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CMA
Competition &
Markets Authority

INFLUENCER MARKETING AND THE LAW

HOW TO COMPLY WITH DISCLOSURE

Foreword from Joanna Arnold, CEO, Access Intelligence



Influencer marketing is an industry worth today some £4.5bn, expected to reach £18.4bn by 2024. It has grown fast, driven by an exponential take up of social media and explosion in online publishing across multiple channels. From Facebook to Twitter, YouTube, Instagram, TikTok and Medium, we're in an age where seemingly anyone can be an influencer – whether an 18-year-old producing makeup tutorials in their bedroom or the 98-year-old Iris Apfel who was signed this year to IMG.

For some, this isn't a new industry but instead evolution of what began in Hollywood's Golden Age when the first commercial relationships were signed between film stars and mass advertisers. Technology has opened the opportunity to become a screen star and earn from working with brands. In fact, as our research found, there has been a 50% increase in the number of professional bloggers for whom blogging is their main source of income every year since 2016.

It is its sheer scale that makes this industry so radically different to what we've seen before. Inextricably linked to the rise of the internet and social media, influencer marketing is built on processes and ways of working that are themselves relatively new. We're at the birth of an industry where rules, frameworks and structures are still being defined.

This in part explains why mistakes from management of intellectual property to transparency around content payment continue to happen. With such fast expansion, errors and mishaps are inevitable, but we should remember, they are the exceptions. The vast majority are keen to demonstrate best practice and uphold the highest standards. This extends to the brands and agencies who understand that the reputational damage of behaving badly is greater than the reward.

The future of the industry relies on there being open and honest relationships between those who create and commission content with their target audiences. It is a principle increasingly fundamental to every form of marketing – PR to digital, public affairs to social media – and relies on transparency. This is where tech is essential to understanding impact and relevance that must then be deciphered by humans to derive its importance.

We all have an important role to play in supporting this young industry to successful maturity without the growing pains of consumer misselling or worse. This is why we've been delighted to work with the Competition and Markets Authority on this white paper that outlines responsibilities and best practice. This commitment to understand is alongside our annual Online Influence Awards that we hope will become the mark of quality, celebrating those who embody the highest standards.

I look forward to hearing your views on this white paper and working with the industry into the future.

Foreword from the CMA

The Competition and Markets Authority (CMA), the Government's consumer and competition watchdog, has this year taken action to combat illegal practices in influencer marketing.

In January, we secured commitments (called undertakings) from 16 influencers to be more clear and upfront when they have been paid or otherwise incentivised to endorse a product or service in their social media posts, and alongside this we published a guide to help influencers understand what they need to do in order to stay on the right side of the law. Since then, we've continued working with the industry to explain what consumer law means for influencer marketing, and to provide clarity where there are questions.

Consumer protection law protects people from being misled by, for example, not getting the full picture about commercial relationships. It requires anyone endorsing a product or service on social media to disclose clearly and prominently when they have received any payment or have been incentivised or in any other way rewarded (such as receiving an unsolicited free gift).

Although this work was announced this year, there has not been any change to the legal obligations on influencers, which stem from the Consumer Protection from Unfair Trading Regulations 2008 – but our guide explains what we consider compliance with the law looks like in practical terms.

The same general principles apply to social media as any other form of media and advertising: you need to be open, upfront and honest with audiences.

If you mislead your followers, you may be breaking consumer protection law, and could face enforcement action from the CMA, local authority Trading Standards services or the Department for the Economy in Northern Ireland. You might also break industry rules on advertising.

What the law means for influencers

Influencers such as popular bloggers, vloggers, celebrities and social media personalities can have great influence over people's buying decisions if they promote a product or service in their posts.

If you're an influencer, people need to know if you have been paid, incentivised or in any way rewarded to endorse or review something. It's important you make this clear to your followers: it needs to be clearly and prominently stated when a product, brand or service is tagged, linked or endorsed in any way in return for payment.

What you need to do

Look at your posts from your audience's perspective. Ask yourself:

- Will my followers know that I've received a freebie, product loan or any other type of incentive relating to this post and/or brand – even if it was a few months ago?
- Have I disclosed this information or relationship to them in a way that is clear, prominent and upfront?

Audiences need the full picture: they should be able to immediately know from looking at your post whether there is a relationship with the brand, and whether you have been given an incentive to post about a certain product or service.

If audiences could mistakenly assume from your post, for example, that you chose to buy and pay for something that you actually received for free, then you need to make the fact it was a gift clear and prominent. You might be posting about the product because you genuinely like it – and the brand might not have even specifically asked you to post about it – but audiences still need to know it was a freebie.

If they could assume that you are referring to a product or service in your post simply because you personally like it and use it – when actually you are receiving some commission or reward – you should make this clear and prominent in your post. This includes, for example, if you are using discount codes in your post.

