



DEPARTMENT FOR CULTURE, MEDIA AND SPORT

Government Response
to the Culture, Media and Sport
Select Committee Report on Ticket Touting
(HC 202 – Second Report of Session 2007-08)

*Presented to Parliament by the
Secretary of State for Culture, Media and Sport
by Command of Her Majesty
April 2008*

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GOVERNMENT RESPONSE TO THE CULTURE, MEDIA AND SPORT SELECT COMMITTEE REPORT ON TICKET TOUTING (HC 202 – SECOND REPORT OF SESSION 2007-08)

The Government welcomes the Select Committee's report on ticket touting and is pleased to have the opportunity to respond.

In the light of the Committee's analysis of the issues and the conclusions they have drawn, it is clear there is no quick or easy solution to the concerns around the resale of tickets. However, the Government considers that more can and should be done to help genuine fans get hold of tickets for their chosen events. The Government also recognises ongoing concerns about how some aspects of the ticket markets continue to affect both events and consumers, especially those events which are one-off or time limited and are of national significance. Where the price of tickets for such events, particularly national sporting events, has been set to ensure fair access and affordability, the Government considers this is an important principle to maintain.

The Government believes that the primary market can be improved to meet the needs of most consumers, in particular, improving the ways fans can get hold of tickets at source. The Government wants to see events and their commercial partners work towards establishing a common set of principles that meets consumers' needs, provides fair access to all, and covers areas such as limits on numbers that can be sold to an individual, distribution and allocation, exchange and refunds policies and fair terms and conditions. The Government will discuss the development of a voluntary code of principles with key stakeholders.

The Committee commented that regulation must be a last resort and the Government agrees with this. The Government does not see a case for any general restriction of ticket resale. However, the Government has listened to the arguments that some aspects of ticket resale may restrict access to sport or major cultural events; especially where these events are unique, of national or international significance and meet public interest objectives. For instance, the events already protected in law through the broadcasting listed sporting events legislation would be likely to fall into this category. If such events were operating in accordance with an agreed code of principles for the primary market, it could be accepted that there should not be a resale market. The Government will explore with the sports and music industry whether it is possible to draw up a list of events of national significance that will operate to these principles and where steps have been seen to be taken, through the code of principles, to ensure fair access. Where such steps have been taken, the Government intends to consider whether there is a public interest case to be made to agree voluntary restrictions on the ticketing arrangements around such events, which would prevent resale.

The Committee objected to instances where free tickets were being sold on the secondary market. The Government agrees with this position and has taken action on this previously. The Government has spoken to leading secondary agents about the sale of free tickets and these agents have agreed to prevent such sales which the Government welcomes.

The Government will also be working with key stakeholders to keep under review the incidence of malpractice in the secondary market, and to ensure that problems with rogue traders and websites are adequately addressed.

1. It is important to bear in mind that the term “touting” has very different meanings to different people, when considering claims that “touting” causes problems and that there is a need for intervention to control it. (Paragraph 13)

2. It is clear, however, that the rise of the internet has increased the opportunity for secondary sales of tickets – by individuals, organised rings and IT experts – beyond the sometimes offensive antics of “touts” immediately outside stadiums. The question for legislators and policymakers, however, is to define the extent to which this has become a “problem”, why it is so – generally or on a case by case basis – and whether legislation is a proportionate response. They must bear in mind, too, the extent to which legislation will be enforceable, and at what cost, and whether it may have unintended consequences. (Paragraph 13)

The Government agrees very much with the Committee’s approach, and has sought firm evidence on the nature and extent of any problems. The Department for Culture, Media and Sport (DCMS) has held a series of high level meetings with key stakeholders from the primary market and has been in discussion with the main operators from the secondary market. The Government has also taken advice from the Office of Fair Trading (OFT) to determine the extent of complaints around ticketing and ticket touting.

The Government has consistently taken the position that resolution of any problems through voluntary action by the market participants is strongly to be preferred; new regulation would be considered only as a last resort, and only where there is clear evidence that it is in the public interest. New regulation and the associated cost of enforcement are likely to impose greater burdens and restrictions of consumer choice, as compared to market-led solutions.

