



Department  
for Culture  
Media & Sport

ticketing mailbox <ticketing@culture.gov.uk>

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## Chartered Trading Standards Institute response

1 message

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**Info Centre** <InfoCentre@tsi.org.uk>

19 November 2015 at 11:31

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

Cc: i

Good Morning

Attached is the Chartered Trading Standards Institute response to the DCMS / BIS call for evidence regarding the review of consumer protection measures relating to online secondary ticketing platforms.

CTSI does not regard the response to be confidential and is happy for it to be published.

Regards

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ts interlink – the national secure information and communication vehicle for sharing intelligence and best practice. This one-stop shop saves you time and creates efficiencies – find out more by going to <http://www.tradingstandards.uk/products/information-tsinterlink.cfm>

The Chartered Trading Standards Institute, incorporated by Royal Charter, is a membership association leading the trading standards profession. We deliver first class customer service through our innovative solutions for local authorities and business, and are committed to empowering consumers and encouraging honest business. The CTSI group is comprised of the Trading Standards Institute (Reg. No. 38769) and itsa ltd (Reg. No. 2767942), both registered in England and Wales at 1 Sylvan Court, Sylvan Way, Southfields Business Park, Basildon, Essex SS15 6TH. Group Vat reg no. 795 8626 60.

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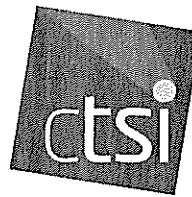
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**BIS-DCMS - Secondary Ticketing - Nov 2015.docx**

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Review of Consumer Protection Measures  
relating to  
Online Secondary Ticketing Platforms

BIS / DCMS call for evidence

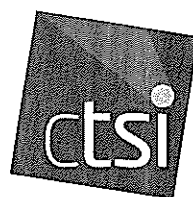
Chartered Trading Standards Institute response

November 2015

About The Chartered Trading Standards Institute

[www.tradingstandards.uk](http://www.tradingstandards.uk)

CTSI incorporated by Royal Charter  
Company Number RC000879



Chartered Trading  
Standards Institute

The Chartered Trading Standards Institute (CTSI) is a professional membership association founded in 1881. It represents trading standards officers and associated personnel working in the UK and also overseas – in the business and consumer sectors as well as in local and central government.

The Institute aims to promote and protect the success of a modern vibrant economy and to safeguard the health, safety and wellbeing of citizens by empowering consumers, encouraging honest business, and targeting rogue traders.

We provide information, evidence, and policy advice to support local and national stakeholders.

We have also, as part of our recently revised remit, taken over responsibility for business advice and education concerning trading standards and consumer protection legislation. To this end, we have developed the Business Companion website ( [www.businesscompanion.info](http://www.businesscompanion.info) ).

The CTSI Consumer Codes Approval Scheme, launched in 2013, has superseded the OFT scheme.

CTSI is a member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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***A key concern for CTSI is that of resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas. They have suffered an average reduction of 40% in their budgets since 2010 and staff numbers have fallen by 50% in the same period.***

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This response has been composed by CTSI Joint Lead Officer for Civil Law. Should you have any queries or wish to discuss the response please do not hesitate to contact [locivillaw@tsi.org.uk](mailto:locivillaw@tsi.org.uk) or at

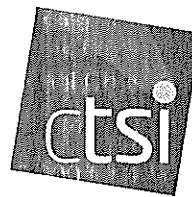
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**Review of Consumer Protection Measures relating to Online Secondary Ticketing Platforms – call for evidence**

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## **Overview**

The Consumer Rights Act 2015 (the Act) has placed a new duty upon trading standards services to enforce consumer protection measures regarding the re-sale of tickets online. In many ways sections 90 to 95 of the Act repeat existing legal requirements found in Part 2 of the Act and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 (CCRs). However, there are differences:

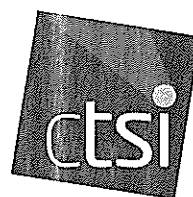
- Enforcement is by means of a financial penalty of up to £5,000 for a breach.
- The information required to be supplied by re-sellers and operators is probably more detailed than required by the CCRs.
- The duty to provide the information, and to face a financial penalty if they don't provide it, is placed upon re-sellers as well as the secondary ticketing operator. Therefore consumers who sell their own tickets could also be the subject of enforcement action.
- Compliance with the requirements to provide full ticket information will enable event organisers to identify re-sellers and take action if they consider it appropriate.
- The Act makes clear that event organisers can cancel tickets that are re-sold, or blacklist re-sellers, providing their terms are not unfair within the meaning of Part 2 of the Act.
- Operators have a duty to report criminal activity to the police and the event organiser. This does not have to be reported to local trading standards services who have a duty to enforce this provision and issue a financial penalty when it has been breached.

