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MODEL TERMS AND CONDITIONS RESTRICTING THE RESALE OR TRANSFER OF TICKETS

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INTRODUCTION

The issue of the secondary market and the resale of tickets, often for amounts far higher than their original price, has dominated news stories about ticketing for many years. Many event organisers want to be able to ensure that they can restrict that sort of resale through terms and conditions that are effective but not unfair to consumers. There is also a desire to promote good, not-for-profit resale, particularly to help customers that can no longer attend an event.

This document details the background to the issue as well as providing key information on what needs to be considered when putting restrictions in place. It also includes model terms and conditions that can be used in conjunction with the existing model Ts&Cs produced by STAR some years ago to help restrict resale. We will, in due course, re-issue the full model Ts&Cs incorporating these amendments.

This is a matter that has been considered carefully for a number of years and we have been pleased to co-operate with the Competition and Markets Authority (CMA), particularly when considering unfair terms regulations. The CMA also produced their own guidance, through an open letter to event organisers published in January 2019. We have worked to ensure that STAR's guidance and model terms reflect the details of that letter.

We understand that people will want simple solutions to what is a complex issue. While what follows is quite lengthy and detailed, it includes all the relevant information to help determine a fair resale policy and put it in place.

If you have any queries or would like further information, please contact the STAR office. (01904 234737 info@star.org.uk).

BACKGROUND

The Consumer Rights Act 2015 (CRA2015) details information that should be supplied by sellers and secondary ticketing facilities when tickets are listed for resale. Tickets listed for resale cannot be cancelled or the seller blacklisted from buying tickets in the future merely because a ticket has been offered for resale unless the terms of the original contract for the sale of the ticket provides for cancellation or blacklisting if the ticket is offered for resale and those terms are not deemed to be unfair for the purposes of Part 2 (unfair terms) of the Act.

Following the publication of the Waterson Review of Consumer Protection Measures concerning Online Secondary Ticketing Facilities in May 2016, STAR convened three industry meetings. This was to help meet the recommendation made by Waterson that the industry form a project group to discuss a number of issues including consumer law protections relating to the provision of information, unfair terms and unfair commercial practices. These meetings included representatives from all industry bodies relevant to the discussions as well as the Competition and Markets Authority (CMA) and the Departments for Business, Energy and Industrial Strategy and Digital, Culture, Media and Sport.

In January 2019, the CMA produced an update on their work in this area, partly informed by those STAR meetings, by way of an [open letter to event organisers](#)¹. This includes a 'CMA prioritisation statement on terms and conditions that restrict event ticket resale'. All quotations included here are from that statement. The statement also includes a helpful Q&A covering a number of key issues and we would recommend that you read it in full.

The CMA letter includes guidance on the steps event organisers should take to help mitigate the potential for resale restrictions to cause consumer harm and reduce the likelihood of the CMA prioritising enforcement action against them.

The CMA says that 'resale restrictions have the potential to cause consumer harm if they prevent consumers from recouping or substantially reducing their losses if they find they can no longer attend an event'. Event organisers should therefore provide refunds to customers or offer alternative ways to help them avoid financial detriment. While the CMA's view is that 'the most effective way to do this is to provide a full refund...the CMA might also consider other alternatives to be acceptable if (i) a consumer would prefer the alternative offered to a refund or (ii) if those alternatives are likely to be effective in allowing consumers to be able to get their money back / or mitigate their losses. These might include:

- Offering to exchange tickets for another date;
- Providing a consumer with a credit note that can be used in future for another similar event;
- Providing a consumer with a method whereby they can resell a ticket.'

If providing a resale method, 'this must comply with consumer law and must be likely to be effective in allowing a consumer to get their money back on the ticket or substantially reducing their losses'.

'If an event organiser is concerned about the cost they might incur in helping customers mitigate their potential losses then the CMA considers the most effective way to avoid this is by selling tickets without resale restrictions.'

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/771521/Open_letter_to_event_organisers.pdf



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WHAT'S NEEDED? – STAR'S RESPONSE

