



ticketing mailbox <ticketing@culture.gov.uk>

Review of Consumer Protection Measures relating to Online Secondary Ticketing1 message

20 November 2015 at 17:06

Dear Sir,

Please find attached the Premier League's response to the Call for Evidence with respect to the independent review of consumer protection measures related to online secondary ticketing platforms commissioned by the Department for Culture Media and Sport and Department for Business, Innovation and Skills.

Please let us know should you require any further information.

We should be grateful if you could confirm receipt.

Your sincerely

Sincerely,

T: 020 7066 0000

D: 020 7066 0000

E: ticketing@culture.gov.uk

Yours faithfully,



**2014/15
SEASON REVIEW**

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95.9%
record stadium
occupancy

185
countries where the
Premier League is
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Premier League Response - Call for Evidence - Online Secondary Ticketing.docx

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The Football Association Premier League's (the "Premier League") response to the Call for Evidence with respect to the independent review of consumer protection measures related to online secondary ticketing platforms commissioned by the Department for Culture Media and Sport (DCMS) and Department for Business, Innovation and Skills (BIS)

1. Introduction

- 1.1 The Premier League is the governing body of the competition currently known as the Barclays Premier League. The top twenty football clubs in England & Wales from time to time are our members and shareholders (the "**Clubs**"). The Premier League welcomes the opportunity to respond to the Call for Evidence with respect to the independent review of consumer protection measures related to online secondary ticketing platforms commissioned by the DCMS and BIS.
- 1.2 Each Club is responsible for the ticketing arrangements at their stadium. The 2014/15 season marked a record level of occupancy in Premier League grounds. The cumulative attendance for the season was 13,741,982 with 95.9% of tickets available sold over the 380 matches of the campaign. It also marked the third season in a row that occupancy exceeded 95%.

2. The Current Legislative Landscape

- 2.1 Following the Hillsborough Disaster, the public safety risks posed by ticket touts was addressed in the Taylor Report.¹ At paragraph 274 Lord Justice Taylor wrote:

"[Ticket touts] sell tickets to all comers regardless of their allegiance. Thus tickets for the home area at a soccer match fall into the hands of away supporters and vice versa. The result is to frustrate the efforts of clubs and police to achieve peaceful segregation. Pockets of alien affiliation planted amongst home supporters form a focus for hostility and often violence results."

- 2.2 Following the publication of the Taylor Report Parliament legislated by way of section 166 of the Criminal Justice and Public Order Act 1994² ("**CJPOA 94**") to make it illegal to sell or otherwise dispose of tickets to any football match involving a team from England or Wales without the express authorisation of the home club.
- 2.3 As well as ensuring that rival fans remain segregated the legislation also helps to ensure tickets are not available to persons subject to banning orders and other risk purchasers (including known ticket touts). These measures assist in deterring people from attending football matches on the chance of getting a ticket, which adds to policing pressures outside of stadia.
- 2.4 On 6 April 2007 the Violent Crime Reduction Act 2006 updated the CJPOA 94 extending the ban on touting to specifically cover touts trading on the internet and other practices associated with the unauthorised sale and distribution of tickets including offering, advertising or exposing such a ticket for sale.
- 2.5 On 1 October 2015 the Consumer Rights Act 2015 came into force requiring sellers of tickets for a recreational, sporting or cultural event through a secondary ticketing facility, and the

¹ The Hillsborough Stadium Disaster Inquiry by The Rt Hon Lord Justice Taylor – 15 April 1989

² Amended by section 53 of the Violent Crime Reduction Act 2006

operator of the facility, to provide additional information about the ticket including the location of the ticket, any restrictions on the ticket and the ticket's face value.

