ENTERTAINMENT AND SPORTS LAW JOURNAL

James, M and Osborn, G. 2024. A New Dawn for Ticket Regulation? *Entertainment and Sports Law Journal*, 22(1): 1, pp. 1–5. DOI: https://doi.org/10.16997/eslj.1582

INTERVENTIONS

A New Dawn for Ticket Regulation?

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Ticket touting remains one of the most controversial issues facing the sport and entertainment industries, with diametrically opposed views from both sides on its legality and the need for further regulation. Following the launch of the latest campaign to increase consumers' knowledge of available protections when engaging with the secondary ticketing market, this intervention reviews the current state of the law and proposes a more holistic approach to any future legislative interventions.

Keywords: Tickets; Touting; Scalping; Regulation; Secondary Market

Introduction

The unauthorised resale of tickets for entertainment events, otherwise known as ticket touting, or in the US as scalping, has been a well-documented part of the UK's ticketing landscape for well over a century. Despite regular interventions by the UK Parliament to attempt to prohibit ticket touting at football, the Olympics, and the Commonwealth Games, and the regulation of specific aspects of reselling, such as the prohibition on using bots to buy tickets (The Breaching of Limits on Ticket Sales Regulations 2018), the secondary ticketing market shows no signs of declining (James and Osborn 2023; House of Commons Culture, Media and Sport Committee 2008; Waterson 2016). Further, when any major ticket-related convictions have been secured, it has been for the offences of fraudulent trading and going equipped (*R v Hunter and Smith* 2021), not the touting-specific offences. This shows prosecutorial creativity, but not using the laws that are supposed to regulate touting perhaps casts doubt on the efficacy of the current regime. Underpinning all of this is a well-worn debate about the very nature of the activity: are ticket touts serving a legitimate purpose in the marketplace, or are they causing the shortage in available tickets by buying them up to resell them? Should we leave things as they are or regulate the market more specifically? This intervention does not address this existential question directly but, rather, examines recent developments in the ticketing ecosystem and places them within their broader context.

On 11 September 2023, the FanFair Alliance (FFA) outlined three pro-consumer measures for tackling ticket touting (Davies, 2023, FFA 2023). These proposals recognise the complexity of the issues in play and the need for holistic thinking to address the problems associated with the operation of the secondary ticket market, something we proposed as far back as 2017 (James and Osborn 2017). Two of FFA's proposals concern industry action and response: first, the need for platforms such as Google to take remedial action against unauthorised listings (IQ 2022). This proposal has two limbs. The first asks search engines to take action to stop promoting touts. Secondary and resale platforms regularly appear at the top of searches, notwithstanding the fact that tickets may still be available at face value on primary and other authorised sites. This could be seen as a negative or reactionary measure. The second limb was more proactive, asking the search engines and resale platforms to *actively direct* consumers to authorised sources.

The second FFA proposal focussed on the ticketing industry itself: to make capped, consumer-friendly ticket resale visible and viable. However, it is the third of the FFA's proposals, the call for legislation to criminalise the unauthorised and for-profit resale of event tickets that will be our focus here. Such a call is not a new one, but including it as an integral element of a broader series of proposals to tackle ticket touting illustrates both the ongoing importance of the issue, and the increasing acknowledgement of the need for agile and nuanced approaches to dealing with it.

This intervention examines the call for legislative action by locating it within the context of previous attempts to regulate ticket touting both in the UK and abroad. Further, it examines the legislative possibilities open to an incoming Government, potentially within a broader raft of measures supporting the cultural industries. There is increasing momentum behind the support of both industry-led and legislative action on this issue, as can be seen in the recent manifestos of UK Music (UK Music 2023), which we discussed in our article for *The Quietus*, 'Shadowplay: the case for regulating online ticket touting'. Building on these points, this intervention examines specifically the granular detail of the Private Members Bill introduced by Sharon Hodgson MP in 2010 before

examining recent legislative attempts to tackle the problem in Ireland, exploring contemporary possibilities, and suggesting that this could be a key part of an incoming Government's legislative programme. To contextualise this, we begin by outlining the historical context of the regulation of the secondary market in event tickets.

Context: Legislative attempts to tackle ticket touting

Discussions of ticket touting often focus on 1994 as the 'year zero' for the legislative beginnings of the regulation of ticket touting (Greenfield and Osborn 1996). That was the year of enactment of the multi-faceted Criminal Justice and Public Order Act (CJPOA), a piece of legislation that straddled many controversial issues and which was seen as a significant attack on civil liberties and human rights (Greenfield and Osborn 1996). The CJPOA had a significant impact on football fans, both generally and specifically through s.166, which provided that it was now a *criminal* offence to sell, or offer or expose for sale, a ticket for a designated football match (in effect, all professional football matches in England and Wales). Whilst 1994 might effectively be 'year zero', there had been previous attempts to regulate the public sale of tickets for football matches, in particular, Eric Fletcher MP's Private Members Bill of 1961 (HC Deb, 21 February 1961; vol635, cc336–338).