Also, influencers should not give the impression that they are genuine customers when they are not. For example, if you give the impression that you have personally purchased and/or personally used something when you have not, you could be falling foul of the law.



Thinking in this way will help you understand what disclosures need to be included in your posts in order to remain on the right side of the law.

Some specific things to look out for are:

- You need to say when you've been paid, given freebies or loans

Make sure you are disclosing the fact that you have received an incentive to post. An 'incentive' isn't just monetary payment; it could be a free gift or service, a loan of a product, or some sort of experience such as the brand sending you on a free trip.

- **Be clear about your relationship with a brand or business.** Any commercial relationship with a brand needs to be clearly disclosed on any post about them or their products. Remember that, even if the relationship has ended relatively recently, it needs to be disclosed. As a general rule, we say any relationship within the past year should be disclosed.
- **Don't be misleading.** Review your posts and make sure that you are presenting the relationship and incentive clearly. In particular, it is important that you don't give the impression that:
 - you are acting as an ordinary customer when you are actually acting for your own business purposes or on behalf of a brand or other business
 - you have bought something that was given to you as a gift or on loan
 - you have used the service or product yourself, if you haven't

How to disclose

The law is not prescriptive about how you make these disclosures. It is not likely that there will be just 'one way' of explaining your relationship with a brand. The key thing is that they should be clear, prominent, upfront and non-ambiguous. In practice, this means they should be the first thing that people see.

The CMA takes the view that 'Advertisement Feature' or 'Advertisement Promotion', are useful descriptions, but it has seen a range of other wording, (including #Ad, #Advert and using the 'Paid Partnership' tool on Instagram in addition to these hashtags), which convey the appropriate messages simply and effectively to show your relationship with a brand.

Some practices that we don't think go far enough to comply with legal requirements include:

- Tagging a brand or business in either the text, picture and/or video of a post without additional disclosure
- Tagging a gift from a brand in either the text, picture and/or video of a post without additional disclosure
- Using discount codes in a post without additional disclosure
- Using ambiguous language without additional disclosure in a post (for example 'thank you'; 'made possible by'; 'in collaboration with'; or 'thanks to...')
- Unclear use of hashtags, for example:
 - using #sp; #spon; #client; #collab etc.
 - adding #ad directly after the name of the brand or business (for example #[BRANDNAME]ad)
 - when the disclosure (for example #ad, #advert) is not prominent because it is hidden at the end of or among other text and/or hashtags
- Product placement where there is an associated (and undisclosed) payment or other incentive
- Disclosing the commercial affiliation only on an influencer's front, home or profile page

It is important to revise your practices if you are engaging in any of these activities.



Remember that this is not about 'ticking off' compliance with your legal requirements and there is no one-size-fits-all fix. As we said earlier, it's about seeing this from your audience's point of view and making sure you are presenting a clear and accurate impression of your relationship with a brand.

What you should do when working with influencers

Everyone involved in the campaign, from the brand, through to any agencies, and the influencers themselves, needs to ensure they are complying with the law.

Being armed with knowledge of what is expected of influencers is a huge part of ensuring compliance, so take a look at our guide so you can give them clear instructions and spot if anything isn't being done properly.

With customers increasingly aware of influencer marketing and its regulations, compliance with consumer protection law can help you build trust, protect your brand's reputation and improve the social media endorsements' market as a whole.

Some specific examples you should look out for:

- If you give an influencer a free gift or loan of a product – solicited or otherwise – you should ask them to clearly disclose that the gift was free or on loan, if they choose to post about it. This is worth bearing in mind if you regularly send your new releases out to a selection of influencers. It's fine for them to post about it, but influencers must make sure they clearly disclose that they received the item for free.
- Some influencers you've worked with in the past might choose to endorse your brand after the commercial relationship has officially ended, but they need to let audiences know they worked with you recently.
- If an influencer receives any financial reward when their followers buy products and services that they have chosen to refer to in their posts, the commercial nature of the post needs to be clearly stated by them. For example, when using affiliate links or promoting products they have partnered with a brand to create.

- Influencers must not give the impression that they have personally used something and/or personally achieved any results from it if this is not true. For example, if you are looking to partner with an ambassador for a shampoo and show off how glossy it has made their hair – the influencer needs to have actually used that shampoo and be showing genuine results!

What marketers should do when working with influencers

- Make sure the terms of your contract with influencers are consistent with consumer protection law, and never try to stop them disclosing their relationship with you. Take legal advice on contracts and bring the CMA's guide to your adviser's attention.
- Review the posts from the point of view of the audience. Ask yourself: what information does the audience need to make an informed decision if they are thinking about buying something? Do they have this information? Thinking about it from their perspective will help you understand what needs to be included.
- Make sure appropriate disclosure tools, tags and/or wording are being used for the platform. But don't assume these tools are always sufficient, as they might not be in your specific case – and it is your responsibility to explain what the relationship is clearly and transparently. Remember: the disclosure should be clear, non-ambiguous and the first thing that audiences see.
- If you see something that doesn't look right, query it with the influencer – and seek legal advice if you are unsure.