3. Challenges with Enforcement

- 3.1 Given the introduction of s166 of the CJPOA 94, we believe that the clear intention of Parliament is that there should not be an unauthorised secondary ticketing market for Premier League tickets, however, one of the biggest challenges the Clubs presently face is the proliferation of websites selling tickets for their matches without authorisation. Touting operations have been greatly facilitated in the last fifteen years through the advent of the internet, and its potential has been ruthlessly exploited by the ticket touting industry. This view is informed from the Clubs' own operational experience with increasing problems and incidents related to touting being reported.
- 3.2 The territoriality of s166 of the CJPOA 94 extends only to England and Wales. Ticket touting is not illegal in many countries. Whilst the intention of Parliament was to prevent the unauthorised sale of tickets to football matches in the UK, operators of unauthorised online secondary ticketing platforms have been able to escape enforcement by establishing their operations outside of the UK even when they are targeting purchasers in the UK for events in the UK. They argue that by establishing their company outside of the UK that they are exempt under section 166A CJPOA 94³ which has the effect of dis-applying the section 166 CJPOA 94 offence to anything done "...in the course of providing information society services" by a service provider established outside the UK.
- 3.3 The effect of the exemption under s166A CJPOA 94 is that large scale touts can claim exception from the criminal offence in s166 CJPOA 94 simply by transferring the establishment of the company operating a particular website to a different Member State. Thus, in the internet age, the criminal offence in section 166 CJPOA 94 has become of very limited use. This is exemplified by all of the most prolific touting sites identified by the Premier League⁴ being established outside of the UK.
- 3.4 The Violent Crimes Reduction Act 2006 introduced amendments which were intended to strengthen the CJPOA 94 precisely because Parliament recognised the growth of the internet in fuelling touting for tickets to football matches. The 166A CJPOA 94 exemption which was passed into law at the same time, was legislated to avoid a perceived incompatibility with the E-Commerce Directive⁵ (the underlying aim of which was to make the cross-border provision of information society services easier). The E-Commerce Directive included a "country of origin" principle – the basic objective of which is that e-commerce services should only be subject to the legal system of the Member State in which their provider is established. The potential outcome of legalising foreign websites touting tickets was not the intention of the E-Commerce Directive as:
 - 3.4.1 it was not designed to harmonise Member States criminal laws as to what goods can be lawfully sold in their national territories;⁶ and
 - 3.4.2 the E-Commerce Directive allows Member States to derogate from the requirements of the Directive for serious reasons which include "public policy".⁷

³ An amendment to the CJPOA 94 legislated by way of the Violent Crimes Reduction Act 2006

⁴ 40 unauthorised sites are identified on the Premier League's Safe Ticket Buying webpage at the time of writing - <http://www.premierleague.com/en-gb/matchday/unauthorised-ticket-websites.html>

⁵ Electronic Commerce Directive 2000/31/EC

⁶ Electronic Commerce Directive 2000/31/EC Recital 8

⁷ Electronic Commerce Directive 2000/31/EC Article 3(4)(a)

If Spain decided to legalise cannabis, it would surely not follow that the UK was then disentitled from applying its criminal laws to a Spanish company which was operating a website selling cannabis to customers of the UK. We believe there is a serious prospect that Parliament has "over-legislated" based upon an unwarranted fear of incompatibility, thereby materially legalising the online sale of football tickets in circumstances in which EU law did not require that step to be taken.

- 3.5 Even where the territoriality exemption does not apply, for example where tickets are sold outside the ground, support from police forces is virtually non-existent due to police resources having to be prioritised to deal with the separation of fans and other public order issues. This results in ticket touts openly offering tickets for sale outside of Premier League stadia on match days.
- 3.6 Where arrests are made the sanctions under the CJPOA 94 (a fine of £5000 and a possible banning order) are not sufficient to act as a deterrent to ticket touts or to act as an incentive for the police to investigate and make arrests. The returns that are to be made from touting far outweigh the risk of any response being taken against these operations. In an attempt to overcome this, police forces have used touting legislation as grounds of investigation but then have been compelled to frame the offences within crimes with a more severe sanction. An example of this was seen in August 2013 where the Metropolitan Police Service's Police Central eCrime Unit investigated seven people for the illegal sale of football tickets worth over 1 million pounds via the website 'onlineticketexpress'. Three were found guilty of conspiracy to commit fraud by false representation and possessing criminal property, and four were found guilty of possession of criminal property. Each of the defendants were given suspended sentences and between 150 and 280 hours of community service. The website was down for a matter of months before returning and offering tickets to Premier League matches as before.
- 3.7 Many of the online ticketing operations appear to be genuine as they use the respective club crests and other intellectual property to convince consumers of their veracity. Whilst the Premier League endeavours to get these sites removed, it is often a constant battle to do so, particularly given the jurisdictional issues. Even when this process is successful, new sites spring up again under different guises. By way of example, one strategy employed was that the Premier League would ask the police to issue a Notice of Criminality against a particular unauthorised website based on s166 CJPOA 94. The Premier League would use the Notices of Criminality to compel internet service providers and credit card payment providers to disrupt the activities of the website by taking the site down or removing their ability to take payment. This strategy initially proved promising in frustrating, disrupting and ultimately shutting down online touting sites, however, following a legal challenge by one of the most prolific sites against the police based on the 166A CJPOA 94 exemption, the police are now unwilling to issue any further Notices of Criminality with respect to other ticket touting sites established outside of the UK. Without the Notices of Criminality the ISPs and the credit card companies are not willing to take action against the websites.
- 3.8 Whilst the Premier League welcomes the passing of the Consumer Rights Act 2015 into law as it offers some regulation that if properly enforced will benefit sports and event holders that do not benefit from s166 CJPOA 94, it does not address the inadequacies of the previous legislative regime, namely a lack of enforcement, and a blind spot on territoriality. We have not heard of any reports of the Consumer Rights Act 2015 being used for enforcement in the sale of football tickets and believe that as far as football is concerned the most constructive means of addressing the current enforcement problems is through the amendment of CJPOA 94.

