

**North Yorkshire County Council**  
**Business and Environmental Services**

**Executive Members**

**23 March 2018**

**Policy on the Enforcement of the Secondary Ticketing Provisions of the Consumer Rights Act 2015.**

**Report of the Assistant Director - Growth, Planning and Trading Standards**

<b>1.0 Purpose of the report</b>
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| 1.1 To seek approval for the policy on the enforcement of the secondary ticketing provisions of the Consumer Rights Act 2015. |
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**2.0 Background to the Report**

- 2.1 In 2014, during debates on the Consumer Rights Bill in Parliament, MPs expressed their concerns regarding the online resale of tickets to sporting, recreational and cultural events and the information consumers were receiving during such sales. To address these concerns, the Consumer Rights Act 2015 introduced requirements that applied to the sale of tickets via online secondary ticketing platforms. These requirements came into force on 26 May 2015.
- 2.2 The Consumer Rights Act 2015 also required Central Government to commission a review of legislation applicable to the re-sale of tickets, within a year of the legislation coming into force. This review was undertaken by Professor Michael Waterson, and the report was published in March 2017. A recommendation of the report was that concerted investigation of compliance and action should take place, to test out the secondary ticketing provisions.
- 2.3 NYCC together with City of York Trading Standards, host the National Trading Standards eCrime team (NTSeCT) on behalf of National Trading Standards (NTS), for which funding is provided to tackle online and internet based breaches of trading standards legislation. In April 2017, the NTSeCT hosted by NYCC, was tasked by NTS to undertake the enforcement work.
- 2.4 Preparatory work has been undertaken and advice taken from Counsel as to the interpretation of parts of the Act. Prior to any enforcement action being taken, Members approval of the policy is requested.

**3.0 Requirements of the secondary ticketing provisions of the Consumer Rights Act 2015**

- 3.1 The Consumer Rights Act 2015 places a duty on an individual who re-sells a ticket for a recreational sporting or cultural event through a secondary ticketing facility, and on the operator of the secondary ticketing facility itself, to provide the following information to the buyer before the buyer concludes the purchase;
- The face value of the ticket
  - The seat/row/block the ticket is for (if it is a seated ticket)
  - Any restrictions on the use of the ticket.

- 3.2 The Digital Economy Act 2017 amended the Consumer Rights Act to require that in addition to the above pieces of information that the seller and the operator will also be required to provide any unique ticket number that may help the buyer to identify the seat or standing area the ticket relates to. This amendment will be enacted on 6<sup>th</sup> April 2018.
- 3.3 Where an enforcement authority is satisfied on the balance of probabilities that a person has breached this duty, the authority may impose a financial penalty on the person in respect of that breach.
- 3.4 The amount of financial penalty to be imposed “may be such as the enforcement authority imposing it determines” but must not exceed £5,000.
- 3.5 The policy sets out the circumstances under which a financial penalty will be imposed, the procedure which will be followed and how the financial penalty will be set.

#### **4.0 Legal Implications**

- 4.1 The Legislative and Regulatory Reform Act 2006 requires that any person exercising a regulatory function should carry out regulatory activities in a way that is transparent, accountable, proportionate and consistent and should only be targeted at cases in which action is needed. The policy this report relates to is intended to provide that transparency, accountability, proportionality and consistency.

#### **5.0 Financial Implications**

- 5.1 Funding to undertake the enforcement work has been provided by National Trading Standards to NYCC, via a grant. Any costs caused by appeals will also be met via this grant. As part of the grant funding, it is agreed that 50% of any financial penalties recovered will be repayable to National Trading Standards.
- 5.2 It is anticipated that the imposition of some penalties will encourage compliance from the rest of the market and therefore the penalties likely to be recovered is not a continuing funding stream.

#### **6.0 Equalities Implications**

- 6.1 A decision record sheet covering the decision not to complete an equalities impact assessment has been submitted and signed off. See Appendix 2.

