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## Secondary ticketing



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## Summary

The online resale of tickets (the secondary ticketing market) applies to recreational, sporting or cultural events in the UK. Secondary ticketing, especially pricing, is a subject that attracts much public interest. Recently, there have been various investigations of this sector resulting in some enforcement activity.

Following the introduction of the [Consumer Rights Act 2015](#) (CRA 2015), the Government commissioned an independent review of the effectiveness of consumer protection measures in the online ticket resale market. [Professor Waterson's report](#), published in May 2016, made nine recommendations to make this market work better for consumers. Karen Bradley, then Secretary of State for Digital, Culture, Media and Sport, hosted roundtable meetings with enforcement bodies and stakeholders in November 2016. The Government's written [response](#) to the report was published on 13 March 2017. As well as accepting the report's recommendations in full, the Government said Parliament would be invited to consider proposals for reform of the secondary ticketing market within the context of the [Digital Economy Bill](#).

The Culture, Media and Sport (CMS) Committee has held two one-off evidence sessions into ticket abuse. The first session took place on 15 November 2016 and considered the problem of software being used to harvest tickets from primary sellers. The second session was held on 21 March 2017.

The [Digital Economy Act 2017](#) received Royal Assent on 27 April 2017.<sup>1</sup> In respect of secondary ticketing, the Act:

- criminalises the use of bots to purchase tickets in excess of a maximum number and puts the ICO's direct marketing code on a statutory footing; and
- requires sellers to provide "any unique ticket number that may help the buyer to identify the seat or standing area or its location."

The [Advertising Standards Authority](#) (ASA), the UK's independent regulator of advertising across all media, has also acted against four secondary ticketing websites in respect of misleading presentation of pricing information. Separately, in June 2016, the [Competition and Markets Authority](#) (CMA) began a compliance review of the secondary ticketing market, resulting in an announcement on 19 December 2016 that it would conduct a formal investigation into suspected breaches of consumer protection law.

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<sup>1</sup> [Digital Economy Bill receives Royal Assent](#), Department for Culture, Media and Sport press release, 27 April 2017

Following on from this investigation, the [CMA](#) began enforcement action in November 2017 against four secondary ticketing websites. Three of those sites made a formal commitment in April 2018 to overhaul the way they do business. In respect of the fourth site, Viagogo, the CMA issued proceedings over concerns it was breaking consumer protection law. A court order made on 27 November 2018 required Viagogo to overhaul its business conduct. On 5 September 2019, the CMA announced it had suspended its court action because Viagogo had addressed outstanding concerns about how it presented information to consumers.

More recently, on 16 August 2021, the CMA published “[Secondary ticketing - Recommendations to government for improving consumer protection](#)”. In this report, the CMA set out its concerns about non-compliance with consumer protection law in the uncapped secondary tickets sector. Its recommendations include a requirement that all secondary ticketing sites acquire a licence to operate in the UK. This licence could be withdrawn if there was evidence of a breach of consumer protection laws (effectively shutting down the business). The Government has not yet responded to the report.<sup>2</sup>

This Commons briefing paper outlines the current regulation of the secondary ticketing market. It considers past enforcement activity and recent initiatives to protect consumers.

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<sup>2</sup> [CMA calls for stronger laws to tackle illegal ticket sale](#), Competition and Markets Authority press release, 16 August 2021

# 1 Introduction

## What is secondary ticketing?

In the UK, tickets for live events (such as pop concerts, theatre, and sports events) are first made available in the “primary market”. Tickets can be purchased at face value (i.e., the amount printed on the ticket) through various sources on the primary market (e.g., from the ‘box office’, official distributors, or an event organiser). However, tickets can also be bought from ticket resellers. Once bought, many tickets are then resold via certain online platforms. This process of reselling tickets is known as secondary ticketing.

In brief, the main ways in which tickets are resold in the UK are:

- **Uncapped secondary ticketing platforms** – online platforms that allow ticket holders (resellers) to resell tickets to buyers at any price that they choose. In the UK, the main operators are Viagogo, StubHub and Gigsberg;<sup>3</sup>
- **Capped secondary ticketing platforms** – online platforms that set a limit on what the reseller can charge for the ticket. For example, these might be ‘fan-to-fan’ sites (on which any reseller can list a ticket within the cap applied by the platform), or a capped resale exchange within a primary platform (on which a reseller who initially bought the ticket on the primary platform can resell the ticket via a platform operated by the same primary ticket seller);
- **Non-specialist channels and social media** – such as Gumtree and Facebook;
- **Offline channels** – such as box office return outlets and ticket touts who resell tickets, typically outside venues.

This paper is concerned solely with the uncapped secondary ticketing sector.

The past two decades have seen unparalleled growth in secondary ticket selling for live music and sporting events.<sup>4</sup> The internet has “made it easier for people to apply for tickets in the first place but [has] also enabled the resale market to thrive.”<sup>5</sup>

<sup>3</sup> [CMA calls for stronger laws to tackle illegal ticket sale](#), Competition and Markets Authority press release, 16 August 2021, p5

<sup>4</sup> Culture, Media and Sport Committee, [Ticket touting](#), 10 January 2008, HC 202 2006-7, p7

<sup>5</sup> Professor Michael Waterson, [Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities](#), May 2016, IND/16/7

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## Market structure

The CMA has described the character and structure of the uncapped secondary ticketing market as follows:

“There are two main secondary platforms in the uncapped UK secondary ticket market – Viagogo and StubHub. In 2019, a CMA merger investigation into the acquisition of StubHub by Viagogo (‘the CMA’s merger investigation’) found between 90% and 100% of tickets by value were sold to UK consumers through these platforms. Their closest rival Gigsberg had a share of supply of less than 5% during the same period.<sup>1</sup> These platforms are ‘two-sided’. They enable buyers and sellers to trade tickets for music, sports, theatre and other live events.