4. How it affects Football

- 4.1 The high demand for Premier League tickets combined with a virtually unregulated market, at the very least presents an opportunity for touts to profit at the expense of genuine supporters and at the worst can lead to incidents of disorder within stadia, encourages unscrupulous practices and fraud.
- 4.2 With over 13 million supporters, including 800,000 tourists,⁸ attending Premier League matches each season, the Clubs are ambassadors for Britain and British sport. The Clubs endeavour to provide elite level football at a variety of price points (many under market value) so that Premier League football continues to be accessible to supporters on limited incomes. An unregulated secondary market for Premier League tickets denies fans access to tickets at affordable prices, forcing them to use touts who charge exorbitant prices many times higher than the original face value of the tickets and denies fans redress to standard consumer protection regulations that apply when a ticket is bought from a legitimate source.
- 4.3 The lack of consumer protection for supporters is particularly relevant as the reports of counterfeit tickets increase. We received the following report from a Club earlier this season:
- "At a recent game we had 42 forged season tickets presented at our turnstiles. The forgeries were very good and included a hologram. They had been purchased after adverts on the website 'Craigs List' and had been picked up after meeting the seller at various tube stations around London. The prices paid varied, as far as we can ascertain, from between £70 and £200. Although we have suffered something similar to this in the past, this is the first time it has been to this extent with this level of sophistication."*
- 4.4 Sellers of Premier League tickets in unauthorised secondary markets exploit the high demand for tickets irresponsibly, often to the detriment of public safety by selling tickets to the highest bidder, regardless of the team they support, having no regard to the impact their actions might have on public order and safety. Clubs report problems with fans entering the wrong part of the stadium, an activity that means more police and security staff are required as a precautionary measure, or are detracted from their primary areas of responsibility. The presence of away fans in home areas of a stadium can lead to disorder in the ground and confrontation between supporters of different sides. This problem is exacerbated by the potential of home fans to take matters into their own hands by themselves trying to eject away fans who have bought tickets from touts in the wrong area of the ground. It puts an added and unneeded pressure on the police and stewards. The present legislation is simply not enabling the football authorities or the police to effectively combat touting and prevent the resulting public disorder problems described above.
- 4.5 The exact extent of the problem is unknown, but based on the information that has been provided to us from the police, the Clubs and the credit card companies and based on the number of websites offering Premier League tickets for sale, we have reason to believe that several thousand unauthorised Premier League tickets are being sold on the secondary market each week. We conservatively estimate the unauthorised secondary ticketing market for Premier League tickets to be worth tens of millions of pounds. Research conducted by just one Club during the 2014/15 season found that over 25,000 home and away tickets were being advertised over the course of the season, across 21 of the most prolific ticket touting websites. They approximate the total resale value of these tickets at £8m. This translates into not only tens of thousands of fans being grossly overcharged for their tickets but it places the safety of every fan at risk by exposing them to the dangers identified by Lord Justice Taylor in the Taylor Report.

⁸ Source: Visit Britain - <http://www.bbc.co.uk/sport/0/football/34197370>

- 4.6 The huge amount of money to be made from this illegal activity means that touts are turning to various new approaches to infiltrate the ticket buying process including setting up fraudulent memberships, multiple applications for tickets, obtaining tickets through use of multiple, stolen or cloned credit cards, using drop box addresses or addresses for ticket delivery to blocks of flats where it is known that the post is left in a communal hall.
- 4.7 The problem of secondary ticketing platforms establish outside of England and Wales extends beyond just the Premier League; it affects the England national team when playing in the World Cup, European Championships or friendly matches as well as English and Welsh teams playing in the UEFA Champions League, UEFA Europa League, FA Cup and League Cup matches.

5. Call for Government to take action

- 5.1 Parliament has recognised the importance of preventing the sale of unauthorised football tickets on the secondary market when they passed the CJPOA 94 and then the Violent Crimes Reduction Act 2006, however, in the internet age and with the growing quantity and value of tickets traded, the current legislation is not effective in achieving its aim. We therefore recommend that Parliament:

5.1.1 repeal s166A(1) CJPOA 94 so that secondary ticketing platforms which are established outside of the UK but, in every meaningful respect, are operating in the UK, are caught by the act; and

5.1.2 amend s166(3) CJPOA 94 so as to increase the sanction for ticket touting to:

- 5.1.2.1 take account of the largely corporate nature of the crime and the huge profits that can be accrued;
- 5.1.2.2 ensure that suitable deterrent punishments are in place such as the seizure of company assets, disqualification of directors and custodial sentences; and
- 5.1.2.3 ensure that the application of penalties are appropriate to meet the state's enforcement obligations.