- 1) Many event owners and ticketing companies have put in place different terms and conditions to try and limit the opportunities for unauthorised resale, not all of which would stand up to a test of fairness. Establishing model terms that reflect the CMA's guidance provided in their letter to event organisers will therefore help introduce reliability and uniformity across entertainment ticketing and improve consumer understanding and education.
- 2) If a customer that cannot attend an event is left with a ticket he cannot return, cannot exchange and cannot resell, it is likely that the terms and conditions are unfair. Those three mitigations – return, exchange and resale – are key to ensuring fairness. However, it is not the case that all three options have to be offered and it is also possible to place some reasonable limitations around the options that are relevant to the event and the circumstances.
- 3) It may be possible to limit a resale option to a specified, authorised sales channel. However, if this is the only option, it must offer a customer a reasonable opportunity to dispose of the ticket at the price they paid (or more) to enable the customer to recoup his/her loss. The costs of using that facility should also be reasonable and proportionate. It is our understanding that any resale mechanism which is not easy for buyers and sellers to use or find, or which has limits places on it (e.g. can only be used after all the event organisers have sold out or imposes fees which are higher than other platforms or not commensurate with the value of the tickets being listed for sale) is likely to be of concern to the CMA.
- 4) Any authorised or exclusive resale channel must of course comply with provisions on secondary ticketing in the Consumer Rights Act 2015 and all other applicable consumer laws.
- 5) On occasion, customers unwittingly buy tickets that include resale restrictions as a gift for family or friends. Systems for transferring to family or friends at no cost should be in place to avoid such restrictions being deemed unfair.
- 6) The means by which resale restrictions are enforced is also important. Terms and conditions must not be spurious and unenforced as this may lead to them being considered unfair and/or misleading.
- 7) Details of how restrictions are enforced will depend on the event and the venue and, with new technology, may change rapidly in the future. Systems at present include names on tickets, proof of ID, digital tickets etc. These systems are not detailed here.
- 8) Resale and transfer functions may have their own system-specific terms which are not covered here. Obviously, any such functions must be effective in ensuring that the ticket can be used by the new purchaser or the person to whom it is transferred. This would, for instance, cover options such as letters of authorisation or transfer of payments.
- 9) The Breaching of Ticket Limits Regulations 2018 make it a criminal offence to purchase tickets through electronic means in greater numbers than the limit set by the ticket seller/event owner with the intention of deriving profit. These regulations are principally focused on the use of software, such as 'ticket bots' or other online processes that are used to bulk-buy tickets.



- 10) Where a resale option is offered, the rules on the extent of any uplift that can be added to the price by the person reselling the ticket should be included. The amount of this will be subject to a company's own policies and cannot be dictated by STAR. Users of these model terms should reflect on the debates around ticket resale for profit which have led to some primary ticketing companies offering resale facilities capping the resale price to a maximum of the price paid for the ticket originally, including any booking fees. Note, however, that the CMA has indicated that capping the price of tickets being resold to face value or less will not automatically mean that a term restricting resale would be deemed fair as it still places limits on the way that a consumer is able to deal with a ticket. Users of these model terms should consider consumer law and the rules relating to fairness when deciding on what (if any) pricing limits should apply where a resale option is offered.
- 11) Some terms and conditions state that a ticket is a 'personal revocable licence'. The CMA has said in its guidance that, 'regardless of whether a specific ticket is a personalised licence, consumer law (including unfair contract terms law) still applies to the transaction and specifically to the use of resale restrictions'. They go on to say that, 'even where the organiser believes that the tickets they sell do constitute personalised licences', they should still ensure that they comply with the CMA guidance on resale restrictions.
- 12) Finally, some terms and conditions restrict businesses/traders from purchasing tickets. Whilst the CMA does not directly offer its views on the issue, the prioritisation statement in the CMA's open letter to event organisers does list 'ensuring as many tickets as possible for an event are sold at a price affordable to a greater number of consumers (rather than being bought up by businesses to be resold at higher prices)' as an example of what the CMA may consider to be a legitimate reason to restrict businesses/traders. The CMA add that 'it is more likely to regard this reason to apply where the event organiser is taking clearly identifiable steps to prevent professional resellers from buying tickets in the first place' (for example, where the event organiser adopts a names on tickets approach and the tickets are marketed on this basis). In addition, the CMA makes clear that as a matter of contract law, where an event organiser voids tickets purchased by businesses/traders, the event organiser should refund the business/trader buyer. Therefore, as well as ensuring compliance with CRA2015, event organisers will need to make sure that they are not open to any claim by businesses/traders that they are in breach of contract for voiding tickets without refunds.



THINGS TO CONSIDER BEFORE ADDING RESALE RESTRICTIONS

Before deciding if and what resale restrictions should be put in place, event organisers should consider the following:

1. Will the resale restrictions apply to all events (and all ticket types for those events) or specific events/ticket types?
2. Why is the event organiser restricting resale? Is there a legitimate reason and is restricting resale necessary and proportionate for achieving such aim?
3. What provisions are made for customers that have bought tickets but are unable to attend? Can such provisions be offered through all sales channels for that event?
4. If providing a resale method, does it comply with consumer law and the rules relating to fairness?
5. How will the resale restrictions be disclosed to buyers? Will such disclosure be consistent through all sales channels for that event? Is the disclosure clear and made up front?
6. How will the resale restrictions be enforced?

Considering these points will not only help event organisers to decide which resale terms should apply and how they are enforced, it will also help to reduce the risk of the CMA prioritising enforcement action against them.