Section 166 CJPOA 1994 focussed exclusively on football, with its rationale firmly grounded in the perceived need to reduce instances of public disorder at football matches. It has, however, been used as a template for other legislation, where spectator disorder is not an influencing factor, including the criminalisation of ticket touting at the London 2012 Olympics and the 2014 and 2022 Commonwealth Games in Glasgow and Birmingham. Attempts to use the same approach for other sports, such as cricket or rugby, has received short shrift from the government of the day, a throwback perhaps to the very particular issues that have been associated historically, and often erroneously, solely with football. Interestingly, whilst the legislation enacted for the London Olympics and both recent UK-hosted Commonwealth Games were almost exact transplants from the updated s.166, their necessity was *not* based on safety and public order concerns but on the need to protect the events' revenue streams (James and Osborn 2016).

Alongside these sport- and event-specific offences, restrictions on the use of bots to buy additional tickets beyond the usual allocations and the requirement that certain information be publicised when advertising a ticket for resale have also been introduced. Regulation has often been more of a reaction to tickets' increasingly restrictive terms and conditions. This can be seen, for example, in the stringent anti-touting conditions in place for PJ Harvey's brace of shows at the London Roundhouse in 2023 or around a series of Ed Sheeran shows and tours. There has been the occasional prosecution for general criminal and corporate offences, but there has not been a strong push to intervene directly in the market by the state. The success of this approach is debatable; the secondary market continues to grow, though there may be a more subtle impact through the law's symbolic ability to change people's behaviour.

Within this ticketing landscape, Sharon Hodgson MP introduced her Private Members Bill in 2010. This was inspired, as our interview illustrates, by the experiences of a member of her family attempting, unsuccessfully, to obtain tickets to see the group Take That, which resulted in her becoming aware of a fundamental problematic at the heart of the ticketing industry. Her interest is therefore both political and personal, and something of a crusade.

Sharon Hodgson's 2010 Bill & its afterlife

Sharon Hodgson's Sale of Tickets (Sporting and Cultural Events) Bill had its first reading on 30 June 2010. Its headnote proclaimed that it was a Bill 'to regulate the selling of tickets for certain sporting and cultural events and for connected purposes'. Consisting of eight clauses, the Bill sought to address the problem of consumers paying prices for tickets that were significantly in excess of their original face value. Clause 1 provided for the designation of events, establishing the parameters within which the proposed Act would apply. Venue operators and event organisers would be able to apply to the Secretary of State for the host venue to be 'designated', which would mean that the Act would apply to any events held there. Clause 2 was the crux of the Bill, outlining the two new offences:

> 2(1) It is an offence for an unauthorised person to be concerned in the sale of a ticket for a designated event at a *price greater than 10% above the face value* of the ticket.
> 2(4) In respect of the sale or advertisement for sale of tickets for designated and non-designated events –
> (a) No person is permitted to be concerned in the sale of a ticket *where the primary retailer has not yet released for sale* tickets for an event, and
> (b) No person is permitted to be concerned in the sale of a ticket which they *have not purchased from the primary retailer.* (our emphasis)

Clause 2(1) criminalised any resale of a ticket for over 10% of its original face value, with 'face value' defined in Clause 6 as the original price of a ticket plus any administration or other fees incurred in its purchase from the primary retailer. This 10% leeway effectively allowed for a small profit to be made but not the excessive profits that can be made from the most popular tickets and was seen at the time as a disincentive to profiteering. The offences in clause 2(4) were aimed at sellers attempting to sell tickets *before* they had been released for sale on the primary market, referred to now as 'speculative selling', and where they had not been purchased from the primary seller.

Clause 5 pre-empted more recent discussions about the use of non-legal remedies for ticketing offences:

> 5(1) The Secretary of State must consult venue operators, event organisers and ticketing agents with the aim of establishing –
> (a) a voluntary code regarding ticket refunds to customers; or
> (b) an official ticket exchange facility for consumers.

