- Enabling consumers to buy tickets at any stage, and particularly where the primary agent has ceased selling or has limited tickets available
- It may lead to cheaper prices for consumers as the event gets closer
- The services provided in the secondary market may be more convenient, operating online, 24 hours a day, when primary sources may provide only a more limited service and not have the same capability
- The secondary market enables ticket holders to dispose of unwanted tickets so that they are not left out of pocket when, as is often the case, promoters and primary agents offer no refund or resale facilities
- The existence of a legitimate secondary market allows reputable operators to provide safe and secure services with consumer protection and make it unnecessary for consumers to use shady sources¹⁰

The supply side of the equation also benefits from the availability of alternative ticket distribution mechanisms.

- Promoters and venue booking offices may not have the capability to deal with high volume demand and distribution and so ticket sales are facilitated in this way
- Sale to secondary ticket agents spreads the risk as well as assisting further sales because of the convenience of timing and availability
- The existence of the secondary market sustains the demand for advance purchase which could fall away if consumers knew that they must either occupy seats or leave them empty
- The secondary market helps to increase ticket revenues for promoters and artists when it buys (and makes losses on) tickets for events where supply exceeds demand
- The secondary market invests in advertising which can be beneficial to the artists or events for which tickets are advertised
- If there were no legitimate secondary operators, reselling would be driven underground and be more difficult to control

- The demand by consumers who need to exchange or sell on their tickets has led to the development of new business ventures such as Seatwave

There is however a shared interest from both the demand side and supply side in banning exploitative practices in secondary ticket selling.

Question 2: Secondary Sales

Q2a: Do you agree that it is inappropriate to introduce new regulations in this marketplace?

The consultation paper sets out some practices that are undesirable and show the market is not working and not providing consumers with the protection and value that they would expect. Therefore it appears that regulations need to be considered as one of the options to address these issues and should not be ruled out entirely, particularly given the failure of industry to agree a way forward in self-regulation.

Greater information and awareness for consumers alone is not going to prevent illegal practices and is unlikely to limit these if there are no enforcement mechanisms or remedies available. Consumers might shop elsewhere if they have had a bad experience but this does not address the bad experience or prevent it happening to someone else. Particular issues about declaring face value and itemising fees – in advertisements and in the early stages of a purchasing enquiry – need to be adequately addressed and enforced in current regulations.

Consideration should be given to a proposal to limit the resale value of tickets to say 10 -15% above face value to prohibit excessive profiteering and to discourage buy up of significant numbers of tickets. This has been tried in some Australian and US states and coupled with clear information and disclosure regulation (and its enforcement) may eliminate some of the problems.¹¹ This proposal may be able to be limited to those who are not registered traders subject to code compliance, if a code could be agreed.

Q2b: Should resale be restricted for events of outstanding national significance on a voluntary basis?

We believe that this would be too difficult to define and that restrictions are just as likely to harm the consumer. A regulatory framework for ticket sales generally should be able to address the problems with these events.

Q2c: Should promoters or their agents release tickets much closer to the actual events or stagger the quantities released at any one time to encourage purchase at source?

This would form part of the answer for consumers but may carry a further risk to ticket agents that is likely to be passed on to consumers in price increases and so is ultimately not the best approach.

Q2d: What should the interval be between release of tickets and events?

A release too far away from the event date carries risks for consumers as unforeseen events could prevent them from attending, but releasing too close to the event carries risks for the ticket agents in not being able to sell tickets. The current system of initial release and alternative sources where tickets can be picked up closer to the event date fits the consumer needs of convenience and availability. A staggered release of tickets could also be considered.

Q2e: Which of the following details are the most important and should be displayed more clearly by secondary sellers?

[Tick all that apply]

- Actual release date of tickets
- Policy on returns/exchanges
- Additional costs such as booking fees and postage

The release date of tickets needs to be publicly available in advance of ticket release so that professional ticket re-sellers do not have the advantage of inside knowledge.

In addition to this stated information the full price and disaggregated price of tickets (face value plus breakdown of all fees and charges) should be available in advertisement and early in any purchase enquiry.

5. Better consumer information and service

There are existing regulations that provide some consumer protection in this area in relation to concerns expressed about transparency of prices and fees. The Code of Advertising Practice¹² requires advertisements to include all taxes and duties. Further guidance from the Advertising Standards Authority stated that it was not enough to quote the face value of the ticket and state that prices were subject to a booking fee, but that all quoted prices must include booking fees.¹³ As a result many advertisers were not including prices at all in their advertisements because not saying anything is not misleading. Recent regulations now consider it a misleading omission if not

stating the price including taxes¹⁴ however advertisements for events do not universally have price information stated. Both the e-commerce regulations¹⁵ and the Price Indications (Resale of Tickets) Regulations 1994 require price information to be provided before a contract is concluded.

Better enforcement is needed and in addition industry and government should jointly take the lead in an information campaign making consumers aware of their rights and of how to identify authorised sellers.

Question 3: Better consumer information and service

Q3a: Should the Government have a role in better informing the consumer?

There are still gaps in knowledge and understanding of consumers in this area and in the absence of industry leadership the Government should take a lead role in promoting awareness of rights, particularly given there is a myriad of legislation and regulation covering ticket purchases. There also appears to be a distinction between authorised distributors and unauthorised distributors and how to recognise an authorised distributor who complies with best practice needs to be made clear by way of a kite mark, for example.

Better consumer information and service needs to go hand in hand with other measures. Consumers are time poor and bombarded with information and so may not always make the most rational decisions and neither should this be a pre-requisite to consumer protection¹⁶.

Q3b: Which of the following do you think it should be important for the consumer to know when buying tickets?