<h4><b>7.0 Recommendations</b></h4>
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| <ul style="list-style-type: none"><li>7.1 That BES Executive Members and the Corporate Director (BES) approve the Policy on the Enforcement of Secondary Ticketing Provisions of the Consumer Rights Act 2015.</li></ul> |
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Matt O'Neill  
Assistant Director - Growth, Planning and Trading Standards

Author of report: Nicola Pearson, Divisional Officer

Background documents: None

## **POLICY ON THE ENFORCEMENT OF THE SECONDARY TICKETING PROVISIONS OF THE CONSUMER RIGHTS ACT 2015**

### **SCOPE:**

This policy applies to the enforcement by North Yorkshire County Council Growth, Planning and Trading Standards, of the secondary ticketing provisions of the Consumer Rights Act 2015.

### **PURPOSE:**

- To set out the circumstances under which enforcement action will be taken under the secondary ticketing provisions of the Consumer Rights Act 2015.
- To set out the steps which will be taken prior to imposing a penalty
- To set the standard level of penalty to be imposed and circumstances when that amount imposed will differ from the standard.

### **THE LEGAL FRAMEWORK:**

#### **DUTY ON A PERSON WHO RESELLS A TICKET FOR A RECREATIONAL, SPORTING OR CULTURAL EVENT IN THE UK TO PROVIDE INFORMATION TO THE BUYER**

Section 90 of the Consumer Rights Act 2015 (as amended), creates a duty where a person (the seller) resells a ticket for a recreational, sporting or cultural event in the UK, through a secondary ticketing facility, that the seller and each operator of the secondary ticketing facility must provide the following information to the buyer in a clear and comprehensible manner, before the buyer is bound by the contract for the sale of the ticket;

- The face value of the ticket;
- Information about any restrictions which limit use of the ticket to persons of a particular description;
- Where the ticket is for a particular seat or standing area at the venue for the event, information necessary for the buyer to be able to identify that seat or standing area, which includes (so far as applicable)
  - information to enable the buyer to identify the name of the area in the venue in which the seat or standing area is located,
  - information to enable the buyer to identify the part of the area in the which the seat or standing area is located (eg block number),
  - the number or letter or other distinguishing mark of the row the ticket is for,
  - the number letter or distinguishing mark for the seat, and;
- Any unique ticket number that may help the buyer to identify the seat or standing area or its location

#### **CIRCUMSTANCES UNDER WHICH ENFORCEMENT ACTIVITY WILL BE TAKEN UNDER THE SECONDARY TICKETING PROVISIONS OF THE CONSUMER RIGHTS ACT 2015**

Section 93 of the Consumer Rights Act 2015 provides that a local weights and measures authority (the enforcement authority) may enforce the secondary ticketing provisions of the Act, and that where the enforcement authority is satisfied that, on the balance of probabilities, a person has breached the duty, that the enforcement authority may impose a financial penalty on a person in respect of the breach.

Section 93(3) outlines that an enforcement authority may not impose a financial penalty on a person if the authority is satisfied on the balance of probabilities that the breach was due to a mistake, reliance on information supplied to the person by another person, the act or default of another person, an accident, or another cause beyond the person's control, and that the person took all reasonable precautions and exercised all due diligence to avoid the breach.

NYCC will consider potential breaches and whether, on the balance of probabilities, it is satisfied that there has been a breach.

**STEPS TO BE TAKEN PRIOR TO THE IMPOSITION OF A FINANCIAL PENALTY:**

NYCC will follow the procedures set out in Schedule 10 to the Consumer Rights Act in imposing a financial penalty.

**SERVING OF A NOTICE OF INTENT TO IMPOSE A FINANCIAL PENALTY**

Before a financial penalty is imposed on a seller for a breach of duty under Section 90 of the Consumer Rights Act, NYCC will serve a Notice of Intent on the seller. The Notice of Intent will be served within six months of the authority having sufficient evidence of a person's breach. The Notice of Intent will set out:

- the circumstances of the breach and the reasons for proposing to impose the penalty,
- the amount of the proposed financial penalty,
- information about the right to make representations and the circumstances under which a monetary penalty notice may be varied or withdrawn,
- what can be expected following the Notice of Intent,
- the due diligence defence, as provided in Section 93(5) of the Act.

