



ticketing mailbox <ticketing@culture.gov.uk>

Fan Freedom UK - Consultation Response

1 message

20 November 2015 at 17:22

to: "ticketing@culture.gov.uk" <ticketing@culture.gov.uk>

Dear Sir / Madam,

Please find attached the Fan Freedom UK consultation response.

Let me know if you need anything further.

Many thanks,



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Fan Freedom UK: Consultation Response

1. About Fan Freedom UK

Fan Freedom UK is an organisation dedicated to fighting for fans' rights, specifically around ticketing issues. We represent live entertainment and sports fans alike, and our supporter base comprises over 7,000 people. We believe that all fans should have basic protections as ticket holders, and we support legislation that provides this. This includes areas such as:

- Ticket ownership;
- Ticket transferability;
- Transparency in the market;
- Fair access; and
- Competition.

2. The problems with the Consumer Rights Act

In the UK, there are fundamental problems in both the primary and secondary ticket markets. Exacerbating this, the secondary ticket market provisions in the Consumer Rights Act have created new pitfalls for fans that wish to legitimately buy and sell tickets.

In many cases, venues and clubs work with 'authorised' secondary ticket providers. When tickets for their events are listed for resale on competing platforms, they often take steps to cancel the ticket. The Consumer Rights Act helps them do this by forcing fans to reveal details about the row and seat number that their tickets apply to.

This makes it much easier for event organisers and sports clubs to cancel tickets. This restricts competition and allows event organisers to gain an unfair monopoly on ticket resale. It is therefore unsurprising that they pushed so hard for the legislation in the first instance.

The passage of the provisions in the Consumer Rights Act was even more surprising given that the Competition and Markets Authority (CMA) had recently recognised the legitimacy of the secondary ticket market.

This was evidenced in March of this year (2015), by the CMA agreeing with four of the largest secondary ticket platforms to give improved information to buyers about the tickets listed on their sites. These included:

- Information on restrictions on entry and view that applied to the ticket being sold;
- Whether or not multiple seats that were listed together were located together;
- Whether there were any additional charges not included in the listed ticket price;
- The face value of the ticket; and
- A contact email address for buyers to use if something goes wrong.

Such a voluntary approach was to be welcomed, and there was no need for the provisions in the Consumer Rights Act to be added to this.

It must also be pointed out that if fans are afraid to list tickets on public online marketplaces, this will not eliminate the secondary market, —it will just push it on to the streets where there are no consumer protections. The unintended consequence of this would be an increase in street touting. Without these protections, event organisers will continue to use restrictive terms and conditions placed on tickets to limit fans' ability to resell their tickets.

One particularly egregious example can be found on the terms and conditions attached to tickets for matches at the ground of Saracens FC:

Tickets cannot be resold on by anybody other than the official marketing selling channels... Tickets cannot be exchanged and no refunds will be made in respect of unused tickets... If this Ticket is used in breach of these Conditions, it is void (and in such case, the Management reserve the right to cancel this Ticket and retain any monies paid therefor) and the holder may be refused admission to or ejected from the Stadium.¹

The government needs to ask itself; does it want a secondary market which is open, competitive and with consumer protection; or instead, one controlled by event organisers who decide which sellers gets the right to resell a ticket and push their fans to buy tickets from street touts.

While the latter approach may best serve the commercial interests of a few select operators in the primary market, Fan Freedom UK believes that the interests of fans will ultimately be best served by open competition – not by restricting the secondary market to a few authorised resellers.

To ensure that the law is succinct and prevents cancellation or blacklisting, there need to be specific statutory protections written in to prevent venues and clubs from trampling over the consumer rights of their fans. Suggested text to achieve this could be:

Ticket Holder Protections

No individual, corporation, business, or company shall:

(1) Restrict, by any means, the resale of any ticket or season ticket package as a condition of purchase or transfer, to retain such ticket or ticket package for the duration of the subscription or season ticket package agreement, or to retain any contractually agreed upon rights to purchase or transfer future ticket subscriptions or season ticket packages that are otherwise conferred in the subscription or season ticket agreement;

(2) Deny access to a ticket holder who possesses a resold ticket or season ticket to a performance based solely on the grounds that the ticket has been resold; or

In addition, no ticket issuer shall:

¹ <https://www.eticketing.co.uk/saracens/staticpages/termsandconditions.aspx>

(3) Impose license or contractual terms on the initial sale of event tickets or any policies including, but not limited to, terms printed on the ticket that restrict the price or other terms and conditions under which a ticket may be resold;

(4) Require the purchaser of a ticket, whether for a single event or for a series or season of events, to agree not to resell the ticket, or to resell the ticket only through a specific channel approved by the ticket issuer; or

(5) Limit or restrict the price at which a ticket may be resold.