Even so, it is apparent that some concerns remain about how the markets operate for consumers. This is about the availability of tickets on the primary market compared with the apparent ease with which tickets can be bought and resold on the secondary market. While a well-functioning and honest secondary market has clear benefits for consumers, the Government believes that more can be done by event owners and promoters to ensure that a wider range of fans and supporters have a fair chance of getting tickets at source, and through putting in place acceptable controls over resale to ensure that tickets reach fans. In particular, the Government considers there are some events that are of such significance to the nation that more specific action should be taken to ensure wide availability of tickets distributed and sold under agreed standards of principles. The Government intends to explore this further.

3. The surveys of consumer opinion which have so far been carried out do little more than confirm that consumer attitudes are mixed. One element which is missing is whether consumers would give the same answers if they had been informed of the concerns expressed by organisers about the possible long term effects of touting on the industry. Further research would be helpful. (Paragraph 30)

Consumer opinions on this subject vary and the Government would welcome any further research on consumers’ views or the operation of the markets for consumers. Recent surveys carried out by primary and secondary stakeholders do not generally explore the long term effects of ticket resale or solutions that might be required. The Government would welcome further research and analysis by industry stakeholders in these areas.

4. We accept that the organisers’ desire for the secondary market to be curbed is largely motivated by concern for the long term well-being of the industries in which they operate, and that this is something beyond merely protecting their own commercial interests which, in the short term, they could do simply by raising their prices, so that there was no profit to be made by touting. (Paragraph 31)

Most event owners and promoters have said that their pricing structures are not about securing the largest profit from ticket sales in the short term but about encouraging and sustaining a fan base that supports the longevity of the live sporting and cultural sectors. The Government agrees that it is important that access to culture and sport remain at an affordable level for people across society. The Government expects event owners and their commercial partners to provide well functioning ticket distribution and pricing systems that meets consumers' needs.

In the case of a major sport or cultural event, the Government would be concerned if ticket prices had to increase, or a greater proportion of tickets were not made available to fans, because of failings by the primary market to properly manage fairness of distribution and access to tickets, or of the effects of a growing secondary market. Therefore, the Government will work with key stakeholders to look more closely at existing ticketing arrangements and at where restrictions of access within the market might be taking place, in order to help ensure fair and proportionate access is provided to fans.

5. As mentioned, there has been particular public criticism of the selling of tickets which were issued free, for charitable events; and we have no hesitation in condemning this practice. However, in principle, we see no difference between the selling on of tickets which have been provided free (whether to a wholly free event or as a complimentary ticket) and the selling on for profit of tickets which have been priced low to enable particular groups to attend, or which have been allocated to particular groups such as wheelchair users. In both cases the resale undermines the objectives of the organisers who, in both cases, have intentionally supplied the consumer with something worth more than any money which has been paid. However, the onus is on promoters to ensure that such tickets can be distinguished so that sellers, buyers and exchanges are aware of the basis on which they were originally available. (Paragraph 35)

The Government agrees with the Committee that if a ticket is intended for a specific concessionaire, the promoter should ensure that this is made clear at the point of sale and on the face of the ticket.

The Government wants fans and people from across the social spectrum to have the opportunity to attend live sporting and cultural events of their choosing and to take part in the live entertainment tradition. This contributes to DCMS objectives around opportunity and participation. Event owners should continue to look at the distribution mechanisms and consider how these can be improved and increase the proportion of tickets that reach fans. The Government is particularly interested in understanding what further measures the primary market will adopt to enable fans to purchase and use tickets for their chosen event and the action they take against those whose only interests are to block-buy tickets for resale.

With the expansion of the Internet, it is important consumers have access to the right information and seek necessary assurances when shopping online. Consumers should feel secure when making ticket purchases online and in discussion with the OFT the Government will ask the Society of Ticket Agents and Retailers (STAR), which is the leading trade association in the ticketing market, to update their code of practice which might incorporate the code of principles for the market to make it fit for purpose and under which event owners and their ticket agents could operate.

The Government is aware of the concern from the public and industry about the selling of tickets for free events. DCMS has taken action on this in the past where tickets were being sold for free events like Live8 or publicly-supported events such as BBC Radio 1's Big Weekend.

Therefore, the Government will be inviting secondary agents to take effective action through their facilities to prevent such sales of tickets originally provided free (so long as the non-market nature of that distribution has been made clear by the promoter). The Government is pleased that some leading ticket facilitators in the secondary market have already taken measures to prevent this. The Government expects the secondary market to apply this principle to all free and publicly supported events.

The Government will monitor progress with these initiatives.