## **Enforcement activity**

Although six months has passed since the commencement of these controls, we cannot find any evidence of any enforcement action being taken under the Act. This is not surprising because the Act does not deal with the main areas of concern for consumers, namely:

- The selling of tickets that are fake or actually do not exist - a significant area of consumer fraud being dealt with by National Trading Standards.
- The suspicion that tickets for popular events are being obtained through the use of 'botnets', purely to be re-sold at a vast profit.
- The perception of close links between some primary ticket sellers and secondary ticketing operators.

It is likely that the Act will only be used when intelligence suggests that there is a problem that requires direct enforcement action; this could be through a campaign across the sector or targeting a specific business. Although attractive to local authorities, it is unlikely that enforcement action will be driven by the opportunity to simply generate income from levying financial penalties.



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Our colleagues in National Trading Standards have provided us with details of their enforcement action with regard to ticketing; full details are included in Appendix 1. In the short-term, NTS work has focussed upon the sale of fake / fraudulent tickets through the secondary ticketing market. However, there is potential to widen this work in 2016 / 17 in collaboration with other Consumer Protection Partnership partners.

### **Provision of information by re-sellers and operators**

The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations require businesses selling at a distance to provide pre-contract information which includes 'the main characteristics of the goods'<sup>1</sup>. It can be argued that the Act simply duplicates this requirement; the only aspect that is more demanding is the requirement to provide full ticket details including the seat number.

The Act provides a different sanction to the CCRs, a financial penalty of up to £5,000 that can be issued to the site operator and the re-seller irrespective of whether or not they are in business. It is unlikely that an operator would not be a business, but many re-sellers will simply be consumers themselves. It is unlikely that enforcement action would be taken against re-sellers unless the volume of their transactions would effectively make them a business, or a level of criminality is identified. The CCRs only allow for injunctive action to be taken against a distance selling business that does not comply with the regulations - this would normally be used as a 'last resort' against a problem trader.

In our opinion, the CCRs provide an adequate level of protection for consumers; we would argue (based upon this market) that the main characteristics information required would include the face value of the ticket. Consumers would also expect to know where their ticket is situated, but we see the requirement to provide the exact seat number as being of greater benefit to event organisers rather than consumers.

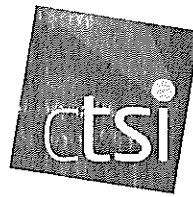
The Act does not require operators to warn consumers that event organisers can cancel tickets that have been re-sold. Although some operators may provide some level of protection to purchasers when this happens, usually at the expense of the re-seller, many do not. Perversely the Act, by requiring such precise ticket information, will make it easier for event organisers to identify tickets that are being re-sold and cancel them and / or refuse admission to the innocent purchaser.

We would be interested to know what action event organisers actually do take to identify re-sellers and the number of tickets that are cancelled. We assume that is more likely to happen for events that are in high demand, but this does appear to present an increased risk for consumers.

We believe that, based upon the scale of the re-sale market, there is a need for a clear warning to be given to consumers purchasing tickets that event organisers have the right to cancel tickets that have been re-sold - this warning should not be hidden in small print.

### **Cancellation and blacklisting**

<sup>1</sup> Regulation 13(1) and Schedule 2 para (a)



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The Act makes clear that event organisers can cancel tickets that have been re-sold, or blacklist re-sellers, provided that they use contract terms that allow them to do this. These terms must not be unfair within the meaning of Part 2 of the Act. This is not new law; organisers used these terms prior to passing of the Act and they fell under earlier unfair terms law with regard to all of their terms and conditions.

It is strange that one particular term can lead to a financial penalty of up to £5,000, whereas the rest of the contract is subject to an undertaking or an injunction if found to be unfair.

We can provide little evidence of enforcement action in this area, although trading standards services have offered advice to event organisers regarding their terms and conditions in the past.

As we have indicated above, we are concerned that the Act has made it easier for event organisers to cancel tickets that are offered for re-sale or re-sold or to refuse admission to the innocent purchasers. If there is evidence of this, trading standards services may have to consider enforcement action against event organisers who are using potentially unfair terms.

We believe that our colleagues in the Competition and Markets Authority could assist with guidance on what would make a re-selling term unfair. This is a sensitive area, bearing in mind the 'free market economy' arguments that were put forward in Parliament. Initial research conducted on London theatre terms and conditions has found the following approaches being used:

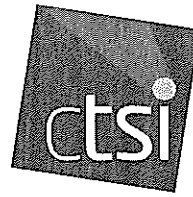
- Tickets can only be re-sold through outlets authorised by the event organiser.
- Tickets cannot be exchanged or re-sold at all - this does appear to be unfair to consumers who have legitimate reasons to re-sell their tickets and who are not simply attempting to do so for a profit.
- Tickets will become void if they are sold or transferred for profit or commercial gain.

