

Affiliates and UK Gambling Commission Face Up To Licensing Uncertainties

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An affiliate licensing system introduced by the UK government is likely to see the sector governed along similar rules to third-party suppliers, but experts are sceptical of the UK Gambling Commission's ability to police a potentially enhanced black-market ecosystem.

The licensing of affiliates wishing to do business with UK-licensed operators looks to be a certainty after the measure was recommended by the House of Lords [select committee](#) on the social and economic impact of the gambling industry report in early June.

Sensing the change in the mood, only two days [previously](#) the Responsible Affiliates in Gambling (RAiG) accepted the argument in favour of a "statutory licensing or registration scheme" for affiliates active in the UK market.

Stephen Ketteley, partner at the law firm Wiggin, believes we may see a similar form of licensing as that already existing for third-party suppliers, suggesting both operators and affiliates will be held jointly responsible for any regulatory lapses.

"They have already raised the concept of joint responsibility when, say, a game malfunctions and a customer is disadvantaged," he said. "That also happens in advertising. If affiliates are licensed they will have the same obligation to follow the advertising codes. In this sense, both licensed entities (operators and affiliates) will have an obligation to follow the rules and both the affiliate and the operator could face regulatory action for the same failing.

"As it is today, it will be so important for operators to be able to demonstrate proper oversight of affiliates' activity to ensure blame can be apportioned appropriately."

David Clifton, partner at legal consultancy Clifton Davies, agrees that affiliate licensing will take a similar form to the licensing of suppliers including likely provisions on telling the Gambling Commission in which other jurisdictions a company derives revenue.

"They will ask questions about where you take your business," he added. "The questions would be posed as part of the licensing process."

Still, as Ketteley suggests, there are many questions that remain, including the division of responsibilities between operator and affiliate around advertising and marketing materials.

"How do we ensure that someone that has been self-excluded by us is not advertised to by someone else? The only way that can happen is for the affiliates to know who has self-excluded. That means the sharing of data. There are data protection issues but there is also the issue of a lack of trust between the affiliate and the operator."

Much of the debate around licensing has focused on the potential for some affiliates to opt to remain outside any registration regime and work only with offshore operators, whether they are targeting the UK or elsewhere.

Tom Galanis, founder and principal at TAG Media, suggested affiliates are the "gateway to the black market". "It cannot truly exist without them and no licensing structure will ever be able to curtail or block affiliates who opt to market unlicensed product to players," he said.

In recent weeks, the expert-by-experience grouping Gamvisory has said it would be keen to work alongside the [Betting and Gaming Council](#) (BGC) to combat both offshore operators and those affiliates that appear to deliberately target gamblers who have self-excluded.

Clive Hawkswood, chief executive at RaiG, said it was clear that the UK "already has a leaky sieve" when it comes to the black market.

“Any quick Google search will throw up lots of affiliates who are promoting unlicensed operators and only last year I sat down with operators and the team from Google to raise this as an issue, especially with regard to those actively promoting sites that would let self-excluders get around GAMSTOP,” he added.

However, he added that the commission’s priority would be to “continue to be to combat black market operators rather than affiliates”.

“With regard to affiliates they will never have the time or resource to monitor every channel so they will primarily rely on people to report any breaches that they come across,” he added.

Among some there are fears that the commission has historically downplayed the threat from offshore operators targeting UK customers.

Pointing to a letter the commission sent as evidence to the recent UK parliamentary Public Accounts Committee (PAC) inquiry into gambling regulation, Clifton said he was “pretty unimpressed with what the Commission has been saying about enforcement of illegal websites.”

In the letter, commission chief executive Neil McArthur said: “In terms of scale, there is little evidence of a substantive online gambling provision that is unlicensed and overtly targeting UK consumers.”

On the face of it, this will be a difficult task. After all, non-licensed entities such as Fun88 will still feature — at least for the next season — on the shirts of English Premier League club Newcastle United. Given that example, defining whether a (potentially UK-licensed) dotcom affiliate featuring non-UK-licensed sites is targeting UK consumers would be a tricky, if not impossible, job.

Bahar Alaedini, partner at law firm Harris Hagan, points out that the push to license affiliates is “not a magic pill to fix the reputational issues faced by operators due to rogue affiliates.”

“Consumers do not distinguish between affiliate advertising and advertising by operators themselves, so why should both be licensed?”

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CONTENT

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