**OPPORTUNITY TO MAKE WRITTEN REPRESENTATIONS ABOUT THE PROPOSAL TO IMPOSE A FINANCIAL PENALTY**

A person on whom a Notice of Intent is served may, within a period of 28 days beginning with the day after the notice was sent, make written representations to the enforcement authority about the proposal to impose a financial penalty.

**SERVING OF A FINAL NOTICE IMPOSING A FINANCIAL PENALTY**

After the end of the 28 day representation period, NYCC will decide whether to impose a financial penalty (and if so, the amount), in light of the written representations. If NYCC is satisfied, on the balance of probabilities that the breach is due to a mistake, reliance on information supplied to the person by another person, the act or default of another person, an accident, or another cause beyond person's control, and that the person on whom the notice has been served took all reasonable precautions and exercised all due diligence NYCC to avoid the breach, will not issue a Final Notice.

If NYCC is satisfied on the balance of probabilities that there is a breach and that there is not a due diligence defence and therefore that it does intend to impose a financial penalty, it will serve a final notice on the person, requiring payment of the penalty within a period of 28 days beginning with the day after the notice was sent.

The final notice and associated notes will state:

- The circumstances of the breach,
- The amount of the financial penalty,
- The reasons for imposing the penalty,
- Information about how to pay the penalty,
- The period for payment of the penalty,
- Information about the rights of appeal, and
- The consequences of failure to comply with the notice.

**WITHDRAWAL OF NOTICE OF INTENT OR FINAL NOTICE IMPOSING A FINANCIAL PENALTY**

NYCC may at any time withdraw a notice of intent or a final notice or reduce the amount specified in a notice of intent or final notice, by giving written notice to the person on whom the notice is served.

## **APPEALS AGAINST A FINAL NOTICE**

A person on whom a final notice is served may appeal against that notice to the First-tier Tribunal, on the grounds that:

- The decision to impose a financial penalty was based on an error of fact
- The decision was wrong in law
- The amount of the financial penalty is unreasonable, or
- The decision was unreasonable for any other reason.

If a person appeals to the First-tier Tribunal, the final notice is suspended until the appeal is finally determined or withdrawn. On appeal, the First-tier Tribunal may quash, confirm or vary the final notice. The final notice may not be varied so as to make it impose a financial penalty of more than £5,000.

## **RECOVERY OF FINANCIAL PENALTY BY NYCC WHERE THE PERSON A FINAL NOTICE WAS SERVED ON DOES NOT PAY THE WHOLE OR ANY PART OF A FINANCIAL LIABILITY**

If the Final Notice is not appealed, or if on appeal, the Final Notice is confirmed, and the whole or any part of the penalty remains unpaid, NYCC will be entitled to recover the penalty or part, on the order of the county court, as if it were payable under an order of that county court.

## **AMOUNT OF FINANCIAL PENALTY**

The Act states that the penalty may be such as the enforcement authority imposing it determines, but must not exceed £5,000. Only one financial penalty may be imposed in relation to each breach.

The principal purpose of imposing a financial penalty is to promote compliance with the secondary ticketing provisions of the Consumer Rights Act 2015, by deterring those people who have breached the provisions from committing further breaches and helping to deter others from committing similar breaches, and demonstrating the benefits of compliance.

In deciding the amount of financial penalty to impose, the amount of the penalty must be sufficient to ensure that it will act as an effective incentive to compliance. In deciding the financial penalty for a breach of the secondary ticketing provisions of the Consumer Rights Act, NYCC will set a standard amount of £5,000 per breach. NYCC will consider the written representations, if provided, from the person on whom the notice is served and the full circumstances surrounding the breach. As a result of the representations, NYCC may decide to reduce the amount of the financial penalty. If a decision is taken to reduce the amount of the financial penalty, this will be outlined in the Final Notice.

In deciding to reduce the amount of financial penalty, NYCC will consider the following (this list is not exhaustive and if other circumstances are applicable to a particular case, those circumstances will also be considered):

- Financial hardship that would be caused by the payment of the financial penalty within 28 days of the Final Notice.
- The amount of benefit gained as a result of the breach.