3. Polling Research

The beliefs and opinions put forward by Fan Freedom UK are shared by the vast majority of the public, according to polling undertaken by Opinium in conjunction with ourselves in December 2014 and November 2015 (attached) – before and after the passage of the Consumer Rights Act.

Both survey results showed that the public firmly believe that when they buy a ticket, it is theirs to do what they want with. This includes giving it away, selling it – at above or below face value – or even throwing it away.

The headline figures from December 2014, where 2,001 UK adults were asked about their attitudes to tickets, ticket ownership and resale before the passing of the Consumer Rights Act were the following:

- 64% of UK adults believe that you should be allowed to resell tickets;
- Only 16% think that if they buy a ticket the promoter continues to control the ticket after its purchase;
- 52% believe that the ticket owner should be able to determine the resale price; and
- Only 28% thought it was fair that event promoters or sports clubs cancel tickets because a supporter or fan has resold it. 51% thought it was unfair.

The headline figures from November 2015, where 2,003 UK adults were asked about their attitudes to tickets, ticket ownership and resale after the passage of the Consumer Rights Act were the following:

- 62% of UK adults believe that you should be allowed to resell tickets;
- 51% think that if they buy a ticket it is personal property and they can do with it what they wish;
- Only 18% think that if they buy a ticket the promoter continues to control the ticket after its purchase;
- 52% of UK adults would support tougher legislative safeguards preventing event promoters from cancelling fans tickets that were bought and sold outside of pre-approved platforms;
- 79% were not aware that some sports teams have cancelled fans tickets and season ticket packages due to them reselling their tickets. Knowing this, 46% would not feel comfortable providing their seat location when reselling; and

- 71% believe that event organisers should declare what proportion of tickets are made available to the public for given events and what proportion are set aside for VIP guests and alternate sale.

These opinion polls suggest that the provisions in the Consumer Rights Act will be ineffective and that fans believe they should have the right to use, resell or give away tickets however they choose.

4. Benefits of the Secondary Ticket Market

For the majority of fans, the only way they can get a ticket to an event is by buying a ticket on the secondary market. This is because many events are over-subscribed, with demand far outstripping supply. This is then exacerbated by the fact that not everyone can take time away from a work or family obligation when tickets go on sale. The secondary market provides fans with the flexibility to purchase tickets when it suits them, not when it suits the promoters.

It is often asserted that these sales in the secondary market are limiting public access to cultural sporting events because of the premium attached to such tickets. However, by enabling fans to get hold of scarce tickets, the secondary market provides a valuable service to many fans.

Moreover, where a fan has a spare ticket but is unable to attend, it is better that this ticket is reallocated rather than have the seat remain empty because it is not possible to get a refund from the event organiser. Not only does someone else get to go to the event, but the event organiser also benefits from increased spend at the concert on things like merchandise and refreshments.

From the organiser's perspective, if a fan believed that when they bought a ticket they would have to occupy the seat or let it go empty it would dramatically reduce the advance demand for events, particularly for season tickets or knock-out sporting events where tickets for future rounds are sold in advance.

Given these reasons, Fan Freedom UK ultimately believes that people should be allowed to resell tickets at whatever price they choose. Ultimately, people should be entitled to sell their own property and we believe that what should determine the price of a ticket is what someone is prepared to pay for it.

Any moves by the government of regulating prices are therefore, in our opinion, deeply retrograde. In particular, we also question why ticket selling should be regulated in the secondary market but not in the primary.

If the government wants as many people to attend sporting and cultural events as possible, the answer should not be further government regulation but to explore market-based solutions to make it easier for real fans to get hold of tickets in the primary market.

For example, tickets are often sold in bulk, at times that are inconvenient to ordinary fans. This decreases their likelihood of being able to get hold of a ticket in the primary market. Alternatively, tickets could be made available in tranches.

We also believe event organisers should do more to examine the balance of corporate allocations for major events, thereby increasing the number of tickets available in both the primary and the secondary markets. When tickets go on sale, often the best tickets, and sometimes as many as 90% of tickets, are already sold through fan club and credit card pre-sales and as VIP giveaways.

This need not impact on revenues if event promoters simply charge more for fewer corporate tickets. As shown by our Opinionium survey, 71% of people feel that there needs to be more transparency in this area.