This approach would have allowed a degree of self-regulation from the industry, which has not been taken up. The Bill's second reading provided much interesting debate. Hodgson began by outlining an example from *The Times*:

> That situation plays out time and again in homes up and down the country – ordinary fans trying in vain to get tickets, only to find that they have sold out within minutes. The disappointment is then compounded when they see that the touts do not have the same problems as they do in finding large numbers of tickets. I know all this because it has happened to me and to my teenage children, and I know we are not alone. (HC Deb, 21 January 2011, c1160)

Ticket touting was identified as a widespread problem affecting everyone across all sections of society and one that was ongoing rather than a one-off or an event-specific issue. Other MPs were less sure that there was a need for legislative intervention. Philip Davies questioned whether there was an identifiable victim who was harmed by touting, particularly where tickets for charity events were resold. Jacob Rees-Mogg characteristically played his full free-market hand, proclaiming:

> If the charity fails to sell its tickets for the market price … that is its fault. It ought to investigate other ways to sell its tickets, such as eBay, to maximise its return, rather than our introducing a harsh legislative measure. (HC Deb, 21 January 2011, c1162)

As Hodgson rightly responded, the charity was at liberty to set a price that it thought appropriate to try to attract its target audience. Rees-Mogg's unsophisticated take utterly failed to appreciate the nuance of event organisers' ticketing policies, instead focussing solely on a commercial metric. This line was enthusiastically followed by Sajid Javid:

> Ticket resellers act like classic entrepreneurs, because they fill a gap in the market that they have identified. They provide a service that can help people who did not obtain a supply of tickets in the original sale to purchase them for sporting and cultural events. As long as those tickets have been acquired genuinely and lawfully, it is an honest transaction, and there should be no Government restriction on someone's ability to sell them. (HC Deb, 21 January 2011, c1186)

The Government eventually filibustered the debate to prevent it from progressing, a tactic where the debate in the chamber is artificially prolonged to prevent any vote or positive action being taken. Whilst this Bill failed to be enacted in the UK, it has had an afterlife, or legacy, as it has been used as the basis for legislative interventions elsewhere. In the next section we examine the Irish legislation before examining how any future UK laws might be framed.

The Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021

Two countries that have drawn inspiration from Hodgson's Bill are Australia and Ireland. As each state in Australia has a slightly different approach, we will not go into the technical details of the various legislative frameworks here. What is important to note is that the states in which some regulation of the secondary market has been introduced, New South Wales, Queensland, Victoria, Western Australia, and South Australia, *restrictions on resales*, rather than outright prohibitions on all secondary resales, have been seen as the appropriate approach. These include price caps on resales, of either 10% of face value or face value plus any associated fees, and designation or registration systems, where the criminalisation of touting applies only to specific venues and/or events. These approaches operate somewhere between the legislative framework proposed in Hodgson's Bill, and the one for criminalising engagement with the secondary event tickets market that is now operational in Ireland, to which we now turn.

The Sale of Tickets (Cultural, Entertainment, Recreational and Sporting Events) Act 2021 (Sale of Tickets Act 2021) introduces into Irish law many of the regulatory proposals first mooted in Hodgson's Bill, alongside a series of innovative legislative interventions and criminal provisions. It is one of the most comprehensive and detailed frameworks for the regulation and criminalisation of ticket touting. It seeks both to remove the profit element of engaging with the secondary ticketing market and to provide consumers with additional information about their tickets before purchasing them.

Section 15 of the Sale of Tickets Act 2021 makes it an offence to resell for a profit any tickets for events at designated venues and for designated events. Operators of venues with a capacity of over 1,000 can apply to the Minister for Enterprise, Trade and Employment to have their venues designated under s.7 of the Act, and both venue operators and event organisers can apply to have a specific event designated. Although not the absolute prohibition sought by some, it ensures that the venues and events that are most likely to be affected by touting are covered by the legislation.

Once designated, the venue and/or specific event must be entered on a publicly available register, maintained by the Minister.

Once an event or venue is registered, it is a criminal offence to sell, advertise, or cause the advertisement of tickets to an event at the designated venue or to the designated event for a price exceeding the original sale price. The original sale price includes all additional charges or fees applying to the original sale of the ticket or ticket package. Interestingly, there is no 10% margin allowed under the Irish legislation.

Any transfer of a ticket without requiring a charge to be paid, or as a gift, or for the original sale price or lower is lawful. This is reinforced by s.19, a novel extension of the law, which makes it an offence for a primary ticket seller to prohibit such disposals via the ticket's terms and conditions. Any tickets making their way onto the secondary market can, therefore, only be sold at or below their original sale price. Further, any secondary resale listing must include the following information: the original sale price of the ticket or the ticket package, and the information necessary to enable the identification of the particular seat or standing area to which the ticket or ticket package entitles the ticket holder to gain admission; this includes, where applicable, the seat, row, and block number, and any clearly identifiable unique ticket number. If sellers fail to provide this information, they are guilty of an offence. Likewise, the secondary market operator is guilty of an offence if it allows a listing of a resold ticket without the required information.

