

Response

Thank you for your FOI request regarding unsolicited text messages, affiliate marketing and the Commission's engagement with the Information Commissioner's Office (ICO).

Non-compliance with the PECR is within the remit of the ICO to address and, as you are aware, the Commission is now working closely with the ICO regarding possible breaches by licensed gambling operators of the Privacy and Electronic Communications Regulations (PECR), relating to unsolicited or 'spam' text messages.

The ICO have shared their assessments and statistics with the Commission which are now published on their website. These are available here:

<https://ico.org.uk/action-weve-taken/nuisance-calls-and-messages/>

<https://ico.org.uk/about-the-ico/news-and-events/pecr-live-blog/>

We are in contact with a number of operators and have reminded them of their obligations under PECR and the Commission's Licence conditions and codes of practice (LCCP). We have referred operators to the ICO for more information about the complaints and have stressed that we expect to see any breaches resolved.

In particular we have reminded operators of the LCCP requirement which makes clear that they are considered responsible for the actions and behaviour of third parties with whom they contract (which would include marketing affiliates):

Social responsibility code provision 1.1.2 Responsibility for third parties – all licences

All licences

1 Licensees must take responsibility for third parties with whom they contract for the provision of any aspect of the licensee's business related to the licensed activities and ensure that the terms on which they contract with such third parties:

a require the third party to conduct themselves in so far as they carry out activities on behalf of the licensee as if they were bound by the same licence conditions and subject to the same codes of practice as the licensee

b oblige the third party to provide such information to the licensee as they may reasonably require in order to enable the licensee to comply with their information reporting and other obligations to the Commission

c enable the licensee, subject to compliance with any dispute resolution provisions of such contract, to terminate the third party's contract promptly if, in the licensee's reasonable opinion, the third party is in breach of contract (including in particular terms included pursuant to this code provision) or has otherwise acted in a manner which is inconsistent with the licensing objectives.

We are continuing to track trends and potential breaches with the ICO and will take necessary enforcement action if required where they have breached the condition above.

I would also like to take this opportunity to apologise for the failure to deal with your initial enquiry of 1 April 2015. This will be followed up internally as to why this happened.

I hope you find this information useful and it addresses the concerns you have raised. If you require any further information or if any of this is unclear please let me know.

Review of the decision

If you are unhappy with the service you have received in relation to your Freedom of Information request and wish to make a complaint or request a review of our decision, you should write to FOI Team, Gambling Commission, 4th floor, Victoria Square House, Victoria Square, Birmingham, B2 4BP.

If you are not content with the outcome of your complaint, you may apply directly to the Information Commissioner (ICO) for a decision. Generally, the ICO cannot make a decision unless you have exhausted the complaints procedure provided by the Gambling Commission. The ICO can be contacted at: The Information Commissioners' Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF.

Request

I am aware from the ICO that you are working with them to tackle unlawful marketing texts promoting gambling, presumably in light of figures showing the gambling sector is the 3rd most problematic area.

I have also had problems with Ladbrokes and have initiated a small claims court proceedings against them too. Once again, this was caused by their use of an Affiliate marketer, which appears to be a common tactic within the industry. I wondered if this is something you were actively considering, especially given the Licence Operators are supposed to promote responsible gambling and indeed ensure their advertisements are appropriate?