

## **Operator guidance regarding affiliate marketing arrangements**

- This document sets out good practice in relation to operator relationships with marketing affiliates.
- The document addresses the core issues where affiliate activity has to be in line with the social responsibility duties operators have.

### **Fundamental duties and aims**

- Operators should ensure affiliates are aware the operator is licensed by the Gambling Commission and accordingly is bound by licence conditions and codes of practice whose aim is to fulfil the three licensing objectives set out in the UK Gambling Act 2005 (“**Licensing Objectives**”) as follows:
  1. Preventing gambling from being a source of crime and/or disorder, being associated with crime or disorder and/or being used to support crime;
  2. Ensuring that gambling is conducted in a fair and open way; and
  3. Protecting children and other vulnerable persons from being harmed and/or exploited by gambling.

The Gambling Commission is clear that it can and will hold the operator responsible for actions of affiliates (see LCCP SR 1.1.2 and 1.1.3 – Responsibility for third parties). At the same time affiliates should be clear they must have due regard for, and act at all times, in a manner consistent with Licensing Objectives as though it were a licensee of the Gambling Commission itself and agree to demonstrate consideration of and adherence to the Licensing Objectives in all of its activities.

### **Contracting and due diligence**

The conduct or misconduct of affiliate partners can have a direct and severe effect on operators under consumer and privacy laws and any breaches of these can have a direct bearing on a licence to operate a gambling service. Operators should be able to demonstrate the actions they have taken to mitigate this risk:

- They should check how long has the affiliate been in operation.
- They should seek and check references.
- They should check whether an affiliate has been or is currently the subject of any regulatory or legal action.
- They should have a clear and clearly communicated policy in the event of misconduct.
- They need to remember their self-reporting arrangements with/to regulators extend to issues over the conduct of an affiliate when acting on their behalf.
- They should make sure affiliates understand when, why and how they should notify an operator in the event of a data or privacy breach, an approach from regulatory or law enforcement bodies.

### **Age requirements and children**

Operators should be explicit on the requirement that affiliates should not itself, nor will it allow, assist or encourage others to, to market and promote services to those under the age of 18.



Operators should highlight existing provisions in advertising codes with particular reference to rules prohibiting marketing that is likely to appeal particularly to those aged 17 or younger. This includes use of cartoon and comic book images and child and youth orientated language.

Operators should also highlight that affiliates should not use anyone within advertising for gambling who is, or who appears to be, under the age of 25.

The Advertising Codes can be located at <https://www.asa.org.uk/codes-and-rulings/advertising-codes.html>

The Committee on Advertising Practice Guidance can be found here:

<https://www.asa.org.uk/news/particularly-appealing-guidance-for-gambling-operators-not-children.html>

### **Marketing techniques, data protection and privacy issues**

Operators should ensure affiliates are fully aware of the duty at all times to comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003 alongside the Data Protection Acts 1988 and 2003, as amended, and the General Data Protection Regulation. Details are at: <https://ico.org.uk/for-organisations/guide-to-pecr/what-are-pecr/> Guidance on the GDPR is at <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

The ICO Direct Marketing Checklist is at: <https://ico.org.uk/media/for-organisations/documents/1551/direct-marketing-checklist.pdf>

Self-exclusion and suppression files with appropriate encryption safeguards operators should allow affiliates to de-dupe their list of prospects who have given consent to text and email marketing against the operator's suppression file. The Gambling Commission advice is at: <http://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Self-exclusion/Ensuring-self-excluded-customers-do-not-receive-your-marketing-materials.aspx>

Operators should be clear:

- That there can be no unsolicited marketing by text, email, telephone or other messaging.
- That they have editorial approval over any direct marketing the affiliates believe can be carried out, where they have the necessary consent. This might be managed through a dedicated platform where affiliates could access approved content.
- Whether affiliates can or cannot make use of sub-affiliate relationships and the need for prior consent if such arrangements are acceptable.

### **Visibility**

- Operators should be clear on their requirements in terms of visibility of the plans and practices of affiliate partners. This may include a requirement on affiliate partners to disclose full media buy provisions (pages advertised, landing pages, brand displays, player destinations).

