



HM Government

Government response to Professor Waterson's Independent Review

Consumer Protection Measures concerning
Online Secondary Ticketing Facilities

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Ministerial Foreword

Most of us like to go to see new shows and sport and the UK is an attractive location for hosting major events and tours by popular artists. The process of distributing and buying of tickets, particularly for popular events, however, is all too often a matter of continuing public frustration and concern.

The government brought in new rules regarding tickets offered for sale on the secondary ticketing market in the Consumer Rights Act 2015 (CRA). These came into force in May 2015 and related mainly to the information that should be provided to purchasers using the secondary ticket platforms.

That Act also required that a review of the existing and new consumer protection measures be carried out and the government appointed Professor Michael Waterson, a Professor of Economics at the University of Warwick to Chair the Review and his comprehensive Report was published by the government on 26 May 2016.

The government welcomes Professor Waterson's thoughtful and comprehensive independent Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities. We are grateful to Professor Waterson for his report and recommendations and acknowledge the detailed analysis and strategic thinking done by him in relation to ticketing and live entertainment. Professor Waterson's report deals comprehensively with the linkage between the primary and secondary ticketing markets and the government agrees with his analysis of the benefits and drawbacks of the secondary ticketing market for the consumer.

Professor Waterson has highlighted what needs to change to improve the market for tickets in the UK. Reform is needed and the government looks to the industry to respond positively to Professor Waterson's report and deliver actions that result in net benefits to the consumer. Where necessary, such as on bots and enforcement, the government will play its part to support this.



Secretary of State for Business, Energy and Industrial Strategy



Secretary of State for Culture, Media and Sport

Background to the Review

1. Professor Waterson's Independent Review fulfilled the requirement in the Consumer Rights Act 2015 (CRA)¹ to review consumer protection measures applying to the re-sale of tickets for recreational, sporting or cultural events in the UK through internet-based secondary ticketing facilities. While the focus was on the online secondary ticketing market, the Review also examined, as included in the Terms of Reference², how the primary ticketing market works and how issues encountered by consumers are influenced by the interaction between the primary and secondary ticketing markets.
2. This is the UK government's response to the outcome of Professor Waterson's Independent Review. This government response does not preclude the Scottish or Welsh governments, or the Northern Ireland Executive, responding to Professor Waterson's report to the extent they feel it has any application or relevance to matters within their competence.

Response to recommendations

3. The report on the outcome of Professor Waterson's Independent Review was published on 26 May 2016³. His findings and his recommendations for change cover a wide range of issues, including enforcement of legislation, who may constitute a trader in the secondary market, the need for those traders to be properly identified to protect consumers, and whether operators in both primary and secondary markets are being sufficiently transparent with the consumer on ticketing practices. The government particularly welcomes what Professor Waterson has to say on ticket sellers adopting strategies to prevent automated ticketing purchasing by bots and botnets but recognises that more may need to be done and is considering its options accordingly.
4. The government also welcomes Professor Waterson's comments on the need for routine reporting of suspected ticketing fraud. The government notes his acknowledgement that if prices (for various reasons) are set at a below market clearing level, then the event organiser's ticketing and venue control strategies need to take this into account, as otherwise there is an opportunity for operators in the secondary market to seek to capture the value added that the event organiser has effectively forgone.
5. We welcome that through the Competition and Markets Authority (CMA), the Consumer Protection Partnership (CPP) is acting on the proposal that the ticketing industry and consumer bodies should develop best practice guidance

¹ www.legislation.gov.uk/ukpga/2015/15/section/94/enacted

² www.gov.uk/government/uploads/system/uploads/attachment_data/file/467466/1510010_Call_for_Evidence.pdf (pages 7-8)

³ www.gov.uk/government/publications/consumer-protection-measures-applying-to-ticket-resale-waterson-review

on the practical application of unfair terms legislation to events and primary ticket outlets and progress is being made. The secondary ticketing platforms need to follow this lead from other parts of the industry and the government calls on them to do as Professor Waterson also proposed, and adopt clear principles on ticket speculation and the timing of resales.