5. Paperless Tickets

Many event organisers now tie admittance to an event to the original ticket purchaser's credit card and matching photo ID to stop tickets being resold or even transferred. This heavily restricts the ability of a person to resell the ticket in circumstances where they have paid for it but may be unable to attend the event.

Further, it restricts fans from giving away spare tickets to friends or relatives – something which the majority of people (51%) clearly believe is their right, according to research we have undertaken with Opinionium.

Suggested text to ensure that event organisers do not unfairly disadvantage fans through the use of paperless tickets would be:

Consumer Choice

Notwithstanding any other provision of law to the contrary, no individual, corporation, business, or company shall:

(1) Employ a paperless ticketing system, unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price and at any time without additional fees independent of the operator or operator's agent; to any athletic contest, concert, theatre performance, amusement park, exhibition, or other entertainment event to which the general public is admitted.

(2) This section does not preclude an operator or operator's agency from employing a paperless ticketing system that does not allow for independent transferability of paperless tickets only if the consumer is offered an option at the time of initial sale to purchase the same tickets in some other form that is transferable independent of the operator or operator's agent including, but not limited to, paper tickets or e-tickets. The established price for any given ticket shall be the same regardless of the form or transferability of such ticket. The ability for a ticket to be transferred independent of the operator or operator's agent shall not constitute a special service for the purpose of charging a service charge.

(3) Nothing in this section shall be construed to prohibit an operator of a place of entertainment or such operator's agent from:

- a) Maintaining and enforcing any policies regarding conduct or behaviour at or in connection with his or her venue; or
- b) Restricting the resale of tickets that are offered as part of a targeted promotion at a discounted price or for free to specific individuals or groups of individuals because of their status as or membership in a specific community or group including, but not limited to, persons with disabilities, students, religious or civic organizations, or persons demonstrating economic hardship; provided, that tickets offered promotionally to the general public shall not be considered as tickets offered to specific individuals or groups of individuals. Any promotional, discounted, or free tickets for which the operator or operator's agent restricts resale shall be clearly marked as such.

(4) An operator shall be permitted to revoke or restrict season tickets for reasons relating to violations of venue policies including, but not limited to, attempts by two or more persons to gain admission to a single event with both the cancelled tickets originally issued to a season ticket holder and those tickets re-issued as part of a resale transaction and to the extent the operator may deem necessary for the protection of the safety of patrons or to address fraud or misconduct.

(5) For the purposes of this section, the following terms shall mean:

- a) "Paperless ticket", a ticket created on a purchasers' credit card or other electronic medium. A paperless ticket shall be transferable;
- b) "Paperless ticketing system", any system employed that may be virtually validated and is not a paper ticket;
- c) "Ticket", any physical, electronic, or other form of a certificate, document, voucher, token, or other evidence indicating that the bearer, possessor, or person entitled to possession through purchase or otherwise has either a revocable or irrevocable right, privilege, or license to enter an event venue or occupy a particular seat or area in a venue with respect to one or more events or an entitlement to purchase that right, privilege, or license with respect to one or more future events.

6. Bots

Organisations use bots to buy up huge numbers of tickets for popular events as soon as they go on sale, preventing anybody trying to buy through legitimate means from getting a look-in. This is a serious problem affecting the ticketing market, and one which the Consumer Rights Act does not address at all.

The ticket review should therefore consider existing anti-bot laws and if they are effective in stopping the operation of touts. Venues and ticket sellers should have to turn over evidence of bot use to the proper authorities so users of bots can be prosecuted to the fullest extent of the law. Possible text for legislation could be:

Interference with operations of ticket seller

(1) As used in this section, unless the context otherwise requires, "ticket seller" means a person who has executed a written agreement with the management of any venue for a sporting event, theater, musical performance, or public entertainment or amusement of any kind, to sell tickets to such an event over the Internet.

(2) It is an offense for any person to knowingly sell, give, transfer, use, distribute or possess with the intent to sell, give or distribute software that is primarily designed or produced for the purpose of interfering with the operations of any ticket seller that sells, over the Internet, tickets of admission to a sporting event, theatre, musical performance, or place of public entertainment or amusement of any kind by circumventing any security measures on the ticket seller's web site, circumventing any access control systems of the ticket seller's web site, or circumventing any controls or measures that are instituted by the ticket seller on its web site to ensure an equitable ticket buying process.

- a) A violation of this section is punishable by a fine of not more than five hundred pounds (£500), or any profits made or tickets acquired in the course of the violation of this section, whichever amount is greater.
- b) Each acquisition, sale, or offer in violation of this section constitutes a separate offense.