Professional resellers buy tickets from the primary ticket market with a view to selling them for a profit on the secondary market. The CMA’s merger investigation also found the majority of tickets that are traded through uncapped secondary ticket platforms are sold by such resellers. The CMA’s merger investigation also found that the 200 largest resellers account for around 50% of the ticket sales (by value) being sold on secondary ticketing platforms.

Based on data provided from all the main secondary platform providers in the UK, the CMA’s merger investigation estimated the value of the tickets sold in 2019 through secondary ticketing platforms was about £350 million.”<sup>6</sup>

The Coronavirus (COVID-19) pandemic has had a devastating impact on the events industry, with most live events in the UK cancelled or postponed from March 2020 up until recently. Obviously, this resulted in few tickets being sold on the secondary ticketing market during that period.

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<sup>6</sup> [CMA calls for stronger laws to tackle illegal ticket sale](#), Competition and Markets Authority press release, 16 August 2021, p5

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## 2

# Regulation: relevant legislation

As set out below, the resale of tickets for live events (and in some cases the purchase of primary tickets) is regulated in the UK by various general and specific regulations.

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### Consumer Rights

The [Consumer Rights Act 2015](#) (“the CRA 2015”) introduced new provisions ([sections 90 to 95](#)) in respect of the sale of tickets via online secondary platforms. They apply even where the person selling the ticket is a private individual. The provisions mean that:

- anyone (business traders or consumer) offering tickets for resale online must provide clear information about face value, seat location and any usage restrictions, and make clear any link with an event organiser or online platform on which the ticket is being resold;
- vendors are protected from having their tickets cancelled by the organisers purely because of the resale (unless this result of re-selling is clear in the original terms of sale and these terms are not deemed to be unfair); and
- to help combat fraud, secondary ticketing platforms have a new legal obligation to report criminal activity they become aware of in relation to tickets to the police and event organisers.

Crucially, information must be given to the prospective buyer before a contract is made and the ticket sold. For the purposes of the Act, an “online secondary platform” is a website or app where tickets are offered for resale, rather than where the first sale of the ticket is made by or on behalf of the event organiser.

The [CRA 2015](#) also contains provisions in respect of unfair contract terms. Event organisers often want to ensure that tickets are sold to genuine fans rather than to individuals who simply want to buy and resell the tickets. Some organisers take steps to prevent speculative buyers reselling tickets, others may cancel tickets that are offered for resale. The difficulty, of course, is that a genuine buyer may have a good reason for wanting to resell a ticket. It is unlikely that an event organiser could cancel a ticket unless:

- it was a term in the original contract when the ticket was sold, that the organiser could cancel the ticket in these circumstances; and
- the term was not unfair.

Although much would depend on the circumstances of the case, it is unlikely that any such term could be effective or fair if it was not properly



communicated to the consumer at the time the purchase was made. An assessment of fairness would consider all relevant circumstances.

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## Unfair Trading

The amount a secondary ticketing operator can charge as a service fee is not restricted by the regulations that protect consumers from excessive card surcharges.<sup>7</sup> However, the [Consumer Protection from Unfair Trading Regulations 2008](#) (known as the “Unfair Trading Regulations”),<sup>8</sup> prohibit unfair commercial practices.<sup>9</sup> These Regulations not only affect the person who resells the ticket, but also the promoter or venue that sells direct to the consumer.

Under the Unfair Trading Regulations, it is illegal to give consumers misleading information. It is also illegal to make a misleading omission, including hiding or omitting material information that the average consumer needs to make an informed choice. In addition, consumers must not be misled as to the price, location, terms, or any adverse factors that may affect their enjoyment of the event. All ticket sellers must give consumers clear, honest information about prices and tell them about any extra charges on top of the ticket’s face value. This means that all compulsory fees (whether fixed or variable) should be clearly disclosed at the outset when the ticket price is first displayed.

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## Distance selling

Where tickets are sold at a distance (for example, over the internet or by phone), the [Consumer Contracts \(Information, Cancellation and Additional Charges\) Regulations 2013](#) (“the CCRs”) may apply. The Regulations came into force on 13 June 2014 and apply to contracts entered into on or after that date. In brief, these Regulations require certain information to be given to the consumer before contract, and they require additional charges like booking fees to be disclosed up front. (In other words, additional charges must not be selected automatically for the buyer using pre-ticked boxes or in any other way). However, in most cases, tickets are exempt from the cancellation rights that normally apply under the Regulations, as events are usually booked for a specific date.

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## Use of bots to harvest tickets

In respect of secondary ticketing, the [Digital Economy Act 2017](#) (DEA 2017) introduced new provisions to:

- criminalise the use of bots<sup>10</sup> to purchase an excessive number of tickets;
- put the [Information Commissioner’s direct marketing code](#) on a statutory footing; and
- require re-sellers to provide “any unique ticket number that may help the buyer to identify the seat or standing area or its location”.