6. More work needs to be done on quantifying the core problem. In particular more reliable estimates are needed of the proportion of tickets passing through the secondary market: overall; for different kinds of events; at, above or below face value; via organised operations or incidental sales; through auction sites, trading platforms, secondary agents or other routes. We would encourage secondary ticket sellers and marketplaces to co-operate fully in making this data available. (Paragraph 39)

The Government supports this recommendation.

7. While we consider that it would be unwise to assume that problems caused by ticket touting are necessarily the same worldwide, or that measures used to ameliorate the problems in one country would necessarily be effective in another, there may be lessons to be learned. The different trends now observed in different parts of the United States and Australia strongly suggest that legislatures there are seeking to contend with problems whose nature depends on how touting and national attitudes to it have developed over the years in those countries. We recommend that DCMS, with the assistance of the industry, should undertake a comparative analysis of what problems have arisen in other countries, including other European countries, what measures (if any) have been introduced to deal with them, and whether such measures have been regarded as successful in tackling the problems they were intended to address. (Paragraph 46)

Ticket touting (or scalping as it is known in Australia and the USA) is an issue that affects most countries hosting major sporting or cultural events. The Government has already looked at the measures being taken in Australia, New Zealand and the USA as part of its evidence to the Committee.

DCMS will continue to look at the success of controls and legislation in place abroad.

8. We accept that a blanket refund policy may not be a realistic option for organisers. Apart from the likelihood that it would encourage touts to buy up swathes of tickets safe in the knowledge that they could get their money back on any not sold for profit, it would carry an unacceptable commercial risk: in this context, tickets are not like durable goods which can be returned unused to a shop for resale, not least because they become valueless once the event has taken place. (Paragraph 58)

The Government acknowledges that it may not be practical for organisers to offer refunds in all circumstances. On the other hand, there are circumstances in which refunds would be entirely appropriate, for example, in the event of the organiser's cancellation for which the consumer has received no benefit. In general, the Government would have concerns about any attempts by event owners or primary and secondary ticket agents to undermine the consumer's legitimate expectations as to cancellation rights. The Government would like to see a well functioning primary market meeting the needs of fans and offering solutions to help fans dispose of tickets they can no longer use. The Government supports measures that enable fans a fair opportunity to obtain tickets at primary market prices and does not support activities that prevent or undermine this.

9. Quite apart from any question of whether promoters' returns mechanisms are adequate to balance and make conditions restricting resale fair and enforceable, it seems to us highly improbable that consumers who are simply seeking to avoid making a loss on tickets which they are unable to use would find the returns services on offer from the primary market to be a satisfactory alternative to what the secondary market offers. Services offering less than full reimbursement and then, only for sold out events-so that the primary market can only profit and never lose by providing the service-would be less attractive, and of little real benefit to those consumers. The primary market must do more to help the "genuine" supporters who cannot attend for "genuine reasons" to mitigate their losses. As well as providing more authorised resale mechanisms, refunds should be more openly available to those supporters, who should not be penalised by a blanket refusal to give refunds put in place to protect the market for touting. More widespread use of schemes offering vouchers could offer a constructive way forward, with the potential to give full satisfaction to the consumer with less encouragement for tout abuse than cash refunds. (Paragraph 59)

The Government is keen that all consumers in the ticket markets are protected from unscrupulous behaviour and is therefore encouraged that STAR, which represents the principal ticket agents in the UK, is close to agreeing model terms and conditions on the issue of refunds and re-sales. The Government intends to build on these discussions in seeking agreement on a common set of principles to ensure continued access for fans to identified events of national importance.

10. We look forward to learning the outcome of the negotiations between the Office of Fair Trading and the Society of Ticket Agents and Retailers (STAR) on model terms and conditions for use by STAR members. We are disappointed that they have still not been announced and we urge the OFT to explain the reasons for the delay. However, it seems to us wholly unsatisfactory that there should continue to be uncertainty as to whether standard terms and conditions restricting resale, which underpin organisers' strategies against touting, would be enforceable against consumers who sell in breach of them. We observe that eBay, which says that it should not be asked to take sides in contractual disputes about terms and conditions between organisers and consumers, nevertheless saw fit to launch a test case to "stand up for the consumer" in Australia. We find it surprising that none of the stakeholders has apparently been motivated to test standard terms and conditions in this country and we recommend that they should consider the option of litigating so that the uncertainty may be resolved. We note in this respect that, shortly after giving evidence to the Committee, the Office of Fair Trading launched a court case to test the legality of bank overdraft charges. We would encourage it to make it clear that, failing voluntary agreement within the industry, it is prepared to do so over terms and conditions of secondary ticket sales and to set a clear deadline in public by which it is prepared to do so. (Paragraph 60)

The Government understands that STAR and the OFT are close to agreement on the draft model terms and conditions. The Government would have liked to have seen quicker progress but acknowledges that as STAR is a representative body it has needed to ensure that its membership are content with the key changes requested by the OFT, and to have the revised terms ratified by the decision making processes within STAR. The Government will look to STAR to adopt the model terms and conditions as soon as possible once agreed.