[Tick all that apply]

- That the seller complies with a Government endorsed code of principles
- That the seller has been granted a 'quality mark'
- How to recognise agents that may not be legitimate or do not have appropriate systems in place to deal with consumer redress
- Precise details of ticket value, seat location and whether there is any restricted view
- Having a proper returns and exchange policy in place
- Entitlement to full refund of all monies in the event of cancellation

Q3c: How should consumers get this information?

[Tick all that apply]

- From the event organiser or authorised agent
- From consumer organisations
- From Consumer Direct
- From the Office of Fair Trading
- From the Government

6. Extending best practice for ticket exchange in football

The financial outlay for football tickets is significant and potentially explains the lack of diversity in attendance. Greater flexibility in allowing returns, exchanges or transferability of season tickets may lead to greater access and a different mix of spectators, particularly for those with work or family commitments that may prohibit them attending every week. It is patently unfair to consumers that matches can be changed (venue, timing) at short notice and they are left without redress or even that season tickets are sold without guaranteeing seats for all games.

Q3g: Would new ticket return/exchange facilities for football tickets (both match day tickets and season tickets) improve opportunities of access to fans?

Guaranteed refunds for cancellations or changes and limited resale rights would assist in alleviating the unfairness currently caused by the restrictions on resale of football tickets.

Q3h: What best practice currently exists and how easy would it be to replicate these systems for other clubs (and minimise opportunities for illegal touting)?

Arsenal FC operates a ticket exchange that allows season ticket holders who are unable to attend a game to release their ticket for re-sale to another fan. This seems a sensible option and other clubs need to facilitate this.

7. A market-based system that controls access to events of outstanding national significance

We believe that it is too difficult to define events of outstanding national significance and that if there were sufficient checks and balances in the market, intervention in relation to specific areas would be unnecessary.

A right to re-sale or exchange is especially important in relation to these events, which often involve a significant outlay by consumers and where tickets are often released a long period in advance. Government intervention in this area should concentrate on genuine access, ie ensuring there are numbers of tickets at affordable prices.

The House of Commons Second Report on Culture, Media and Sport commented that they are not optimistic that this approach would do more than exacerbate the confusion inherent in the existing two-tier system.¹⁷ We agree with this assessment.

Question 4: Events of outstanding national significance

Q4a: Do you think there should be voluntary restraint by secondary sellers on the sale of tickets for events of outstanding significance?

No, because it is unlikely to solve the problem. It takes just one seller not abiding by it and voluntary restraint becomes a totally impotent mechanism. Restraining secondary sellers would also not prevent re-sale on e-bay.

Q4b: Which of the following criteria should determine which events are of outstanding national significance?

This definition would be difficult and it seems that the regulatory system would be made simpler and easier to administer if the underlying problems were addressed rather than treating specific instances differently.

8. Proposals for change

We welcome the recognition in the DCMS report that more needs to be done in terms of regulating the market but also that there are significant benefits offered by the secondary market to consumers and industry alike. How the market is to be regulated is problematic given that the significant work that DCMS and OFT have done with industry to develop agreed standards has not come to fruition. If self-regulation is unlikely then the Government will need to step in.

We propose a regulatory framework (whether by self-regulation or legislation) that includes the following:

- Advertising and promotion
 - No pre-sale of tickets

- Required statement of face value and fees and charges as an overall price and disaggregated.
- Identification of seller, clarity of status (Association member)
- Statement of compliance with standards
- Access and availability of tickets
 - Staggered release of tickets with different methods of distribution, and in particular an allocation to be available at the box office (for those wanting to avoid fees and/or pay in cash).
 - A queuing system to be established for popular events and metering of ticket availability (how many tickets to be sold, how many left) with restrictions on total tickets bought.
- Information disclosure
 - Full compliance with relevant legislation
 - Price disclosure at the commencement of any purchasing enquiry
 - Identity of seller, contact details
 - Terms and conditions of sale
 - Refund and exchange policy
 - Complaints procedure
 - Full details of event and seat allocation
- Model terms and conditions
- Refund and exchange policy
 - Full refunds (including fees and charges) if event cancelled.
 - Credits and exchanges for all events up to 48 hours before the staging of the event and re-sale facility provided after this
- Complaints procedure and redress
 - Compensation and refunds to be available as well as consideration of collective forms of redress
 - Penalties including removal from membership/authorisation

- Measures to safeguard customer deposits and pre-payments in the event of corporate insolvency or non-delivery
 - Re-sale provisions
 - Re-sale permitted by registered agents or agents compliant with code
 - Consideration of limiting resale by non-registered traders and consumers to face value + 10-15%.
 - Consideration of delay before release to secondary agents
-

References

¹ DCMS, February 2009

² Evidence to the Select Committee on Culture Media and Sport, Second Report, January 2008, p2

³ December 2006, p4

⁴ Office of Fair Trading, Ticket agents in the UK, January 2005, p44

⁵As above, p7

⁶ Campbell Keegan Ltd for DCMS and COI Communications, March 2007, p9

⁷ OFT, January 2005, p3

⁸ Campbell Keegan Ltd, p12

⁹ As above, p9

¹⁰ House of Commons, Culture, Media and Sport – Second Report, December 2007

¹¹ Live Performance Australia, Ticket Scalping Discussion Paper, December 2006, p 8

¹² British Code of Advertising, Sales Promotion and Direct Marketing, March 2003, cls 15.2 and 15.3

¹³www.asa.org.uk/cap/advice_online/advice_online_database/Show+Entry.htm?advice_online_id=303

¹⁴ Consumer Protection from Unfair Trading regulations 2008, 6(4) (a)

¹⁵ Electronic Commerce (EC Directive) Regulations 2002

¹⁶ National Consumer Council and Better Regulation Executive, Warning too much information can harm, November 2007

¹⁷ January 2008, para 79

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