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<sup>7</sup> [Consumer Rights \(Payment Surcharges\) Regulations 2012](#), SI 2012/3110

<sup>8</sup> [Consumer Protection from Unfair Trading Regulations 2008](#), SI 2008/1277

<sup>9</sup> For an overview of the Regulations see [Consumer protection: Unfair Trading Regulations 2008](#), Commons Library briefing CBP-4678

<sup>10</sup> A “bot” is a software application that is programmed to do certain tasks, they are automated and often imitate a human user’s behaviour.

On 5 July 2018, the [Breaching of Limits on Ticket Sales Regulations 2018](#) came into force under the DEA 2017. The Regulations made it an offence to use automated computer programmes to purchase tickets in excess of any limit set out in terms and conditions regarding the maximum number of tickets a consumer may buy and where the intent is financial gain.

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## Electronic Commerce Regulations

The [Electronic Commerce \(EC Directive\) Regulations 2002](#) (“the ECRs”) as amended by the [Electronic Commerce \(Amendment etc.\) \(EU Exit\) Regulations 2019](#) apply to all sales online. Under the Regulations, certain information must be provided to buyers before a contract is made. The intention is that a buyer should know exactly who is selling the goods or service.

The ECRs impose information requirements on those providing an ‘information society service’, including those operating an online marketplace and engaging in online sales. Secondary ticketing platforms must therefore provide information about themselves and their users. When selling tickets through a secondary ticket platform, a business seller will also be providing an information society service and will also be subject to the requirements of the ECRs, including the requirement to provide information about itself.

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## Price indications

Secondary ticketing is also subject to the [Price Indications \(Resale of Tickets\) Regulations 1994](#).<sup>11</sup> The Regulations do not prohibit any method of ticket resale or place any controls on the level of the price which may be charged for a ticket. Their aim is simply to ensure that the consumer is given sufficient information about the price and quality of a ticket before deciding whether to buy it. In effect, consumers must be given clear and accurate price information before they buy a ticket. Information given to the consumer must be complete, and not mislead. For example, if the consumer is quoted a range of prices, or a ‘from’ price, the trader should make sure that a reasonable number of tickets are available at the lower price. “Bait marketing”, attracting consumers with a low price with low or limited availability (or other restrictions that are not readily disclosed) is illegal. It is important to note that the 1994 Regulations do not apply to consumer-to-consumer transactions. Accordingly, they do not apply to ticket sales between private individuals.

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## Bespoke legislation for certain sporting events

The sale of tickets for a limited number of sports events are restricted under specific legislation, which makes it unlawful for anyone other than an authorised person to sell or re-sell tickets to those events. This was the case with tickets for the 2012 London Olympic and Paralympic Games, it will also be the case for the 2022 Commonwealth Games.

The resale of tickets for designated football matches by an unauthorised person is an offence under section 166 of the [Criminal Justice and Public Order Act 1994](#), which applies to England and Wales. Where a secondary

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<sup>11</sup> [Price Indications \(Resale of Tickets\) Regulations 1994](#), SI 1994/3248

ticketing platform is not authorised by the organisers of the designated football match, it too may be committing an offence if tickets for a designated football match are advertised for sale on its platform.

On 4 June 2018, FIFA, football's world governing body, filed a criminal complaint against Viagogo based on a breach of the law on unfair competition. Both FIFA and Viagogo are based in Switzerland and the complaint was filed with the public prosecutor's office in Geneva. FIFA warned fans who had used unauthorised distribution channels to buy World Cup tickets (including all tickets purchased through Viagogo AG) that they risked being turned away from matches.<sup>12</sup>

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## Fraud

Finally, the law relating to fraud may also be relevant to secondary ticketing in certain circumstances. The key piece of legislation for England and Wales is the [Fraud Act 2006](#). It sets out a general offence of fraud that can be committed in one of three ways:

- by false representation.
- by failing to disclose information.
- and by abuse of position.

In Scotland, where the Fraud Act 2006 does not apply, criminal fraud is mainly dealt with under the common law and several statutory offences.

Where consumers are deliberately scammed, Trading Standards Services and other enforcement authorities can act against offenders. A fraud can also be reported to the police and/or [Action Fraud](#). The [Companies Investigations Branch](#) of the Insolvency Service might also take action against companies that trade illegally in the secondary market for tickets.<sup>13</sup>

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<sup>12</sup> "[FIFA files criminal complaint against Viagogo](#)", FIFA media release [online], 5 June 2018 (accessed 12 November 2021)

<sup>13</sup> "Consultation on ticketing and ticket touting", Department for Culture, Media and Sport, February 2009, p11 [not online]

## 3

## Responsibility for enforcement

No one individual entity has lead responsibility for enforcement in the secondary tickets sector. The division of responsibility is as follows.

### Trading Standards

Local authority trading standards is the primary enforcer of the [CRA 2015](#) secondary ticketing provisions (and holds fining powers in respect of those provisions). Trading standards collaborates with other enforcement bodies directly and via the “Consumer Protection Partnership” through the [National Trading Standards](#) (NTS) and [Trading Standards Scotland](#).

Citizens Advice (and not the NTS) deals with individual complaints from consumers. In serious cases, Citizens Advice can make referrals to local trading standards services, who can issue a penalty notice on a business (i.e., impose a fine without the need to go to court). Such notices are available under a range of legislation, including laws relating to secondary ticketing. If appropriate, trading standards services can refer a complaint to NTS (there are agreed protocols).