The OFT gave evidence to the Committee and the Government has discussed the Committee's report with them. The OFT have pointed out that the circumstances surrounding the banking test case and that of consumers re-selling tickets are not analogous. Unlike the bank case, the OFT has received few complaints from consumers on this issue; and there do not appear to have been instances where promoters, venues or ticket agents have sought legal redress against the consumer. If in the event a voluntary agreement within the ticketing industry is not reached, the OFT would need to consider the appropriateness of any court action at that time, according to the principles of proportionality and administrative priority.

11. As long as secondary sellers continue to indulge in dubious or suspect practices, there will inevitably be calls for legislation and we would encourage them to clean up their act by, at the very least, not advertising tickets which cannot possibly be in their or their customers' possession at the time. (Paragraph 67)

12. We would also welcome an across the board commitment not to list tickets distributed free of charge, for example for charity events, to particular attendees, such as children or the disabled. In the interests of consumer confidence and safety, too, we would like to see secondary marketplaces require sellers to provide more information about ticket details including, ideally, face value, block, row and seat numbers. However, we recognise that this is only practical if the event organisers do not simply cancel all tickets advertised for sale in the secondary market. (Paragraph 68)

The Government agrees with the Committee's view about the sale of tickets distributed free of charge (see the response to recommendation 5 above).

Where there are cases of consumer detriment, misleading practices, or outright fraud, enforcement authorities will take appropriate action as these practices are already generally prohibited under existing consumer law. Guidance provided by the OFT and Consumer Direct is also available for consumers shopping online with specific advice for those shopping for tickets.

The Government is also aware of new initiatives which have been introduced by leading agents in the secondary market to improve protections for users of their websites. The Unfair Commercial Practices Directive which will be transposed into UK law later this year will prohibit unfair and misleading trading practices. All ticket agents and businesses should become familiar with the forthcoming changes to consumer law.

Powers are available to the Secretary of State who can and does take action to put companies into provisional liquidation where it is in the public interest to do so. If the insolvency practitioner or official receiver believes the conduct of a director makes him unfit to run a limited company, the Secretary of State will be informed who then has discretionary power to seek to disqualify the director concerned for between two and fifteen years, with the threat of criminal sanctions if contravention occurs.

The Government cannot comment on current cases but action will continue to be taken against any companies that engage in suspect practices.

13. We do not underestimate the difficulty of eradicating abuses of the market without imposing unnecessary fetters on areas of the market which cause no problems. As we have observed, there is no consensus as to what proportion of the market is problematic: the case for intervention would be strengthened if it were demonstrated that there were real problems affecting more than a small minority of events. (Paragraph 76)

14. We also believe that more can be, and should be done, to seek a voluntary solution. Since it is the secondary market which gives rise to the industries' concerns, and regulation of that market (voluntary or otherwise) which is sought, it is not realistic to expect to find solutions in a forum where that market is virtually unrepresented. So long as one contingent seeks the effective abolition of the other, which is therefore fighting for its very survival, hopes of agreement must be forlorn. (Paragraph 77)

DCMS has had discussions with secondary agents throughout the course of the debate on ticket touting. While DCMS does not propose to convene any more summits at this stage, the Government will continue to listen to views from stakeholders and will encourage primary and secondary operators to improve the market for consumers.

The Government will keep the operation of the markets under review. Rogue businesses and websites that mislead or harm consumers will be dealt with by the appropriate enforcement authorities. The Government expects all primary and secondary market operators to comply fully with the law.

