

## Influencing your relationship

### Key points for brands to consider when contracting with an influencer

Influencers provide brands with an exciting and engaging way to reach audiences. Unlike traditional advertising, when working with influencers, brands usually won't have complete control over the content which is created. This means that brands must have a considerable degree of trust in the influencer, and this usually runs both ways. The relationship between the brand and influencer therefore needs to be built on a solid foundation. In practical terms, that foundation is enshrined in the contract between the brand and influencer.

Our short note below highlights some of the key areas you should bear in mind when documenting your relationship with an influencer. These topics are relevant whether a brand contracts directly with the influencer or indirectly, such as through an agency.



#### Compliance and disclosure



**Compliance should be right at the top of your list!** The laws and rules which govern advertising in the UK (which are mainly to be found in the CAP Codes and reflect consumer protection laws) are sophisticated and well-trodden – and they apply to influencer marketing. It is important that the contract makes clear to influencers that they must comply with all applicable laws, advertising regulations and the latest guidance – remember, the guidance is updated often! This means, among other things, that they must not make misleading claims about products and services. Also, a recurring theme among regulators is that of transparency. The influencer must disclose that they have been paid to promote or mention a brand, product or service, or that they have been given or loaned something by a brand which has led them to mention the brand, product or service. The contract should make clear what kind of disclosure is required - usually #ad or Ad at the very start of their posts. It isn't possible for a brand to absolve itself of responsibility, or to push all of the responsibility for compliance and disclosure onto the influencer, but it is something the contract must be clear about from the outset.



#### Editorial control



**This can be a tricky area for a brand owner** and influencer to negotiate as authenticity of voice is key to any influencer – and that's often one of the main reasons why brands want to work with them. Of course, there are also brand messages that any advertiser will want to ensure come across. Consider how much editorial control you need and what you are looking to achieve. If the promotion is intended to be authentic to ensure maximum reach with the influencer's audience, you may opt for less control (except to ensure the relevant disclosure is used), but if you operate in a more regulated sector you may wish to have more control over the final messaging. Clearly setting out the nature and extent of the editorial control in the contract will avoid any surprises. An editorial control clause can, for example, insist that all materials created by the influencer are submitted to you for prior approval, and allow for a number of reasonable amendments to be requested by the advertiser, as well as setting out a minimum number of posts, the timing of posts, claims/hashtags to be included, and so on.



## Quality of audience



**The right audience is required to help you deliver that return on investment.** That's why you have picked a particular influencer. But what about the quality of that audience? Unfortunately, the rise of fake likes and bots continues but it's important to recognise that, particularly if the influencer's fee is directly related to the number of results, click throughs, likes, etc. Consider including a clause that prohibits the influencer from engaging in any practices which artificially increase the perceived engagement with the content, and entitles you to terminate the contract if this does happen.



## Appearances and other obligations



**Beyond posts,** if you want the influencer to make any personal appearances, attend shoot days or perform any other services as part of the arrangement, these should be clearly set out in the contract, including what is expected of the influencer as part of each obligation, e.g. arriving on time, complying with reasonable directions of the venue or on set, being appropriately dressed (not wearing branded clothing unless asked to do so), etc. You should also consider if any specific insurance is needed, and, if so, require the influencer to co-operate with you and your insurer in the securing of that insurance and to comply with its requirements.



## Exclusivity



**You've found the perfect influencer,** they are on-brand, share your values and you know that they will resonate well with the audience you want to reach. Unfortunately, this means that they will probably also resonate well with the audiences your competitors want to reach! There is a simple fix to this – negotiating some form of exclusivity to ensure that the influencer does not also promote the brands, products and services of your competitors for a pre-agreed period (usually during the term of the campaign and for a short period afterwards). Depending on the commercial circumstances of the arrangement, this is not an unreasonable ask, but it is always about striking the right balance



## Usage period



**While it is critical to decide how long an influencer's initial support will be required** (often known as the "Campaign Period"), you should also consider building in the option to extend this period if the campaign is going well. An extension which is only discussed later on in the relationship would normally require agreement between both parties, but if agreed at the outset, the contract could include an automatic right for you to extend the period in which you can continue to associate the brand with the influencer and/or require the influencer to continue to promote the brand for a reasonable, pre-agreed fee.



## Warranties and undertakings



**This wouldn't be a legal note if we didn't mention warranties and undertakings!** Don't be put off by the wording. 'Warranties' are simply assurances about things which have already happened or about the current state of affairs when the contract is entered into. For example, the influencer should warrant that they do not have a criminal record (important for most brands), the influencer has not worked with any of your competitors in the (recent) past, and the influencer is in a fit and healthy state and able to be involved in the campaign. Some warranties will be relevant only in particular circumstances, e.g. that the influencer has a full, clean, valid UK driving licence if they will be required to promote a car brand. When negotiating which warranties to include, you can flush out any past behaviours or issues you need to know about. 'Undertakings' are similar to warranties, but rather than providing assurances about the past or present they look to the future, including throughout the period of the contract. For example, the influencer should undertake that they will not say anything disparaging about your brand, that they will not bring themselves or the brand into disrepute (e.g. by saying racist, sexist, xenophobic things), and so on.



## Termination



**We know it's hard to envisage the end of your relationship before it has even started** – but it's important that you do. A right to exit the relationship with any influencer is fundamental, not only because marketing budgets and direction can change suddenly but also because brand safety will be key for any brand. Your agreement with the influencer should specify certain rights for you to end your relationship early if necessary. This might be because of a breach by the influencer of their warranties or undertakings, or any obligations (e.g. failure to appear or failure to use the necessary disclosures in a post), or simply because you need to bring the campaign to an end. There is no one-size-fits-all here so give careful thought to whether, why and how you might want to end your relationship with an influencer, and what you will expect from them at that point

### For further information:



**Geraint Lloyd-Taylor**

Partner

+44 (0)20 7074 8450  
[geraint.lloyd-taylor@lewissilkin.com](mailto:geraint.lloyd-taylor@lewissilkin.com)



**Alan Hunt**

Managing Associate

+44 (0)20 7074 8062  
[alan.hunt@lewissilkin.com](mailto:alan.hunt@lewissilkin.com)



**Emily Stirling**

Trainee Solicitor

+44 (0)20 7074 3177  
[emily.stirling@lewissilkin.com](mailto:emily.stirling@lewissilkin.com)