### Competition & Markets Authority

The [Competition and Markets Authority](#) (CMA) has powers to enforce breaches of the [Unfair Trading Regulations](#), the unfair terms provisions and the secondary ticketing provisions of the [CRA 2015](#), as well as the [CCRs](#), and [ECRs](#). The CMA principally enforces consumer protection law through civil proceedings brought under Part 8 of the [Enterprise Act 2002](#). This requires the CMA to take traders to court, seeking an order that they cease any breach of consumer protection law and that the court make any appropriate accompanying directions (including enhanced consumer measures). In lieu of a court order, the CMA can accept undertakings from traders that they will change their behaviour.

It is important to note that the CMA cannot decide for itself that a trader has breached consumer protection provisions and order it to stop, it must go to court. Even when an enforcement order is pursued by the CMA, no civil fines are available nor are there any sanctions targeted at individuals unless that individual breaches a court order (i.e., the route to address such a breach is through contempt of court proceedings).

The Government is currently considering how enforcement of consumer law by regulators might be strengthened. On 20 July 2021, the Government published a consultation paper, “[Reforming Competition and Consumer Policy](#)”,<sup>14</sup> which includes proposals to allow the CMA to:

<sup>14</sup> Department for Business, Energy and Industrial Strategy [Reforming Competition and Consumer Policy – Driving growth and delivering competitive markets that work for consumers](#), , 20 July 2021

- decide for itself where consumer protection law has been breached;
- issue fines of up to 10% of global turnover for traders that breach consumer law; and
- sanction traders that seek to frustrate, delay, or otherwise not comply with the enforcement process including flouting information gathering powers and breaching undertakings.

The consultation closed on 1 October 2021 and the Government is currently analysing the responses received. Various commentators suggest that if introduced, these proposed new powers have the potential to significantly increase the effectiveness of CMA enforcement.<sup>15</sup>

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## Police

Enforcement of the [Breaching of Limits on Ticket Sales Regulations 2018](#) is the responsibility of the police. The police may investigate suspected breaches of the Regulations and the sanction for a breach is an unlimited fine.

The police in England and Wales and Northern Ireland deal with cases of fraud under the [Fraud Act 2006](#) and the [Theft Act 1968](#). The police also have the power to enforce legislation in relation to unlawful sales of football tickets (e.g. in England and Wales under the [Criminal Justice and Public Order Act 1994](#)) and in respect of unlawful ticket sales for specific events (such as the upcoming Commonwealth Games to be hosted in Birmingham in 2022). Police Scotland investigate fraud committed in Scotland.

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<sup>15</sup> [CMA calls for stronger laws to tackle illegal ticket sale](#), Competition and Markets Authority Press Release, 16 August 2021, p22-3

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## 4 Compliance and enforcement

### 4.1 Compliance

In recent years, the CMA has identified potential breaches of consumer protection law in the secondary ticket sector. These issues include:

- bulk-purchasing of tickets in large numbers from the primary market for resale at a profit;
- tickets being advertised for sale without all relevant information being provided to consumers;
- the use of misleading pressure selling messages;
- and refunds not being provided to consumers who are entitled to them.

Each compliance issue is considered below.

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#### Bulk purchase of secondary tickets

To help genuine fans buy tickets at face value to an event, it is not unusual for the primary market to put in place limits on the number of tickets that can be bought. In addition, under the [Digital Economy Act 2017](#) it is now illegal to use automated bots to harvest tickets. However, some resellers may use fake identities and multiple credit cards to breach ticket limits. This may constitute an offence under the [Fraud Act 2006](#), it may also be an offence under the [Companies Act 2006](#) and the [Breaching of Limits on Ticket Sales Regulations 2018](#). As already mentioned, the police have powers to investigate suspected breaches of the 2018 Regulations.

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#### Consumers deprived of information

As outlined above, legislation requires certain information to be displayed by a secondary ticket platform to consumers. This information includes:

- who the seller is;
- any connections the seller may have with the platform or event organisers;
- whether there are any restrictions on the use of resold tickets which could result in the person being denied access to the event; and
- where a seat is located in the venue, including, as relevant, seat details, standing area or unique ticket number.

Both ticket resellers and platforms have the responsibility to ensure that this information is displayed accurately to consumers. According to the CMA,

some tickets are being advertised for sale without all the relevant information being provided to consumers.<sup>16</sup>

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### Use of misleading pressure selling messages

Following its 2016 investigation of the sector, the CMA raised concerns about the use of misleading pressure selling messages by some secondary ticketing platforms. The CMA found the content of some messages to be factually incorrect, in some cases creating the false impression that tickets would only be available for a limited time or at a particular price:

“[...] the timing, location, content, frequency and persistence of the messages created an artificial sense of urgency and put pressure on consumers to make rushed decisions (including to make a purchase), whilst also distracting them from other information”.<sup>17</sup>

These messages potentially constitute misleading actions and/or misleading omissions under the [CPRs](#) (the ‘Unfair Trading Regulations’) since they create a misleading impression about the availability and demand for tickets.<sup>18</sup>

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### Failure to provide a refund

Under the [CRA 2015](#), consumers have a statutory right to a refund where goods are not fit for the purpose for which they are bought (for example, if the tickets purchased were not valid for entry). Any guarantees offered by a secondary ticketing site (such as Viagogo) are in addition to this statutory right. However, according to the CMA, consumers are still experiencing difficulties in getting their money back when things go wrong with their purchase.<sup>19</sup> The CMA received 1,634 complaints about cancellations and refunds regarding event tickets between 1 March 2020 and 31 July 2021.<sup>20</sup>

## 4.2 Enforcement action

### Action taken by the ASA

The [Advertising Standards Authority](#) (ASA) is the UK’s single independent advertising regulator in all mediums, it does this by enforcing the Advertising Codes. There are separate codes for non-broadcast and broadcast advertisements, but all adverts are expected to be “legal, decent, honest and truthful”.