(3) In addition to the ticket seller, any person unable to purchase a ticket as a result of a violation of this section shall be considered a victim and shall have standing to file a criminal complaint with the relevant police authority where the venue is located, alleging a violation of this section.

(4) Any ticket seller with knowledge of activity that the ticket seller believes in good faith may constitute a violation of this section shall report the activity on a per-incident basis to the relevant police authority where the venue is located.

7. The US Experience

Experience from the US has been particularly instructive. Just twenty years ago, almost every state prohibited the resale of tickets for more than a certain price, usually at or slightly above face value. Since then, all but five states (Arkansas, Kentucky, Massachusetts, Michigan, and Rhode Island) repealed these laws and allow supply and demand to set the price of secondary tickets.

A recent study by Stephen Happel, Professor of economics and Marianne M Jennings, Professor of Legal and Ethical Studies, found that price restrictions on the resale market were not effective means of protecting consumers.

The report states that: *"Too much of the existing state regulation has focused on price restriction and resale as a means of controlling fraud, a focus that has proved ineffectual. The desired goal of consumer protection is better achieved through meaningful anti-fraud provisions as opposed to ineffectual market controls."*

Happel and Jennings also concluded that: *"The secondary ticket market is a successful, growing, and continually evolving one. It attracts entrepreneurs who will continue its expansion, but the purpose of any ticket market regulation should be to foster growth even as it curbs deception."*

In addition, Eliot Spitzer, the short-lived governor of New York, who had made efforts as New York's Attorney General to enforce New York's then anti-scalping laws, finally came to understand the market dynamics in high-demand events and reached the correct conclusion about how tickets markets should be regulated. He said: *"Consumers will be better off if we deregulate scalping, let the market function, and get rid of the corruption in the box office. You have people who are being paid bribes to secrete tickets out without the general public ever getting a chance to buy them. What we need to do is focus on theft. That is where the fraud is."*²

In addition, New York and Colorado have passed strong ticket holder protection laws, to stop sports clubs from cancelling season ticket packages or denying access to playoff tickets to ticket holders that resell tickets, or resell tickets on websites other than the team's preferred marketplace.

The substantive text of the relevant legislation in Colorado reads:

Colorado CRS § 6-1-718:

- It is illegal to set a term or condition of purchase that restricts the purchaser's right to resell subscription/season tickets or hold onto some tickets while selling others.
- It is illegal to set a term or condition of purchase that restricts the reseller's ability to buy future tickets including season/subscription tickets.
- It is illegal to set a term or condition that imposes a sanction on the purchaser if they bought a ticket from a reseller not approved by the event operator.
- Event operators are not allowed to deny event access to ticket holders who bought their tickets from resellers (regardless of whether they hold a season/subscription ticket) solely on the basis that the reseller is not approved by the event operator.

In New York, it states:

New York Section 25.30 of the Arts and Cultural Affairs Law

Notwithstanding any other provision of law to the contrary, it shall be prohibited for any operator of a place of entertainment, or operator's agent, to:

- Restrict by any means the resale of any tickets included in a subscription or season ticket package as a condition of purchase, as a condition to retain such tickets for the duration of the subscription or season ticket package agreement, or as a condition to retain any contractually agreed upon rights to purchase future subscription or season ticket packages that are otherwise conferred in the subscription or season ticket agreement.

² Jayson Blair, Attorney General Favors Elimination of State Anti-Scalping Law, N.Y. TIMES, Apr. 22, 2001.

- Deny access to a ticket holder who possesses a resold subscription or season ticket to a performance based solely on the grounds that such ticket has been resold.

In addition, as a response to the rise of paperless ticketing, New York was the first state to guarantee that consumers always have the option of a transferable ticket:

New York Section 25.30 of the Arts and Cultural Affairs Law

Notwithstanding any other provision of law to the contrary, it shall be prohibited for any operator of a place of entertainment, or operator's agent, to:

- Employ a paperless ticketing system unless the consumer is given an option to purchase paperless tickets that the consumer can transfer at any price, and at any time, and without additional fees, independent of the operator or operator's agent. Notwithstanding the foregoing, an operator or operator's agent may employ a paperless ticketing system that does not allow for independent transferability of paperless tickets only if the consumer is offered an option at the time of initial sale to purchase the same tickets in some other form that is transferrable independent of the operator or operator's agent including, but not limited to, paper tickets or e-tickets. The established price for any given ticket shall be the same regardless of the form or transferability of such ticket. The ability for a ticket to be transferred independent of the operator or operator's agent shall not constitute a special service for the purpose of imposing a service charge pursuant to section.

