

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

SCOPE:

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

PURPOSE:

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

THE LEGAL FRAMEWORK:

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

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

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

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

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

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

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

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

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

SERVING OF A NOTICE OF INTENT TO IMPOSE A FINANCIAL PENALTY

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

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

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

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

SERVING OF A FINAL NOTICE IMPOSING A FINANCIAL PENALTY

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

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

The final notice and associated notes will state:

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

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

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

APPEALS AGAINST A FINAL NOTICE

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

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

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

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

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

AMOUNT OF FINANCIAL PENALTY

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

The principal purpose of imposing a financial penalty is to promote compliance with the secondary ticketing provisions of the Consumer Rights Act 2015, by deterring those people who have

breached the provisions from committing further breaches and helping to deter others from committing similar breaches, and demonstrating the benefits of compliance.

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

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

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