A self-regulatory system operates in respect of non-broadcast advertising under the “[UK Code of Non-Broadcast Advertising, Sales Promotion and Direct Marketing](#)” (known as the “CAP Code”). The CAP Code applies to online marketing communications, including the online purchase of tickets for entertainment and sporting events. The CAP Code prohibits misleading

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<sup>16</sup> [CMA calls for stronger laws to tackle illegal ticket sale](#), Competition and Markets Authority press release, 16 August 2021, pp24-5

<sup>17</sup> Ibid, p29

<sup>18</sup> Ibid, pp29-30

<sup>19</sup> Ibid, p24

<sup>20</sup> Ibid, p31

advertising. Secondary ticketing operators must make sure their ticket pricing is transparent by including clear and relevant information about additional fees at the beginning of the online transaction.<sup>21</sup> The price consumers see at the start of the booking process should be the price they pay at the end – no surprises.

On the 7 March 2018, the ASA announced that it had [ruled](#) against four operators in the secondary ticketing sector, banning the misleading presentation of pricing information on their websites.<sup>22</sup> The four operators were:

- StubHub UK
- Viagogo AG
- Seatwave Ltd
- Get me in! Ltd

This action by the ASA was a response to ongoing concerns (including from the campaign group [Fanfair Alliance](#)) about misleading pricing. Following formal investigations, the ASA found that people lured in by attractive prices were hit with big fees towards the end of the online transaction. The ASA gave the four operators until 29 May 2018 to remove misleading price claims on their websites, otherwise they would be referred to [National Trading Standards](#) (NTS) for breaches of consumer protection law.<sup>23</sup>

On 30 May 2018, only Viagogo was referred to NTS.<sup>24</sup> However, on 4 September 2018, the ASA announced that it had secured changes to Viagogo's website and, as a result, had withdrawn sanctions and its NTS referral.<sup>25</sup>

## Action taken by the CMA

Over recent years the [CMA](#) has also taken action against secondary ticketing websites to tackle non-compliance in the sector, including the failure to provide important and accurate information to consumers. For example, in June 2016, the CMA began a compliance review of the secondary ticketing market, resulting in an announcement on 19 December 2016 that it would conduct a formal investigation. On 28 November 2017, the CMA began enforcement action against secondary ticketing websites suspected of breaking consumer protection law.<sup>26</sup>

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<sup>21</sup> "[Clamping down on misleading pricing practices by secondary ticketing providers](#)", Advertising Standards Authority news [online], 7 March 2018 (accessed 12 November 2021)

<sup>22</sup> Ibid

<sup>23</sup> Ibid

<sup>24</sup> "[ASA refers Viagogo AG to National Trading Standards for misleading advertising](#)", Advertising Standards Authority news [online], 30 May 2018 (accessed 12 November 2021)

<sup>25</sup> "[ASA secures changes to Viagogo's website – misleading pricing information removed and costs now clearly displayed and transparent to consumers](#)", Advertising Standards Authority [online], 4 September 2018 (accessed 11 November 2021)

<sup>26</sup> [CMA to take enforcement action on secondary ticketing sites](#), Competition and Markets Authority press release, 28 November 2017



Three of those platforms - StubHub, GETMEIN! and Seatwave – offered formal commitments on 5 April 2018 to overhaul the way they do business.<sup>27</sup> Specifically, their sites would make it clear:

- which seat in the venue the consumer would get;
- whether there was a risk a consumer might be turned away at the door; and
- who was selling the ticket (so consumers could benefit from enhanced legal rights when buying from a business).

The three companies each said they would make it mandatory for sellers to provide this information when listing a ticket, routinely carry out their own checks on primary ticket sellers' websites about resale restrictions, and act promptly if event organisers tell them information is missing.

The CMA also raised the same concerns about how information was provided to consumers with a fourth platform, Viagogo, along with other issues. In August 2018, the CMA began legal proceedings and on 27 November 2018 the CMA secured a court order against Viagogo.<sup>28</sup> The company had until the 17 January 2019 to overhaul its business methods.<sup>29</sup>

On 17 January 2019, the CMA published two open letters online:

- the first [open letter to event organisers](#) outlines how to ensure ticket information about events is properly disclosed on secondary ticketing websites;
- the [second open letter to secondary ticketing website operators](#) outlines how to ensure they are complying with consumer law.

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## CMA action against Viagogo

On 5 March 2019, the CMA [warned](#) Viagogo that it had still not complied with important aspects of the court order, and on 4 July 2019 the CMA [announced](#) it had begun contempt of court proceedings.<sup>30</sup> The CMA [announced](#) on 5 September 2019 that it had suspended court proceedings because Viagogo had finally addressed its concerns about how it presented consumer information:

“The Viagogo website UK customers now visit is worlds apart from the one they faced before the CMA took action. Key information needed to make informed decisions before buying a ticket is now

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<sup>27</sup> [Secondary ticketing sites pledge overhaul](#), Competition and Markets Authority press release, 25 April 2018

<sup>28</sup> Competition and Markets Authority, [Guidance: A summary of the court order secured by the CMA against Viagogo](#), 17 December 2018

<sup>29</sup> Competition and Markets Authority, [Guidance: Information about the secondary ticketing websites deadline – A summary of information about the January deadline for some secondary ticketing websites](#), 17 January 2019

<sup>30</sup> [CMA to take further legal action against Viagogo](#), Competition and Markets Authority news story, 4 July 2019

much clearer including on where you'll sit in a venue and whether you might be turned away at the door.

