

# Pivotal Months Ahead For Gambling Affiliates, Says Legal Expert

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Gambling affiliates have entered an unprecedented period of uncertainty, as mounting regulatory pressures threaten to undermine what has long been an integral part of the online gambling industry. Against this backdrop, GamblingCompliance spoke to legal regulatory specialist Gemma Boore about the challenges that will likely determine the future of this dynamic sector.

Boore, regulatory and commercial specialist in the Betting and Gaming group at Mishcon de Reya, believes that affiliates still play an integral role in the online gaming industry, but admits there exist a diverse range of incoming challenges for this important sector, not least of all the EU's General Data Protection Regulation (GDPR).

Speaking to GamblingCompliance, she said: "While GDPR retains a number of concepts contained in existing data protection laws, it also introduces new concepts and rights for individuals, such as the right for individuals to demand that their data be erased, and affiliates will need to update their data systems to handle these."

"GDPR will also apply to offshore affiliates who hold personal data in relation to individuals in the EU and increase the fines that can be imposed for breaches to very significant levels. The highest level of fine being up to €20m or 4 percent of turnover, whichever is higher," she added.

This is in addition to pressure from the UK's Information Commissioner's Office (ICO), which recently wrote to more than 400 affiliates asking for information about how these businesses acquire and use the personal data they collect.

Boore, who will be speaking about the issues facing affiliates at the Betting on Sports conference in London on September 14, also warned that further mooted EU updates to direct marketing legislation could have a serious impact on affiliates.

"First, there may be a requirement that marketing messages may only be sent to those individuals who have given their consent freely. In other words, an affiliate may not be able to market to those individuals who consented to receive marketing messages in order to take part in a competition or prize giveaway," she said.

"Secondly, consent will also need to be specific, which may make it more difficult for marketing lists to be validly sold to third parties. Thirdly, it may no longer be possible to rely on pre-ticked consent boxes.

"If these changes are introduced, then it may be necessary for affiliates to refresh their marketing lists by getting individuals to re-consent to being contacted."

Much of the recent nervousness over the future of affiliates stems from regulators' increasing insistence that operators are responsible for the actions of their marketing partners.

Earlier this year, the UK Gambling Commission **fined** BGO Entertainment £300,000 for failing to control the actions of its affiliates, while in the Netherlands the Gaming Authority has **forced** some affiliates to leave the country.

However, as Boore noted, affiliates are generally required to accept operators' standard terms of business without negotiation.

"As operators have to take responsibility for the actions of third parties, such as affiliates and advertising networks, they must include certain provisions requiring compliance, but their strong bargaining position also allows many to contract with affiliates on terms which allow the operator to: (i) terminate the agreement with an affiliate without notice at any time; and/or (ii) unilaterally update the terms and conditions without obtaining the consent of the affiliate," she said.

"This approach leaves affiliates at risk, as their commercial partners can terminate agreements at any time and halt affiliates' income streams, which given the growing compliance costs for operators who are increasingly looking to streamline their businesses, is becoming an increasingly more likely scenario."

This risk was dramatically demonstrated earlier this week when Sky Bet announced the **surprise cancellation** of its entire affiliate marketing programme.

“In order to reduce the risk of losing valuable contracts in this way, affiliates will need to demonstrate their value, by both delivering on their promises to direct sufficient traffic and by doing so in a socially responsible way.

“If the future success of the sector is to be assured, affiliates will need to work in harmony with operators. Those that do so successfully may even be able to negotiate more beneficial commercial terms,” said Boore.

Nevertheless, there remains the tangible threat that government bodies throughout Europe will consider adopting the strategy taken up in Nevada and New Jersey, where affiliates are subject to much tighter regulation.

“Affiliates are, after all, already under scrutiny in Europe, with the Danish Online Gambling Association recently calling on regulators to consider stricter affiliate liability rather than focusing on operators as an ‘easy target’”, noted Boore.

“Whether or not there is similar appetite in the UK is another matter,” she said.

“However, these rulings are a timely reminder for affiliates who, if they want their industry to continue to grow, will need to ensure they continue not only to comply as best they can with existing regulations but also look to improve standards. After all, a small step for the affiliate industry, could turn out to be a giant leap for UK gambling.”

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