6. The government notes that Professor Waterson has not recommended further significant legislation, a ban on the secondary ticketing market, or a cap on resale prices. The government accepts these and the grounds that Professor Waterson sets out as the basis for them, within an overall context of recommendations to improve the lot of the ticket-buying public. However, following roundtables with industry that included Professor Waterson, views in relation to ticketing bots have moved forward. The government is responding to this feedback.
7. The central government accepts Professor Waterson's report and recommendations in full and looks to operators in both the primary and secondary ticketing markets to implement those of his recommendations that are addressed to them. It is encouraging that in some areas at least, the industry has shown signs of starting to position itself to do so.

Professor Waterson's recommendations in detail

8. In the government's view, Professor Waterson's nine recommendations should be read alongside the key points in each chapter of his report that cover the issues in greater detail. The UK government's response on each recommendation is set out here:

Recommendation 1: I recommend that a lead body, such as National Trading Standards (NTS), should carry out a concerted investigation of compliance, followed by action coordinated with the police. This may require dedicated funding for a limited period (see Chapter 2).

Recommendation 2: I recommend that enforcement action (and if necessary court proceedings) be taken in respect of breaches of the CRA provisions in order to test them in relation to practical scenarios. On my understanding of the legislation, the secondary ticketing provisions are intended to apply equally to websites based abroad where selling tickets to UK buyers for events in the UK and in my view they should so apply. Further a penalty of £5,000 for a breach is substantial if it relates to a single ticket listing, insubstantial if it relates to the site's listing of a popular artist's tour without complying with the terms of the CRA. If my understanding is not borne out by the courts' interpretation of the provisions, it may be necessary to amend the CRA (see Chapter 2).

9. The government has considered these two recommendations together.

10. The government sought input from the CPP regarding options for conducting an effective investigation of compliance. The government notes that the CPP confirmed in their April 2016 Update Report⁴ that they will consider how best to tackle any areas of concern raised by Professor Waterson in his report in order to protect consumers.
11. CPP members have a number of relevant enforcement activities underway aimed at improving compliance with relevant consumer law including those relating to ticketing.
12. The government welcomes the CMA announcement on 19 December 2016⁵ that it has launched an enforcement investigation into suspected breaches of consumer protection law in the online secondary tickets market. The CMA has said that “Traders who are directing their activities at UK consumers must comply with UK law. If we find, during the course of our current investigation in the secondary tickets sector, that overseas websites are failing to comply with consumer law, then we will seek to take enforcement action to address this.”
13. The CMA will be considering whether, in its view, both the businesses selling tickets and the secondary ticketing platforms advertising them are failing to provide the full range of information in breach of the law and, if so, will take enforcement action. Specifically, this investigation will look at whether information is provided on who the seller is and any connections the seller may have with the platform or event organisers; whether there are any restrictions on the use of resold tickets which could result in the person being denied access to the event; and where a seat is located in the venue.
14. National Trading Standards (NTS) has also developed a number of proposed enforcement measures which it will pursue, working closely with the CMA. The government endorses this approach and will provide funds for NTS involvement. It suggests that in taking these measures forward the relevant CPP members consider any operational requirements for partnership working with police forces and HM Revenue & Customs (HMRC) so as to address issues of wider criminality that may arise from compliance work.
15. The government budget allocation to NTS will mean it can make resources available to support this work from April 2017. Going forward, the availability of resources to achieve this will be given regular consideration as part of a strategic assessment of enforcement priorities in relation to grant funding of the NTS Board. Initial expectation is that funding support will be needed in each of next three financial years.
16. The government understands that the sale of counterfeit and duplicate tickets has been identified as a national enforcement issue and that NTS has taken enforcement action in this area⁶ in relation to event ticketing at a major UK

⁴ www.gov.uk/government/uploads/system/uploads/attachment_data/file/518512/bis-16-162-consumer-protection-partnership-update-report.pdf

⁵ www.gov.uk/cma-cases/secondary-ticketing-websites

⁶ E.g. “Operation Electra” www.nationaltradingstandards.uk/uploads/2015-16%20annual%20report%20FINAL%2024.5.pdf

venue, but Professor Waterson identifies a need for more to be done. The government will undertake dialogue directly and through the CPP in order to determine how this enforcement work can be built upon to focus on breaches of the CRA. The government notes what Professor Waterson says about the need for a test case in relation to the ticketing provisions of the CRA, but also notes that court proceedings cannot happen without prior enforcement action⁷.

Recommendation 3: If within a reasonable time no progress has been made by secondary sites on compliance and identification of traders, then I recommend that the government considers alternative approaches which might include the necessity for those selling beyond a certain volume of tickets to be licensed (see Chapter 5).