What is clearly not acceptable is the time it's taken to get to this stage. Stronger consumer powers are required in the secondary ticketing sector and we will continue to work with the Government on the most effective way to achieve this. A key part will be the Government's existing plans to give the CMA stronger consumer protection powers, so that it can rule on whether a company has broken the law and impose fines on those infringing companies. We will keep up the pressure on Viagogo to ensure that it continues to comply with UK consumer protection law".<sup>31</sup>

Sharon Hodgson MP, co-chair of the APPG on ticket abuse, also criticised Viagogo for not complying sooner and called on the CMA to take immediate action if further evidence against the company comes to light:

"The Consumer Rights Act was enacted four years ago to protect consumers. For over four years, Viagogo have failed to comply with legislation and thousands of fans have suffered as a result. After progress and pressure put on Viagogo by the CMA over the last two years, it is surprising that the CMA have now suspended preparations for court action against Viagogo.

Viagogo are not fully compliant with the Consumer Rights Act. Viagogo have made vanity changes which can easily be reversed now that the CMA have taken off the pressure. This is a backwards step and could threaten thousand more consumers going forward."<sup>32</sup>

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## Independent compliance review

As part of the court order made against Viagogo on 27 November 2018, the CMA secured an independently supervised review of unpaid claims where there was:

- evidence that the consumer didn't get into an event; or
- specific evidence from the event organiser that their ticket was invalid.

The review looked at claims made between January 2016 and November 2018. The process was completed early in 2019. The order also contained a requirement that an **annual independent review** of Viagogo's compliance with the terms of the order be carried out until 2023.<sup>33</sup>

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<sup>31</sup> [Viagogo fixes concerns in face of further CMA legal action](#), Competition and Markets Authority news story, 5 September 2019

<sup>32</sup> All Party Parliamentary Group News, [Ticket Abuse News](#), 5 September 2019

<sup>33</sup> [Secondary ticketing websites – The CMA is investigating suspected breaches of consumer protection law in the online secondary tickets market](#), Competition and Markets Authority press release, 5 March 2015 (last updated 16 August 2021)

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## CMA action against StubHub

On 28 January 2020, the CMA told StubHub to make changes to its website, having identified possible breaches of consumer protection law.<sup>34</sup> On 19 August 2020, the CMA announced that StubHub had addressed concerns about its compliance with existing undertakings to the CMA and newer concerns about its use of misleading messages about ticket availability and the use of adverts for event listings on overseas events that may not have been compliant with UK consumer law.<sup>35</sup> StubHub provided an expanded set of undertakings to the CMA covering those newer issues as well.<sup>36</sup>

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<sup>34</sup> [CMA demands StubHub fix concerns or face court action](#), Competition and Markets Authority news story, 29 January 2020

<sup>35</sup> [Secondary ticketing websites – The CMA is investigating suspected breaches of consumer protection law in the online secondary tickets market](#), Competition and Markets Authority news story, 5 March 2015 (last updated 16 August 2021)

<sup>36</sup> [StubHub makes changes to its UK site to address CMAs concerns](#), Competition and Markets news story, 9 August 2020

## 5 Reviews and reports on the sector

This section provides an outline of all recent reviews of the uncapped secondary ticketing sector and its regulation.

It should be noted that the issue of secondary ticketing also came up during the later stages of the Consumer Rights Bill (now the [CRA 2015](#)). Details are provided in the Library briefing paper, [Consumer Rights Bill – Lords’ Amendments](#) (18 December 2014), pages 6-8.

### 5.1 OFT investigation: 212

In July 2012, the Office of Fair Trading (now disbanded) launched an investigation into the secondary ticketing market. This was to help make sure consumers had all the information they needed before buying tickets from secondary ticket websites.

### 5.2 Which? Investigation: 2013

In December 2013, the consumer group [Which?](#) launched a campaign, “[Play Fair on Ticket Fees](#)”, questioning why some ticket companies imposed on consumers compulsory fees for booking and postage that can add 18 per cent to the face value of a ticket price. In terms of consumer detriment, it found that some large ticket agencies were charging a £3 delivery fee even if the consumer had elected to collect the theatre tickets in person from the box office.

The consumer advice given by Which? was that those buying tickets online should look for agents signed up to a code of conduct laid down by the [Society of Ticket Agents and Retailers](#), identified by a lock-inside-a-star logo. According to the Society’s website, this code of conduct is designed to ensure ticket buyers are treated fairly.

### 5.3 Professor Waterson’s review: 2015

#### **Waterson report and recommendations**

As outlined above, [Sections 90 to 95](#) of the CRA 2015 came into force on 27 May 2015. Collectively, they introduced certain requirements for the sale of

tickets via online secondary platforms. [Section 94\(1\)](#) of the Act required a review of the online secondary ticketing market to be published within 12 months of the above requirements coming into force.