The Sale of Tickets Act 2021 provides a thorough procedure that ensures that tickets cannot be resold for the most popular events and venues, with criminal offences attaching to anyone advertising, selling, or failing to provide specific information about the tickets. There is an additional – and highly innovative – offence aimed at ensuring that all ticket purchasers are aware that the resale of the ticket at a profit is a crime. A primary ticket seller is guilty of an offence under s.16 Sale of Tickets Act 2021 if they do not display in accompanying adverts, on the tickets, or in another durable form, such as a letter or email, the following information: that the ticket being sold is for a designated event (referred to as a 'relevant event'); and that the sale of the ticket or ticket package for that event for a price exceeding the original sale price is prohibited. This ensures that purchasers know that they can't resell this particular ticket in advance of any purchase being completed. The only operative exemption, found in s.18, is where the proceeds of the ticket's sale are used solely for the purpose of funding the activities of a charitable organisation or amateur sports club, and that the specific sale has been approved by the event organiser.

The Irish legislation builds on Hodgson's model, indeed the DNA of the Bill is clear to see, but develops it into an innovative regulatory framework. Instead of a blanket ban on all profit-making resales, it focuses on the major venues and major events at which touting is most likely to occur. A similar restriction in the UK could be a pragmatic response to the sheer number of venues that have a capacity of under 1,000 that would otherwise be subject to this law. However, it is these smaller venues, and the artists performing in them, who are likely to be the most in need of protection from touts, who are taking money out of the industries that could otherwise have been spent on the refreshments and merchandise that help to keep venues viable (FFA 2017). The innovative and pro-consumer legislation aimed at primary ticket sellers, secondary resellers, and the secondary market operators ensures that purchasers are provided with the information necessary to make an informed decision on whether to buy a ticket and, once they have, whether and at what price to resell it. The Irish legislation addresses each of the three approaches highlighted as necessary by the FFA: to punish secondary platform operators for hosting the illegal resale of tickets; to make capped, consumer-friendly ticket resale visible and viable; and to criminalise for-profit resales.

Conclusion

Any new legislative intervention into the secondary event ticketing market must not be solely another knee-jerk reaction to the technological innovations affecting ticketing. It needs to be considered and introduced alongside regulation of the information presented by search engines and resale platforms, education programmes for everyone engaging with the secondary market, including both sellers and purchasers, and the clarification of the appropriateness and legality of the terms and conditions that restrict unauthorised resales. Any new law also needs to be enforced effectively. Despite being on the statute books for almost 30 years, s.166 CJPOA 1994 results in only around 100 arrests and many fewer prosecutions each year. The more modern legislative interventions are similarly underused. The Irish legislation goes a long way towards addressing these issues and should be used as a starting point for future discussions of the regulation of the secondary ticketing market in the UK. It raises important, and existential, questions about ticketing and touting that must be addressed to ensure that the ticket market operates in a more open and transparent way.

More broadly, any new legislation in this specific area should be seen within the context of a new Government's approach to the sporting and cultural industries more generally. As we outline elsewhere (James and Osborn 2023), it is not just about ticketing. Any regulatory intervention needs to be part of a holistic approach to the promotion and protection of sport, culture, and entertainment. These industries are subject to a multitude of threats, some exacerbated by Brexit, some by broader economic issues or cultural shifts, but it needs to be appreciated that these cultural industries have a value outside the economic and need nurturing and protecting. From protections for small venues via levies – an holistic approach to licensing of night-time venues that recognises their social and

cultural benefits, or a more creative approach to the issuance of artist visas post-Brexit – to those that allow tickets to reach a more inclusionary audience, the opportunity is there for a new Government to offer protection, and hope to the cultural sector. This piece was originally submitted on 8 December 2023, and accepted 13 February 2024. On 14 March 2024 the Labour Party announced their plans to clamp down on ticket touts by introducing legislation.

Competing Interests

The authors have no competing interests to declare.

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How to cite this article: James, M and Osborn, G. 2024. A New Dawn for Ticket Regulation? *Entertainment and Sports Law Journal*, 22(1): 1, pp. 1–5. DOI: https://doi.org/10.16997/eslj.1582

Submitted: 13 February 2024 **Accepted:** 15 February 2024 **Published:** 28 March 2024

Entertainment and Sports Law Journal is a peer-reviewed open access journal published by University of Westminster Press.

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