17. The government agrees with recommendation 3, i.e. that operators of secondary ticketing facilities need to take responsibility for the identification of traders, to ensure that ticket brokers falling within consumer law definitions of “trader” meet their obligations to consumers under such legislation, including the Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013⁸ and The Consumer Protection from Unfair Trading Regulations 2008⁹.
18. The government agrees with Professor Waterson that secondary ticketing platforms should differentiate traders from other sellers (e.g. individual fans looking to re-sell tickets they can no longer use) and that this recommendation is for companies operating secondary ticketing facilities to address in the first instance. However, the government notes that the identification of vendor is a matter for inclusion in the CMA’s enforcement investigation.¹⁰ Secondary platforms have at their disposal information to help them determine whether a seller is trading a significant volume of tickets on their site and can advise them of their obligations. For example, in paragraph 5.74 of his report, Professor Waterson says the following:

“Presumptively it seems to me that all those with whom the secondary ticketing platforms negotiate payment terms which involve payment before an event should be declared as traders. A further possibility here is for platforms to presume that all those who sell more than, say, one month in advance of the event to be traders”.
19. However, if within a reasonable time there is no discernible progress on the identification of traders by the four main UK targeted secondary ticketing platforms (GETMEIN!, Seatwave, StubHub and Viagogo), the government will

⁷ Section 93 of the CRA (together with Schedule 10) provides for enforcement of the secondary ticketing provisions by giving local weights and measures authorities (Trading Standards and the Department for Enterprise, Trade and Investment in Northern Ireland) power to impose civil penalties in respect of breaches. Broadly speaking, court action may be pursued where a person wishes to appeal against a penalty notice issued by enforcers or where enforcers wish to recover unpaid penalties.

⁸ See in particular paragraph 13 and paragraph (b) of Schedule 2 of the Consumer Contracts (Cancellation, Information and Additional Charges) Regulations 2013.

⁹ See in particular paragraph 3 and paragraph 22 of Schedule 1 of the Consumer Protection from Unfair Trading Regulations 2008.

¹⁰ www.gov.uk/cma-cases/secondary-ticketing-websites

seek advice from the CMA and NTS as to what further steps may be necessary to ensure that traders in tickets meet their legal obligations.

Recommendation 4: I recommend that, with government assistance, the primary ticket industry as a whole forms a project group to examine and to standardise, to a considerable degree, the way in which information on the full range of primary ticket outlets, previous or forthcoming opportunities to buy for the same event and the manner in which clear pricing information, including compulsory charges, is displayed. It should also consider the presentation of information on availability and conditions under which refunds are offered. These discussions should take into consideration existing consumer law protections, including in relation to the provision of information, unfair terms and unfair commercial practices (see Chapter 3).

Recommendation 5: If the industry fails to form such a project group of its own accord and implement recommendations as necessary within a reasonable period, I recommend that Ministers call a roundtable for the various primary industry participants (see Chapter 3).

20. The government has considered these two recommendations together.
21. The government supports recommendations 4 and 5. Recommendation 4 is for primary ticket sellers to come together, as an industry, and consider how to improve the information the consumer is currently provided in relation to: the routes by which tickets are released onto the market; fees and charges; ticketing terms and conditions; the availability or otherwise of refunds; restrictions on ticket transferability; and any ticketing checks at the venue.
22. We welcome the Competition and Markets Authority (CMA) beginning to work with event organisers to help ensure that any terms used to restrict the resale of their tickets are fair for consumers. It has already carried out discussions with the theatre, music and sports sectors.
23. The government had also hoped that stakeholders named in the Report such as the Society of Ticket Agents and Retailers (STAR), the National Arenas Association (NAA), the Concert Promoters Association (CPA), the Society of London Theatre (SOLT), the Music Managers Forum (MMF) and the Association of Independent Festivals (AIF), and sport governing bodies would come together quickly to form a project group. It therefore welcomes the willingness of STAR, UK Music and the Sport and Recreation Alliance to take the lead in progressing this recommendation and the fact that industry discussions were commenced before the end of 2016. The first meetings took place with participation from officials at the Department for Culture, Media and Sport (DCMS) and the Department for Business, Energy, and Industrial Strategy (BEIS).
24. If, however, progress stalls on this group, then Ministers will consider ways to implement recommendation 5 and call a further roundtable with appropriate stakeholders to facilitate the establishment and operation of the group.

