

The Consumer Rights Act 2015 and secondary ticketing transparency

The secondary ticketing market is worth up to £1 billion per year, with ticket fraud estimated to generate £40 million per year for organised crime networks.¹ Whilst some claim it provides a platform for “classic entrepreneurs”,² others, including a police unit set up to tackle Olympics-related crime, has warned that its lack of regulation encourages unscrupulous practices and a lack of transparency.³

In a bid to bring clarity and an increased sense of legitimacy to the secondary ticketing market, the House of Commons accepted a number of proposed amendments to the Consumer Rights Bill (the “Bill”) in March 2015.⁴ But what impact will these amendments have when they come into force as Chapter 5 of the Consumer Rights Act 2015 (the “Act”) on 26 May 2015?

Ticket touting and the secondary ticketing market

By way of introducing and defining the key terms used in this article:

- The secondary ticketing market is the market in which purchased tickets are resold. Tickets are bought from authorised sellers and then sold on the market for a price determined by the original purchaser. When the supply of tickets for an event available through authorised ticket sellers is reduced, this generally increases the value of any tickets on offer on the secondary ticketing market.
- Ticket touting is the resale of tickets for profit in breach of the terms and conditions governing the use of those tickets. The terms and conditions of football match tickets might stipulate, for example, that each ticket is “personal” to the purchaser, is not to be resold under any circumstances and that any breach of the conditions will void the ticket automatically.⁵

It is worth noting at the outset that there is nothing inherently unlawful about the secondary ticketing market, as UK law does not generally prohibit the resale of event tickets. The key exceptions to this statement are, of course, the Criminal Justice and Public Order Act 1994’s prohibition on the resale of football match tickets (unless authorised by the match organiser)⁶ and the prohibition on ticket sales under event-specific legislation, such as the London Olympic and Paralympic Games Act 2006.⁷

It is also worth recognising that the majority of sales made on the secondary ticketing market are legitimate transactions that should not be considered as touting.

However, the market has in recent times been described as “broken” by campaigners such as the All-Party Parliamentary Group on Ticket Abuse.⁸ In particular it has been criticised for preventing genuine fans from attending the events they love⁹; individuals wanting to attend popular events often find that tickets have been hoovered up by resellers and operators of resale facilities within minutes of their release, only for the tickets to immediately reappear on the secondary market at many times their face value.

Commentators have also raised concerns regarding the fraudulent online sale of non-existent, non-transferable or inaccurately described tickets,¹⁰ with operators often providing no assurances to purchasers as to the quality, nature or the authenticity of what is on offer.

The Consumer Rights Act 2015

It is with these criticisms in mind that the former Conservative sports minister, Lord Moynihan, proposed his amendments to the Bill. Specific to the online secondary ticketing market and termed

“light-touch regulation” in a House of Lords debate on 24 February 2015,¹¹ Chapter 5 of the new Act seeks to increase transparency in the market by improving the information available to potential ticket purchasers and by incentivising operators of resale facilities to protect consumers from the worst excesses of ticketing touting.

In summary:

1. Provision of information

Resellers and operators of resale facilities will need to ensure purchasers are provided with basic information on each ticket for sale, including the row/seat number it relates to, any restrictions as to who it can be used by (for example, any age limit applicable) and its face value (section 90(2)–(5)).

2. Status disclosure

Event organisers and operators of resale facilities will need to disclose their status as organisers or operators (as the case may be) to a purchaser when reselling tickets (section 90(6)–(7)).

3. Cancellation prohibitions/powers

Event organisers will be prohibited from cancelling a ticket that has been resold and from “blacklisting” a reseller (i.e. restricting them from acquiring future tickets) for reselling or offering to resell a ticket, unless the event organiser is permitted to do so under the terms and conditions governing the ticket (section 91).

4. Reporting obligations

Operators of resale facilities will be required to report criminal activity they know is being conducted via their facilities (e.g. the fraudulent sale of non-existent tickets) to both the police and the organiser of the event to which the ticket relates (section 92).

5. Potential sanctions

Where a person fails to satisfy a duty or comply with a prohibition under Chapter 5, that person may be fined up to £5,000 (section 93(4), (9)). Note that no fine will be levied against an operator for a failure to comply with point 4 above where the failure is due to a mistake, reliance on information supplied by another, an accident or a cause beyond the operator’s control, and the operator has taken all reasonable precautions and exercised all due diligence to avoid the failure (section 93(5)).

A debatable impact

On its face, Chapter 5 of the Act goes some way to limiting the exposure of consumers to unfair practices, whilst at the same time protecting legitimate sales made on the secondary ticketing market:

- The information requirements under section 90 will allow consumers to better assess what they should pay for a ticket.
- Requiring resellers to provide specific information on each and every ticket should reduce the number of bulk “non-existent” tickets sales.
- Prohibiting event organisers from cancelling resold tickets and blacklisting reseller should mean the secondary ticketing market remains an active forum through which fans can purchase tickets to sold-out events.
- The threat of fines should ensure persons comply with their duties and prohibitions under the new law, particularly operators of resale facilities who will no longer be able to ignore ticket touts that use the operator’s facilities for criminal purposes.