If the increased information available to event organisers monitoring re-seller sites has led to an increase in cancelled tickets or refused admission, then the Act has increased the risks to innocent consumers participating in the re-sale market.

We believe that event organisers should give a clear statement to consumers regarding the action that they can take if a ticket is offered for re-sale or is re-sold. This information should not be hidden in the terms and conditions small print. Again, we believe that our colleagues in the CMA would be best placed to lead on the development of guidance on this.

#### **Duty to report criminal activity**

This is an interesting new area with operators required to report criminal activity to the police and the event organisers (unless this might prejudice a police investigation). There is no duty to report



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criminal activity to the trading standards service which has the duty to enforce this requirement and can levy a £5,000 financial penalty.

It is always hard to prove a negative - something has not been done. We would expect that this sanction would only be used as part of a much bigger criminal investigation and it is unlikely that the police would see this as a useful add-on to their investigations.

### **Conclusion**

We welcome this review and the fact that it is prepared to look beyond the Act's controls over secondary ticketing.

We are very concerned that, in attempting to balance the conflicting commercial needs of secondary ticketing operators and event organisers, the Act has increased the risks to consumers re-selling tickets for legitimate reasons or to consumers innocently buying tickets that are being re-sold without being made fully aware of the risks that they face.

We believe that both secondary ticketing operators and event organisers should be required to display clear information to consumers regarding the risks of re-selling or buying tickets that have been re-sold.

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### **Appendix 1 - National Trading Standards (NTS) activities**

#### **Role of NTS**

The NTS Board ("the Board") is formed from a group of senior and experienced local government heads of trading standards, representing all trading standards services across England and Wales. Its purpose is to provide leadership, influence, support and resources to help combat consumer detriment, locally, regionally and nationally.

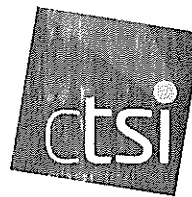
NTS has been in operation since 2012, undertaking a range of regional and national consumer protection functions funded by BIS.

Every year NTS produces a Strategic Assessment through available intelligence that determines key objectives and priorities. Aligned to the Strategic Assessment is a Control Strategy that identifies all the key areas of activity that will be delivered to address and fulfil the objectives and priorities.

#### **The key objectives that link to this consultation are:**

- Provide a framework for sharing intelligence effectively and efficiently in order to identify and tackle emerging threats.
- Ensure effective delivery of national and cross boundary enforcement projects.





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- Lead the coordination, collaboration and communication of local, regional and national consumer protection enforcement.

**The key priority areas that link to this consultation are:**

- Fair Trading Issues.
- eCrime Issues.

NTS delivers its objectives and priorities by a number of mechanisms. To succeed there is a need for an effective working relationship with key players and other enforcement partners across the UK. This is achieved both bilaterally and through the Consumer Protection Partnership (CPP).

NTS has established the National Tasking Group (NTG) to assist with the national tasking of cases in order to ensure that there is no enforcement gap between local, regional and national consumer protection enforcement. The purpose of the NTG is to determine national consumer enforcement investigations and to task, subject to available resources.

Through both CPP and NTG, secondary ticketing issues have been identified as areas of concern and collaborative programmes of activity are being developed to target some areas where significant areas of consumer detriment are being experienced.

**Enforcement Action**

The NTS / NTG have received tasking requests to coordinate and target the supply through the secondary ticketing market of fake / fraudulent tickets. The requests emanated from the region and local authority for one of the country's major event venues. As a result of the request the National Trading Standards Intelligence Team (NTSIT) produced a report that then developed

into an NTS project that is now seeking to build further intelligence on the supply of fake / fraudulent tickets with a view to taking action against some of the major perpetrators.

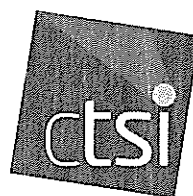
Some of the findings of the report were:

- 193 complaints have been logged on the Citizens Advice database with regard to the supply of fake / fraudulent tickets.
- 4028 reports have been received from the National Fraud Investigation Bureau (NFIB) database with regard to the supply of fake / fraudulent tickets.

(Note – NTSIT produced its report before the implementation of the secondary ticketing provisions of the Consumer Rights Act 2015.)

**Other Action**

CPP is also in the process of developing a collaborative piece of work on ticketing (both primary and secondary sources). CPP partners are developing intelligence and from the analysis of this a project it likely to begin in 2016 / 2017.



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The analysis of the intelligence will determine the scope of the project, which is likely to:

- Build on the enforcement activity being carried out by NTS.
- Develop a consumer education campaign.
- Carry out assessment of the supply mechanism.
- Use any outcomes from this current BIS / DCMS review to inform the development of the project.

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Chartered Trading Standards Institute – November 2015

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