<p><b>Initial equality impact assessment screening form</b> (As of October 2015 this form replaces 'Record of decision not to carry out an EIA')</p> <p><b>This form records an equality screening process to determine the relevance of equality to a proposal, and a decision whether or not a full EIA would be appropriate or proportionate.</b></p>	
<b>Directorate</b>	BES
<b>Service area</b>	Trading Standards
<b>Proposal being screened</b>	Policy on the Enforcement of the Secondary Ticketing Provisions of the Consumer Rights Act 2015
<b>Officer(s) carrying out screening</b>	<b>Nicola Pearson</b>
<b>What are you proposing to do?</b>	Implement a policy to enforce the secondary ticketing provisions of the Consumer Rights Act 2015t.
<b>Why are you proposing this? What are the desired outcomes?</b>	<p>To assist to regulate the secondary ticketing market. The Consumer Rights Act 2015 places a duty on an individual who re-sells a ticket for a recreational event through a secondary ticketing facility, and on the secondary ticketing facility itself, to provide the following information to the buyer before the buyer concludes the purchase;</p> <ul style="list-style-type: none"> <li>• The face value of the ticket</li> <li>• The seat/row/block the ticket is for (if it is a seated ticket)</li> <li>• Any restrictions on the use of the ticket</li> </ul> <p>Where an enforcement authority is satisfied on the balance of probabilities that a person has breached this duty, the authority may impose a financial penalty on the person in respect of that breach. The amount of financial penalty to be imposed "may be such as the enforcement authority imposing it determines" but must not exceed £5000.</p> <p>The policy proposed will outline the circumstances under which a financial penalty will be imposed, the process which will be followed to impose the penalty and how the amount of financial penalty will be determined in respect of a breach.</p> <p>The desired outcomes of this policy to encourage compliance with the information requirements of the Consumer Rights Act 2015, so as to ensure consumers purchasing tickets via the secondary ticketing market have the necessary information to make an informed decision about whether or not to purchase.</p>
<b>Does the proposal involve a significant commitment or removal of resources? Please give details.</b>	<b>No. National Trading Standards have provided funding to North Yorkshire County Council to undertake</b>

<b>Impact on people with any of the following protected characteristics as defined by the Equality Act 2010, or NYCC's additional agreed characteristic</b>				
As part of this assessment, please consider the following questions:				
<ul style="list-style-type: none"> <li>To what extent is this service used by particular groups of people with protected characteristics?</li> <li>Does the proposal relate to functions that previous consultation has identified as important?</li> <li>Do different groups have different needs or experiences in the area the proposal relates to?</li> </ul>				
<b>If for any characteristic it is considered that there is likely to be a significant adverse impact or you have ticked 'Don't know/no info available', then a full EIA should be carried out where this is proportionate. You are advised to speak to your <a href="#">Equality rep</a> for advice if you are in any doubt.</b>				
Protected characteristic	Yes	No	Don't know/No info available	
Age		X		
Disability		X		
Sex (Gender)		X		
Race		X		
Sexual orientation		X		
Gender reassignment		X		
Religion or belief		X		
Pregnancy or maternity		X		
Marriage or civil partnership		X		
NYCC additional characteristic				
People in rural areas		X		
People on a low income		X		
Carer (unpaid family or friend)		X		
<b>Does the proposal relate to an area where there are known inequalities/probable impacts (e.g. disabled people's access to public transport)? Please give details.</b>	<b>No</b>			
<b>Will the proposal have a significant effect on how other organisations operate? (e.g. partners, funding criteria, etc.). Do any of these organisations support people with protected characteristics? Please explain why you have reached this conclusion.</b>	<b>No</b>			
<b>Decision (Please tick one option)</b>	EIA not relevant or proportionate:	X	Continue to full EIA:	
<b>Reason for decision</b>	There is no reason to believe that the change brought about by this policy will impact on any user groups negatively.			
<b>Signed (Assistant Director or equivalent)</b>	<i>Matt O'Neill</i>			
<b>Date</b>	<i>09.03.2018</i>			