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MODEL TERMS AND CONDITIONS

The following are drafted as amendments and additions to the [STAR Model Terms and Conditions](#). Should you make any amendments of your own to these suggested terms, you should ensure they are also consistent with STAR's existing model terms or your own terms and conditions or purchase policy as well.

Add to Section I “Definitions and Interpretation”

Event owner means the person who sets the price of a Ticket. This may be the event owner, organiser, producer, promoter or venue owner.

Event Price means the price set by the Event owner (including any flexible price which is set by the Event owner depending, for example, on market demand, but not including any price set by a reseller) for the sale of a Ticket at the time it is first sold to a customer:

- (a) including VAT and any unavoidable charges set by the Event owner (such as a restoration levy, facility fee or refurbishment fee); but
- (b) not including any fees charged by Us (such as booking fees or delivery charges).

Party means friends and/or family.

Refundable Amount means the amount of the Ticket Price that is refundable in accordance with these Terms and Conditions which shall not be less than the Event Price.

Ticket Price means;

- (a) the total amount of the Event Price and any booking fees which apply per Ticket, but not including any delivery charge which applies per booking; or
- (b) where the Ticket is sold at a discount, the total amount of the discounted Event Price and any booking fees which apply per Ticket, but not including any delivery charge which applies per booking (the discounted Ticket Price).

Make the following changes to the beginning of Clause 7 “Refunds/Exchanges”

Add: “Subject to Clause 11,” to the beginning of Clause 7; and

Delete: “Except where We offer an applicable Ticket exchange or resale facility,” at the beginning of Clause 7.

Replace Clause 11 as follows:

- 11 You may not resell or transfer a Ticket if prohibited by law or the Event owner within its terms and conditions or We, on behalf of the Event owner, prohibit resale or transfer of a Ticket. Resale or transfer of Tickets may be prohibited for certain Events due to the specific terms and



conditions of those Events (including but not limited to charity Events or Events where age restrictions may apply). Any resale or transfer (or attempted resale or transfer) of a Ticket in breach of the applicable law or the Event owner's or these Terms and Conditions, provided such terms are fair, may be grounds for seizure or cancellation of that Ticket (in which case we shall refund the Refundable Amount) and/or blacklisting of You. If we are required by the Event owner to cancel any Ticket or blacklist you, we shall notify You.

Where You offer a Ticket for resale in line with these Terms and Conditions, You must:

- 1) provide to the buyer:
 - a. the block or tier, row and seat number,
 - b. the Event Price of the Ticket,
 - c. the unique Ticket reference (if one is available),
 - d. any information about restrictions which limit the use of the Ticket to persons of a particular description, and
 - e. if You are employed or engaged by, or acting on behalf of someone who is employed or engaged by Us, or You are the Event organiser or acting on behalf of the Event organiser, a statement declaring the same, and
- 2) make the buyer aware of these Terms and Conditions and the Event owner's terms and conditions.

You should also check whether any special terms apply before offering a free Ticket for resale as free Tickets are subject to conditions limiting their transferability.

If resale is prohibited by the Event owner, one or more of the following options must be included in the Terms and Conditions and should also be clearly presented and highlighted to the customer throughout the purchase journey through all sales channels. The CMA's guidance indicates that restrictions on resale, as a minimum, must appear on the event home page and first page of the purchase flow on the website of all official sellers.

(Please Note: When considering which option(s) to include, fairness must be considered. Where credit notes or exchanges are offered, there must be a reasonable opportunity for the customer to use them. So, an exchange for a long-running production would be reasonable, however conversely, only allowing an exchange for a future, but yet undecided, performance by the same artist would not. Similarly, a credit note that does not allow the customer an adequate opportunity to redeem it for a choice of tickets that might be of interest to them could be considered unfair.)



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OPTION 1 - REFUND

Tickets You purchase are for Your and Your Party's personal use only. You and Your Party must not resell or transfer (or seek to resell or transfer) a Ticket. If You can no longer attend an Event, please contact Our customer service team [INSERT CONTACT DETAILS] no later than [48] hours before the Event and We will cancel Your Ticket and refund the Refundable Amount subject to a cancellation fee of £[XXX]. Requests for refunds received less than [48] hours before an Event will be at Our sole discretion.

OPTION 2 - CREDIT NOTE

Tickets You purchase are for Your and Your Party's personal use only. You and Your Party must not resell or transfer (or seek to resell or transfer) a Ticket. If You can no longer attend an Event, please contact Our customer service team [INSERT CONTACT DETAILS] no later than [48] hours before an Event and We will cancel Your Ticket and offer You a credit note for the Refundable Amount subject to a cancellation fee of £[XXX]. Your credit note is valid for [12] months from the date of issue and You can use Your credit note to purchase another Ticket to the same Event on a different day or a different Event at Our [Venue or Venues]. Requests for credit notes received less than [48] hours before an Event will be at Our sole discretion.