A call for evidence closed on 20 November 2015 and Professor Michael Waterson was asked to lead an independent review of the uncapped online secondary ticketing market. Its focus was on large-scale, high-profile, exhibitions, festivals, concerts and major sporting events. The review was informed by responses to a [call for evidence](#)<sup>37</sup> and a [user survey](#).<sup>38</sup>

On 26 May 2016, [Professor Waterson's report](#) was published.<sup>39</sup> In brief, he made the following recommendations:

- Secondary ticketing platforms should ensure sellers on their platforms fully observe the rules set out in the [CRA 2015](#) (where necessary, enforcement action should be undertaken).
- Secondary platforms should be required to play a role in identifying traders and ensuring their details are provided to consumers.
- Primary ticket vendors should be required to guard against the possibility of mass purchase by individuals (who have no intention of attending the event) in breach of contractual terms including by using 'botnets' (i.e., computer programmes). This activity deprives ordinary consumers of the chance to acquire tickets at the price originally established by the event organiser.
- Primary market operators need to increase transparency and come together to standardise the way in which information on available ticket outlets and the pricing structure is made available to the public.
- More should be done to inform consumers seeking tickets about how the market operates across both primary and secondary sellers.

However, as noted by the Government, Professor Waterson did not recommend further significant legislation, a ban on the secondary ticketing market, or a cap on resale prices.<sup>40</sup>

## Government response to the Waterson report

The Government published its [response](#) to Professor Waterson's report on 13 March 2017.<sup>41</sup> It accepted the report's recommendations in full and said that it

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<sup>37</sup> Department for Business, Energy and Industrial Strategy & Department for Business, Innovation and Skills, & Department for Digital, Culture, Media & Sport, [Review of consumer protection measures applying to ticket resale: call for evidence](#), 13 October 2015

<sup>38</sup> Department for Business, Innovation and Skills & Department for Digital, Culture, Media & Sport, [Secondary ticketing websites: user survey](#), 26 May 2016

<sup>39</sup> Professor Michael Waterson, [Independent Review of Consumer Protection Measures Concerning Online Secondary Ticketing Facilities](#), May 2016, IND/16/7

<sup>40</sup> HM Government, [Government Response to Professor Waterson's Independent Review: Consumer Protection Measures Concerning Online Secondary Ticketing Facilities](#), March 2017

<sup>41</sup> Ibid

looked to operators in both the primary and secondary ticketing markets to implement the recommendations. On the use of bots to harvest tickets online, the Government said that it intended to respond with proposals for Parliament to consider within the context of the Digital Economy Bill (see below).

## 5.4 CMA compliance review: 2016

In June 2016, the [Competition and Markets Authority](#) (CMA) began a separate [compliance review of the secondary ticketing market](#). This review was completed in December 2016.<sup>42</sup>

On 19 December 2016, the CMA opened an enforcement investigation into suspected breaches of consumer protection law in the online secondary ticket market. This followed concerns identified by the CMA during its compliance review that people were not getting the full range of information required by consumer protection law when buying tickets put up for resale.<sup>43</sup>

Responding to a recommendation made in the [Waterson report](#), the CMA said it would work with representatives of the live events industry to assess how the law on unfair terms applied to secondary ticketing.<sup>44</sup>

In November 2017, the [CMA](#) began enforcement action against four secondary ticketing websites (see [section 4](#) below).<sup>45</sup>

## 5.5 The CMS Committee: “ticket abuse”

The Culture, Media and Sport (CMS) Committee has held two one-off evidence sessions into “ticket abuse”.

The first evidence session, on 15 November 2016, considered the problem of software being used to harvest tickets from primary sellers' online sites and selling them on at inflated prices to the detriment of fans, artists and organisers of entertainment and sporting events. The Committee heard oral evidence from several witnesses, including Professor Waterson, this evidence was subsequently published online.<sup>46</sup> Written evidence from stakeholders was also considered.

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<sup>42</sup> [Secondary Ticketing Websites – The CMA is investigating suspected breaches of consumer protection law in the online secondary tickets market](#), Competition and Markets Authority, 19 December 2020

<sup>43</sup> Ibid

<sup>44</sup> Ibid

<sup>45</sup> [CMA to take enforcement action on secondary ticketing sites](#), Competition and Markets Authority press release, 28 November 2017

<sup>46</sup> Culture, Media and Sport Committee, [Oral Evidence: Ticket Abuse](#), 15 November 2016, HC 823

The CMS Committee concluded that that the evidence session had revealed “far-ranging and disturbing factors in the market, including clear indications of too close relationships between those selling tickets on the primary market and sellers on the secondary market”. The Committee was concerned that:

“Witnesses’ failure to give satisfactory answers to the Committee’s questions about where companies’ main profits are made, the possibility of even Chinese walls between parts of the same company, and the willingness of the ticket selling companies to even try to identify, let alone bar, large-scale ticket touts and fraudulent sellers have led us to conclude that a fuller investigation of the whole area of ticketing is needed.”<sup>47</sup>

On 22 November 2016, Damian Collins MP, then Chair of the Committee, wrote a [letter](#) to Karen Bradley MP, then Secretary of State for DCMS, urging her to study the submitted evidence regarding the under-reporting of income by known touts and to raise this with HMRC as an area which warranted their investigation. The [Minister’s letter](#) in reply, commenting on the Committee’s findings, was also published online.

On 21 March 2017, the CMS Committee held a second one-off evidence session on ticket abuse, revisiting some of the issues it had considered earlier.<sup>48</sup> The Committee also stated its intention to table an amendment on Report Stage of the Digital Economy Bill to ban the use of bots.

