

**SAFER GAMBLING
COMMITMENTS**

Affiliate Marketing Review

Scoping Paper

Context

In 2018 the UK Gambling Commission introduced new advertising restrictions in which operators became directly accountable for the conduct of affiliate advertising partners. This addressed concerns that affiliate advertisers sat outside of the Gambling Commission's scope and were in effect unregulated. It also followed a series of revelations about affiliate advertisers in which some were found to be operating as supposedly neutral tipsters, while benefiting from lifetime revenue-share agreements with gambling operators for whom they recruited customers.

Since the introduction of the new rules, the financial penalties levied by the Gambling Commission for breaches of the advertising

rules by affiliates have increased substantially, leading to record fines in the last 2 years. In response, many operators have dramatically reduced the number of affiliate partners they work with and amended revenue-share agreements in favour of flat tariffs. Some operators have even closed their affiliate marketing programmes entirely.

Concerns remain, however, about the quality of affiliates marketing and controls they take to protect customers. The Lords Select Committee Inquiry (on the Social and Economic Impact of the Gambling Industry), heard evidence early in 2020 from a number of operators who felt that affiliate advertisers should be directly regulated to ensure they shared the same obligations to protect consumers as operators.

Regulation

Affiliate advertisers are not directly regulated, but their activity is the responsibility of licensed UK operators who are accountable to the Gambling Commission and Advertising Standards Authority for advertising conducted on their behalf. In this respect, affiliate advertising is subject to the following:

- The UK Code of non-broadcast Advertising and Direct and Promotional Marketing (the 'CAP' code) which requires that adverts must be socially responsible, obviously identifiable and that any conditions applied to product offers are clear and understandable.
- The UK Code of Broadcast Advertising ('BCAP' code)
- The Gambling Industry Code for Socially Responsible Advertising
- Additional guidance issued by regulators such as the Advertising Standards Authority; Gambling Commission; and Information Commissioners' Office

Definition of Marketing Affiliates

Affiliate marketing is a type of performance-based marketing where an affiliate is rewarded by a business for each new customer attracted by their marketing efforts, usually with a pre-agreed percentage of each sale.

Affiliates typically place ads and links online that direct consumers to the website of a company or brand. The definition of an affiliate is ever-changing, from odds monitoring web sites to Key Opinion Leaders (KOLs) in the form of celebrity endorsements. This scoping paper look at much broader definition of affiliate where there is a direct contractual (monetary reward) relationship along the value chain between the end affiliate and operator.

Purpose of this review

The purpose of this review is to provide the evidence base for the development of a formal BGC Affiliate Marketing Code of Conduct, which is capable of adoption under the gambling industry's market codes, specifically the Industry Group for Responsible Gambling (IGRG) Code which extends the Code beyond BGC members and is formally recognised within the Gambling Commission's Licence Conditions and Codes of Practice (LCCP).

The new Code, which will complement and be consistent with the CAP and BCAP codes, will form part of future commercial agreements between gambling operators and affiliate marketing partners to ensure that affiliate marketing is conducted in a socially responsible manner, which reduces the risk of gambling messaging to young people and other vulnerable groups.

Scope of this Review

This review is not a review of affiliate marketing companies, but it is a review of the use of affiliate marketing companies by gambling operators. It will consider the nature of those relationships and the conduct gambling operators require of affiliate marketers when promoting their products.

It will therefore look at the following areas, among others:

1. Affiliate account-holder verification, age limits and beneficiary verification
2. Commercial agreements with affiliates who are named individuals versus companies
3. The purchase or registration of particular keywords, search terms or other identifiers for use in search or social media
4. Customer identification, targeting models and obligations regarding direct marketing by affiliates through email, text, social platform messaging, etc.
5. The application of suppression lists to exclude individuals who have opted-out of marketing or who are self-excluded
6. The use affiliate networks, social influencers or other third-party marketing channels
7. Positioning and inclusion of safer gambling messaging and access to safer gambling tools on affiliate sites
8. Customer data-retention, data-sharing and treatment
9. Necessary profiling and safer gambling checks on customers before they are recognised for commission under commercial arrangements, first party data identification and restrictions
10. Obligation to observe watershed and other restrictions
11. Obligation to participate in self-exclusion schemes, especially GamStop
12. Processes for dealing with complaints about affiliate practices
13. Sanctions for breaches of a new Code and the industry approach to affiliates who breach the Code more than once
14. Brand content provided to affiliate partners and brand content created by affiliate partners
15. Treatment of customers recruited by affiliates outside the UK
16. Confidentiality and transparency for regulatory purposes
17. Transparency of advertising to the customer

Key evidence and research

Scott Houghton, Mark Moss & Emma Casey (2020) Affiliate marketing of sports betting – a cause for concern?, International Gambling Studies, DOI: 10.1080/14459795.2020.1718737