15. We agree with DCMS that regulatory intervention should be considered only as a very last resort. While intervention was justified on grounds of public order and safety at and around football matches, and may be an international requirement for hosting some major sporting events, we have reservations about the criminal law being used as a way of supporting organisers' efforts to select the audiences for their events, essentially as an aid to their self-policing of touting. We are also concerned by the real risk that a convenient market, which some consumers have grown accustomed to use and trust, would be driven underground, to the detriment of consumers and stakeholders. We appreciate, however, that international pressures may make it necessary for existing legislation to be extended as a condition of the UK being eligible to host major international sporting events, but we are not persuaded that it would be right to legislate more widely at this stage. (Paragraph 78)

16. While we appreciate that the concept of "Crown Jewel" events is viewed as a possible interim measure, rather than as a long term solution, we are not optimistic that this approach would do more than exacerbate the confusion inherent in the existing two-tier system. In the absence of a voluntary code, it is understandable that pressure will continue to extend special protection to the 'Crown Jewel' sporting events and many popular music events. We urge eBay and other operators in the secondary market to follow the lead of those marketplaces which already refuse to list tickets for free events or tickets which have been allocated for specific groups, such as children, the disabled or amateur sports clubs. There is no arguable justification for profiteering from these. (Paragraph 79)

The Government agrees with the Committee's views about the sale of free tickets (see the response to recommendation 5 above).

It is important the marketplace works well for consumers. Enforcement authorities will continue to monitor the numbers of complaints received from consumers and will advise the Government if they consider that new intervention in the market is necessary. More generally, the Government will also monitor the effectiveness of the implementation of the Unfair Commercial Practices Directive.

The Government has previously indicated that a case might be made for creating a crown jewels list with protections and it notes the Committee's views. The Government believes there are some events that are of specific importance to the public and to fans that might justify particular restrictions around resale. Where an event is unique and one-off and demand consequently outstrips supply, and the event is one of significance to the public interest objectives including the Government's aims of widening access, restraint of resale opportunities may be justifiable so long as adequate distribution, allocation and returns and refund mechanisms exists. The Government will consider the appropriate criteria and discuss this with stakeholders and interested parties. In the first instance, the Government will seek to promote such actions on a basis of voluntary agreement.

The Government is keen that the UK continues to attract world class sporting and cultural events and given international requirements placed on nations and cities bidding to host, particularly in the case of sporting events, the Government will consider whether specific protections need to be put in place for these events which would satisfy the conditions of winning a bid if it is clearly in the public interest to do so. The Government will explore this in the context of the measures the London Organising Committee of the Olympic Games (LOCOG) will introduce as they prepare for the 2012 Games.

The Government agrees with the Committee that voluntary action by the market participants is likely to produce the most satisfactory result, and will continue discussions with this in mind, and taking into consideration how successfully measures have worked abroad.

17. It is encouraging to see a move towards constructive dialogue between creators and secondary marketeers and we urge all the interested parties to join in this debate. It could provide the seed for the co-operation which has so far been lacking between the stakeholders. As presented, the proposal may be no more than a different machinery whereby those responsible for providing events would be able to share in profits which can now be made in the secondary market. But it does introduce new potential for a recognition of the legitimacy of the secondary market by the entertainment and sports industries, alongside an acknowledgment of their moral right to share in profits made by others out of the events for which they are responsible and in which they have invested talent, funding and organisation. At the same time it provides scope for the acknowledged benefits of the secondary market to the consumer to be preserved and developed, with added protection for consumers and a real incentive for effective self-regulation throughout the ticketing industry. For example, tickets could be sold subject to terms and conditions which provided that resale through an approved secondary marketplace was permitted (with an agreed levy passing back to the industry through a collecting agency), so that consumers could be given more information about the tickets being offered for sale, without any risk of finding that tickets have been cancelled because they have been sold on. Approval would be dependent on an agreed code of practice covering consumer protection measures as well as arrangements for collecting levies. A great deal of work needs to be done on the detail of how such a scheme might operate but, at the least, this initiative could lead to joint engagement towards a solution in which the convenience of the secondary market could continue while at the same time supporting the industries on which it relies. We commend it and strongly encourage all those involved to consider it seriously. (Paragraph 81)

The Government supports the principle that events should identify and implement their own solutions, working with their commercial partners accordingly. Ticketing and ticket distribution arrangements should benefit consumers and provide fair and equitable access to all fans. The Government will monitor developments in the market with a particular focus on the consumer benefit, including any new commercial agreements that might involve a levy; and, as noted earlier, will discuss with the industry the development of a code of practice and voluntary arrangements to ensure continued access for a wide range of fans to particular events of national importance.

New deals are already occurring, with the boundaries between the primary and secondary market becoming more fluid. The Government is keen that these commercial decisions and market developments work to minimise exploitation and to provide greater consumer protection and choice.

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