Recommendation 6: I recommend that the live event industry should be represented in the Cyber-security Information Sharing Partnership (CiSP), a joint industry and government initiative to share cyber threat and vulnerability information. This will give the industry the ability to share, learn and seek advice from government and other business sectors (see Chapter 2).

25. The government agrees with recommendation 6 and encourages leading companies in the ticketing industry to apply to become a member of the CiSP collaboration environment administered by the Cyber Information Sharing Partnership – more information can be found here: www.cert.gov.uk/cisp/.
26. The government has already taken action to facilitate this and support the industry's involvement.

Recommendation 7: I recommend that primary ticket vendors should take note of my comments in this report and take seriously the possibility of mass purchase by individuals using bots who have no intention of attending the event and guard against this. Mass purchases of this kind are usually undertaken with a view to resale at a profit, resulting in the primary sites selling out very quickly and tickets ending up on the secondary ticketing market at inflated prices. This deprives consumers of the chance to acquire tickets at the price originally established by the event organiser (which may have been set at lower than expected levels to increase the participation of certain groups). Supposed limits on ticket purchases that do not take into account the possibility of purchases from a variety of sellers amongst many selling the event, or purchases by the same person at a different point in time, or from the same person under different guises, are next to useless. Captcha-type technologies are not sufficient in most cases. Organisers should seriously consider requirements for individuals to prove they are indeed individuals by means such as confirmed identity technologies. Whilst I accept that primary sellers are in the market to sell tickets, they have longer term interests in ensuring the public feels well served. Primary ticket vendors should also report “bot” attacks to the police so that they can be investigated (see Chapter 2).

27. The government supports recommendation 7 which is for primary ticket sellers to address in order to maintain consumer confidence in the ticket buying process. The government recognises the considerable frustration of consumers who are unable to obtain tickets through the primary market only to see high numbers of tickets (which may have been obtained through bots) instantly up for sale on secondary sites at premium prices. The government encourages primary ticketing sellers to consider what Professor Waterson has to say on anti-bot measures and strategies to counter automated ticket purchasing. The government agrees that primary ticket sellers should be routinely reporting bot attacks to the police, as such incidents may give rise to breaches of the Computer Misuse Act 1990, or the Fraud Act 2006. Greater reporting would enable the police to assess any wider criminal intent behind bot and botnet usage.

28. In order to gain further insight into the issue of bots the government, through the DCMS Secretary of State, has hosted separate roundtables in November 2016 with enforcement bodies and stakeholders. Having reflected on the contributions and options the government is responding with proposals which Parliament will be invited to consider within the context of the Digital Economy Bill.

Recommendation 8: I have produced some practical tips for consumers on ticket purchasing at Annex I to my report that I recommend are taken into account, and publicised, by Citizens' Advice and other appropriate consumer organisations (see Chapter 7).

29. The government welcomes recommendation 8 for consumer-facing organisations to take into account and publish Professor Waterson's practical tips for consumers on ticket purchasing. The government agrees that consumers are confused by the complexity of the market and have difficulty in identifying primary from secondary ticketing sites. Often, the best promoted and visible ticket sources will be on the secondary market, even when the primary sellers still have tickets available at face value (plus normal fees).
30. Similarly, would-be purchasers do not appreciate that tickets can appear at prices below (as well as above) the face value of the ticket on the secondary market. Professor Waterson's report notes that secondary market prices can fall as an event gets closer and that consumers can benefit from such falls in price if they are prepared to hold their nerve. The government encourages the ticketing industry to work with the CPP and consumer organisations to improve consumer knowledge as set out in Professor Waterson's Report. Citizens Advice will build on their existing online advice to help consumers.

Recommendation 9: I recommend that the ticketing industry continues to develop comprehensive approaches, such as a common standard for confirming the authenticity of tickets and common terms, and to improve consumer awareness of the standards and their benefits. Again, this would have benefits in reducing consumer confusion (see Chapter 4).

31. The government welcomes recommendation 9, which is for the primary and secondary ticketing markets to take forward. The government agrees with Professor Waterson that the industry as a whole needs to be committed to a high level of ethics, openness and transparency, as well as compliance with the law to maintain public trust in the ticketing market. The government looks to the industry to address issues such as ticket authentication, ticket speculation and reporting of suspected criminality.



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