OPTION 3 - EXCHANGE

Tickets You purchase are for Your and Your Party's personal use only. You and Your Party must not resell or transfer (or seek to resell or transfer) a Ticket. If You can no longer attend an Event, please contact Our customer service team [INSERT CONTACT DETAILS] no later than [48] hours before an Event and We will cancel Your Ticket and exchange it for another Ticket of the same price for the Event on another date subject to availability and an administration fee of £[XXX]*. [If another Ticket of the same price is not available on the alternative date that You have chosen, You may, subject to availability and an administration fee of £[XXX]*, exchange Your Ticket for (i) a Ticket of a greater price subject to Your paying the difference between the original price paid and the price of the new Ticket, or (ii) a Ticket of a lesser price, in which case We will refund You the difference.] Requests for exchanges received less than [48] hours before an Event will be at Our sole discretion.

OPTION 4 - RESALE (AND TRANSFER)

Tickets You purchase are for Your and Your Party's personal use only. You and Your Party must not resell or transfer (or seek to resell or transfer) a Ticket. If you can no longer attend an Event, You may be permitted to resell (and/or transfer) Your Ticket using Our resale facility [for the price You paid for the Ticket or less or plus an uplift of up to [X%] of the Ticket Price and] subject to an administration fee of £[XXX]* [using this link [INSERT LINK]]. [Please contact Our customer service team [INSERT CONTACT DETAILS] [up to [48] hours before an Event] for further details on how to resell Your Ticket.]

- * As these options are being provided to underpin restrictions on resale, the costs of using the facility should be reasonable and proportionate as the consumer's opportunity to recoup the cost is being limited. It is our understanding that any resale mechanism that imposes fees which are higher than other platforms or not commensurate with the value of the tickets being listed for sale is likely to be of concern to the CMA.





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If purchase and/or resale by businesses/traders is prohibited by an Event Owner, then the below option can be included.

You must not purchase and/or resell Your Tickets if You are purchasing and/or reselling Tickets (i) on behalf of a business, or (ii) as a trader acting in the course of business, with the intention of reselling Your Tickets for profit. If We discover or have reason to suspect that You have purchased and intend to resell, or have sold Tickets in breach of this Clause, We reserve the right to cancel Your Tickets without notice and will refund You the Event Price You paid for the Tickets.

HELPING CUSTOMERS THAT ARE REFUSED ENTRY

The following clause is not relevant to the original sale of tickets and therefore should not be included in the Terms and Conditions. It should however be included in resale restriction policies adopted by venues/event owners. It relates to how venues/event owners might help customers that have purchased tickets that have been voided as they were resold contrary to restrictions. The CMA's view is that, where possible, consumers who have bought a ticket subject to resale restrictions should be allowed to enter the event rather than be turned away, though the CMA acknowledges that there are practical limits, for example limited space, which may prevent venues/event owners from doing this.

TO BE USED BY VENUES/EVENT OWNERS

If Your Ticket is voided for entry because it has been resold contrary to the law, [the Event owner's terms and conditions] or Our terms and conditions, We will make every effort to sell You a new Ticket if any is available, or to provide assistance to help You obtain a refund from your point of purchase, for example by providing You with written confirmation that We voided your Ticket.





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TICKETING POLICY – TOP LINE SUMMARY

The following could be used to outline the ticketing policy for an event on relevant web pages and in the purchase journey, provided there is a link to the more detailed terms and conditions. Always ensure that any summary is consistent with your terms and conditions or purchase policy.

XXX EVENT – TICKETING POLICY

IMPORTANT INFORMATION

PLEASE READ THIS BEFORE PURCHASING TICKETS

TICKET SALES:

- Tickets go on general sale at Xam/pm on XX XXXX. Pre-sales will take place on at Xam/pm on XX XXXX. Details at this [link](#) [link to any further details about onsale dates].
- Purchases are limited to 6 tickets per person/household/address.
- Under [age limit] must be accompanied by an adult.
- Authorised ticket agents for this event are: XXX, XXX, XXX, XXX, XXX (primary) and XXX (resale). You risk not getting in if you buy from anywhere else.
- Accessible tickets are available through XXX.

RESALE RULES:

- We are happy for tickets to be resold at the price you paid (ie event price/face value + booking fee) but only through our authorised resale platforms XXX and XXX.
- Please only use our authorised ticket sellers and resellers. Selling tickets through resale platforms that are not authorised by us breaches our terms and conditions and those tickets may be cancelled.
- XXXX, XXXX, XXXX and XXXX are not authorised resale platforms for this event.

OTHER IMPORTANT INFO:

- We reserve the right to cancel tickets purchased by businesses or traders with the intention of reselling them for profit.
- The above is only a summary of our full terms and conditions which should be read [here](#) [link to full terms and conditions].