Building on the CMS Committee’s work into ticket abuse, the Digital, Culture, Media and Sport (DCMS) Committee published a report on “[Live Music](#)” on 6 March 2018.<sup>49</sup> In this report, the Committee considered problems in the ticketing market for live music and called on the Government to assess the impact of the new [Breaching of Limits on Ticket sales Regulations 2018](#).<sup>50</sup>

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<sup>47</sup> Culture, Media, and Sport Committee, [Ticket selling market disturbing factors prompt further investigation](#), 16 November 2016

<sup>48</sup> Culture, Media and Sport Committee, [Oral Evidence: Ticket Abuse](#), 21 November 2016, HC 823

<sup>49</sup> Digital, Culture, Media and Sport Committee, [Live Music](#), 19 March 2019, HC 733 2017-19

<sup>50</sup> *Ibid*, pp12-20

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## 6

# CMA calls for further reform

The CMA published a report, “[Secondary ticketing - Recommendations to government for improving consumer protection](#)”, on 16 August 2021. In this report the CMA set out its concerns about non-compliance with consumer protection law in the uncapped secondary tickets sector and makes recommendations on how regulation could be improved. The CMA gave the following explanation as to why reform was necessary:

“The CMA and Trading Standards have dedicated significant enforcement resource to tackling non-compliance in the UK uncapped secondary tickets market (where tickets are resold at any price that the seller chooses) for almost a decade, and there have been marked improvements in compliance as a result. The CMA’s enforcement has resulted in Viagogo and StubHub, the two major platforms in the uncapped market, gathering key information about tickets from ticket resellers and displaying it to consumers. National Trading Standards (NTS) has secured convictions for fraudulent trading in a criminal case against two professional resellers.

Despite this significant enforcement action by the CMA and Trading Standards and the Coronavirus (COVID-19) pandemic resulting in nearly all live events being cancelled or postponed for a period of over a year, the sector still generates considerable concern from the public, Parliamentarians and campaigners. It also continues to generate national and local media attention.

The CMA has used its existing powers to the fullest in the sector and is concerned that, without reforms to the way that the uncapped secondary tickets market is regulated, problems in the sector are likely to grow as restrictions on attending live events are lifted.”<sup>51</sup>

As live events such as music festivals and large sporting events resume over the coming months, the CMA recommended the following changes to the existing system of regulation:

- a ban on platforms allowing resellers to sell more tickets for an event than they can legally buy from the primary market;
- ensuring platforms are fully responsible for incorrect information about tickets that are listed for sale on their websites; and

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<sup>51</sup> [Secondary ticketing - Recommendations to government for improving consumer protection](#), Competition and Markets Authority, 16 August 2021



- a new system of licensing for platforms that sell secondary tickets that would enable an authority to act quickly and issue sanctions such as taking down websites, withdrawing a business's right to operate in the sector, and the imposition of substantial fines.

In effect, under the CMA's recommendations, new regulations would require all secondary ticketing sites to acquire a licence to continue operations in the UK. This licence could be withdrawn if there was evidence of a breach of consumer protection laws (effectively shutting down the business). **The Government has not yet responded formally to the CMA's report.**<sup>52</sup>

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<sup>52</sup> Competition and Markets Authority Press Release, [CMA calls for stronger laws to tackle illegal ticket sale](#), 16 August 2021

## 7

## Parliamentary questions and debate

In November 2016, Diana Johnson MP asked a PQ on how many (a) investigations were carried out, (b) fines were issued and (c) prosecutions were made by the Companies Investigation Branch in each year since 2009-10; and how many such investigations, fines and prosecutions concerned companies operating in the secondary ticketing industry in each such year. On 14 November 2016, Margot James, then Parliamentary Under Secretary of State (BEIS), provided the following [written answer](#):

“The Companies Investigation Branch (CIB) became part of the Insolvency Service in 2006 and the work formerly undertaken by CIB is now dealt with by the Insolvency Service Company Investigations Live teams. While company investigations are focused on preventing corporate abuse by placing companies into liquidation rather than identifying criminal misconduct, if any evidence of criminal behaviour is found it may result in a prosecution.

The Insolvency Service does not maintain statistics on the number of prosecutions and fines arising specifically from the work of Company Investigations Live teams, nor are any statistics kept regarding companies operating in the secondary ticketing industry. However, there have been a total of 15 investigations in the relevant period with a reference to ‘Ticketing’, as detailed below. None of these investigations led to a criminal prosecution or fine.

Live company investigations completed (ticketing cases)

2009/10 269 (5)

2010/11 267 (5)

2011/12 150 (3)

2012/13 162 (0)

2013/14 151 (0)

2014/15 153 (2)

2015/16 151 (0)

(1.4.16 - 31.10.16) 89 (0)”<sup>53</sup>

<sup>53</sup> [PQ 52371](#) [on secondary ticketing], 14 November 2016

On 2 May 2018, there was a [Westminster Hall Debate](#) on “Ticket touting: musical events”.<sup>54</sup> Introducing this debate, Pete Wishart MP said that ticket touting was a hugely profitable business that was threatening the entire music industry, he called on the Government to legislate on behalf of music fans and artists.<sup>55</sup> One month later, on 7 June 2018, another House of Commons debate on “[secondary ticketing](#)” was introduced by Richard Bacon MP.<sup>56</sup> The issue was debated yet again in 1 November 2018, introduced by Sharon Hodgson.<sup>57</sup>

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<sup>54</sup> [HC Deb 2 May 2018 cc161-9WH](#)

<sup>55</sup> [HC Deb 2 May 2018 c165WH](#)

<sup>56</sup> [HC Deb 6 June 2018 cc558-66](#)

<sup>57</sup> [HC Deb 1 Nov 2018 c1033-4](#)

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