However, on closer analysis, it is arguable that Chapter 5 falls somewhat short and is even in some ways counterproductive. Indeed, those that objected to Lord Moynihan's amendments argue that the new law will, when it comes into force, already be "out of step" with today's online marketplace and will wrap potentially criminalising red tape around consumers who look to make honest sales of tickets on the secondary ticketing market.¹²

Possible concerns over the impact of the Act

Whilst only speculative at a time when the Act is yet to come into force, one might question and have concerns as to:

Control

Whether event organisers should be permitted to restrict and control the resale of tickets through the use of their own terms and conditions. Whilst this control might be needed to ensure the segregation of rival football fans who have a history of violence, should this control be allowed (and is this control really needed) in respect of all ticket resales? Further, whilst governing bodies might use this control to maximise the amount of revenues from ticket sales that are reinvested in their respective sports, should the benefit of such reinvestment outweigh the positives of a free market and an individual's right to sell his/her own property?;

Cancellation prohibition

Whether the prohibition on cancelling resold tickets and blacklisting resellers will prove toothless. Will event organisers not simply circumvent the prohibition by including a right to cancel the ticket and/or blacklist resellers in their ticketing terms and conditions (if they have not done so already)?;

Risk of misselling

Whether fans fearing blacklisting and the cancellation of tickets (that they are arguably not adequately protected from) will intentionally supply incorrect ticketing information to purchasers, leading to increased misselling of tickets, the cancellation of incorrect tickets and the blacklisting of innocent parties;

Reporting duty

Whether the reporting duty of a secondary ticketing facility operator will have the desired effect, it being limited to reporting only criminal activity that the operator knows about and being subject to a number of exceptions (e.g. "mistake"). In order to avoid operators being able to turn a blind eye to criminal activity, should the duty extend to criminal activity that operators are or should be aware of? Also, should this reporting duty extend to activity that the operator knows is in breach of the relevant ticket's governing ticketing terms and conditions?; and

"Harvesting" software

Whether the Act could do more to prevent the mass harvesting of official ticketing providers' ticket supplies. For example, should there be an express prohibition/punitive sanction on persons using, or

minimum security standards imposed on ticketing providers to prevent the use of, "botnets" and other harvesting software to purchase tickets in bulk? Alternatively, should resellers be required to openly disclose their personal details when selling on the secondary ticketing market so that those that have harvested tickets can be more easily identified (and potentially blacklisted)?

Has the right balance been found?

The ultimate concern is, of course, whether the balance between protecting the consumer and protecting market freedom has been properly struck, and, as a result of any imbalance, whether the secondary ticketing market will be forced underground; it is here, in pubs, clubs and carparks, where a lack of consumer protection and formal legal agreements between parties expose consumers to the greatest risk of fraud and corruption.

For now, we will have to wait and see how this concern, and those listed above, are addressed in the government's scheduled review of Chapter 5's impact in 2016.¹³

Oliver Howley is an Associate in the Sports & Entertainment Group at Squire Patton Boggs in London.

To discuss any of the issues raised in this article, please contact the author at oliver.howley@squirepb.com.

1. <http://www.lawinsport.com/articles/criminal-law/item/the-on-going-fight-against-ticket-touting>.
2. <http://www.independent.co.uk/news/uk/politics/ticket-touts-are-classic-entrepreneurs-who-should-be-allowed-to-operate-without-interference-says-new-culture-secretary-sajid-javid-9252429.html>.
3. "Operation Podium Report on Ticket Crime", available at <http://content.met.police.uk/News/Ticket-Crime-report-published/1400015231049/1257246745756>.
4. <http://www.legislation.gov.uk/ukpga/2015/15/part/3/chapter/5/enacted>.
5. See, e.g., The England Football Association's ticketing terms and conditions, available at http://www.thefa.com/England/news/2010/~lmedialfiles/pdf/england/tickets_termsconditionsofissue3.ashx/tickets_termsconditionsofissue3.pdf.
6. See section 166 of the Criminal Justice and Public Order Act 1994, available at <http://www.legislation.gov.uk/ukpga/1994/33/section/166>.
7. See section 31 of the London Olympic and Paralympic Games Act 2006, available at <http://www.legislation.gov.uk/ukpga/2006/12/section/31>.
8. <https://appgticketabuse.wordpress.com/crbill/>.
9. *Ibid.*
10. *Ibid.*
11. <http://www.publications.parliament.uk/pa/ld201415/ldhansrd/text/150224-0001.htm>.
12. <http://www.theyworkforyou.com/lords/?id=2015-02-24a.1559.0>.
13. See section 94 of the Consumer Rights Act 2015, available at <http://www.legislation.gov.uk/ukpga/2015/15/part/3/chapter/5/enacted>