### **Marketing communications**

- Operators should remind affiliates of all relevant statutory and self-regulatory requirements. This includes, but is not limited to, the CAP and BCAP Codes of Advertising Practice and the IGRG Code for Socially Responsible Advertising. The Gambling Commission address this in LCCP provisions SR



5.1.6 (Compliance with Ad Codes), SR 5.1.7 (Marketing of offers) and LC 16 (Responsible placement of digital ads).

- Operators should encourage affiliates to focus on the principles in these codes as well as the various prescriptive requirements. Affiliates should, in particular, be reminded of the principle that advertising and marketing materials should not mislead by omission, exaggeration or by other means. The Gambling Commission is clear that breaches of consumer law will be seen as a breach of licensing conditions.
- Operators should also remind affiliates that they are held jointly responsible by the Advertising Standards Authority for any advertising an affiliate publishes on behalf of an operator. Therefore, both parties would be named if marketing communication is ruled to break the code.
- Affiliates should be made particularly aware of Section 2 of the CAP Code which covers the recognition of marketing communications. Affiliates need to make clear when an ad is an ad.
- Further advice on ensuring affiliate marketing stays within the Advertising Codes can be located on the [CAP](#) website: [Online Affiliate Marketing](#)
- Affiliate websites and advertising should promote responsible gambling and contain 18+ and responsible gambling warning messages. The Senet Group Responsible Gambling tips, 'When the Fun Stops - Stop' and other material is available for use by all at [www.senetgroup.org.uk](http://www.senetgroup.org.uk)
- Affiliates must present "www.begambleaware.co.uk" and "18+ only" links and messages.
- Operators should be clear if limits exist on the advertising creative that can be used and should clearly signpost approved brand creative content if use of this content is a requirement.
- Operators should make clear if they wish to have final approval over creative materials.
- Operators should require that all promotional offers must be supported by the relevant brand terms and conditions.
- Any betting tips/tipster content 'must not imply that success is guaranteed'. Affiliates that provide tips as part of their services must do so in a responsible, fair and transparent manner. Affiliates must not encourage individuals to repeatedly re-invest winnings as part of their tipping services and must not provide inaccurate or misleading information about their tips and the success of them.

### **Inappropriate sites**

- Operators should set out their policy in relation to affiliate marketing on sites in categories they consider inappropriate. Inappropriate sites may include, but are not limited to, those that: display pornography, promote violence, promote discrimination based on race, sex, religion, nationality, disability, sexual orientation, or age, promote illegal activities or violate intellectual property rights.
- The Gambling Commission website signposts operators to an "Infringing Website" list: <http://www.gamblingcommission.gov.uk/for-gambling-businesses/Compliance/General-compliance/Social-responsibility/Advertising-marketing-rules-and-regulations.aspx>

### **Advertorials**

- Operators should prohibit advertorial marketing referencing their brands or should have editorial control of any such content prior to its use.
- 'Pop-under' marketing should only happen where previously agreed by the operator.



### **Social media**

- Any promotion via Twitter, Facebook or other social media the account must have 18+ in the page bio.
- In line with Facebook's policy on gambling advertising, if affiliates wish to advertise an operator's products and services on Facebook the affiliate must first obtain a Facebook Addendum signed on.
- Operators should remind affiliates that no medium should be used for gambling advertising where the marketing would be directed at those aged below 18 years. You can find out more about targeting in the CAP Advice Online article [Children & age-restricted ads online](#)

### **Fraud**

- Operators should be clear that affiliates cannot engage in, allow, assist, promote, encourage or benefit from, directly or indirectly, any act or traffic that involves fraud, whether of players or commercial entities.

### **To be noted**

This document is not a template contract and does not address the financial terms or legal terms on which the operator contracts with their affiliates.

It does not outline issues relating to brands and products which are commercial issues for the parties involved.

This document addresses operators, and how they engage with affiliate partners and can be used as a checklist of the issues that should be addressed.

***Senet Group May 2018***