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View from influencers

Vuelio contacted bloggers, vloggers and influencers in its network to find out how disclosure is affecting their work and audience engagement. All of those who have supplied comment feature in a Top 10 ranking and are leaders in their field.

John Adams – Dad Blog UK

Disclosing when an individual has been paid to produce content is a good thing. Transparency and honesty are vital. Many bloggers are concerned that disclosing they've been paid to produce content could negatively impact on visitor numbers and readership. In my personal experience, this is not an issue whatsoever.

Ultimately, I think media advertising spend has changed massively in the past five years. Consumers accept this and so long as they know you are being paid and you are being honest, most don't see it as a problem and neither should content creators. Conversely, content creators have to accept they are an influential part of the media world and should behave accordingly.

Consistent adherence to the CMA's guide is generally a sign you are a professional content creator because your livelihood is at stake and you can't risk damaging your reputation. That said, there are plenty of people who blog for a hobby or are semi-professional who are meticulous in following the guide too.

It's a bit difficult to explain, but the people I see flouting the law usually don't rely on blogs, Instagram or vlogs as their sole source of income. They may not be as well informed about the law or they're simply prepared to take a risk because they don't rely on content creation for their livelihood.

I have faced a few challenges following the guide. While the PR industry seems pretty well versed and supportive of the disclosure regime, I do get approached and asked to write content and not declare it. I turn such work down. What surprises me, however, is that it is often corporate giants who expect me to bend the rules.





Daddy & Dad

The Daddy & Dad blog and Instagram feed provide an outlet for brands to show off their family-friendly products and services. It's great for brands because they tap into our audience and it's great for us because it provides relevant content and flexible part-time work around school runs.

We had to learn on our feet about disclosure, but right from the very beginning we wanted to ensure our followers and readers were well informed and aware they were looking at something commercial. On the Daddy & Dad blog, we announce a brand partnership right at the top of a sponsored blog post, whether it's paid or not – just beneath the main headline. We're very proud of the brands we've selected to work with so it's never been something we felt we should hide in the small print!

Similarly on Instagram, we're always careful to announce a brand partnership or highlight a gifted item. I think there's probably a concern among influencers that #AD might restrict a post's potential to reach their followers. But that's not what we've found at all – when we're honest and our partnerships are relevant, our sponsored content performs well.

Among our blogger friends there's a genuine desire to comply with disclosure guidelines. It's complicated because there are so many different ways to work with and receive compensation from brands and there's potential for human error. We're also aware there are disingenuous influencers who get it wrong, shining a spotlight on all of us.



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Kate Everall – LesBeMums

As an industry that's still relatively new, we need to be leading by example when it comes to disclosure – especially if we want to be respected. It disappoints me more than anything when I see #AD right at the bottom of a body of text, hidden in the first line of comments, or worse, not at all!

I don't believe for one second that influencers are having their opinions bought when they do an AD, but by not disclosing properly or at all, it looks like you have something to hide. In turn, people then feel cheated (I know I do!). I know it's not helped when a small minority complain and unfollow (after kindly telling you that they're unfollowing you because of the 'constant' adverts!) but you need to ignore these people, as nine times out of ten, it's because they're not thinking of the bigger picture or have an understanding of what #AD really means.

ADs are not dirty. They pay the bills, feed the kids or get you one step closer to that extension or holiday of a lifetime. Magazines have been doing them for years and yet influencers seem to act like they're shameful and consumers act like they're being lied to! This is wrong on both counts, therefore we need to make sure that we're doing it right from the start and owning those adverts.

This is not to say that disclosure is the full responsibility of the influencer – PRs and brands need to make sure that their client's relationship with that blogger/influencer is clearly shown, but at the end of the day these are our platforms and we are responsible for them. WE will be receiving the fines if WE don't do it right.



Hayley Hall

I've been working within the influencer landscape for almost a decade, and my stance on disclosure has never changed: if you're being paid to endorse something, that should be made absolutely clear to your audience. I'm proud of my collaborations and only ever work with brands I would recommend to my best friend, so I've always gone above and beyond to ensure transparency and trust with my audience (even before there were official guidelines).

Although audiences are increasingly savvy about the influencer industry, they also understand the difference between an individual endorsing anything for a quick buck and another taking the time to only work with products they really love. It's frustrating to see industry experts and those with genuine passion mixed in with reality TV stars who will hold up any old pack of skinny tea or teeth whitener for the right amount.

Honestly, I don't understand why we're still having the same issues and discussing disclosure in the same way we were in 2010 – especially when there has been so much industry noise and clarity from authorities on the subject. There's nothing as frustrating to me as seeing content creators hide #ad within a body of text, make it so small it's impossible to spot or (worst of all) believing they're above the need for any kind of disclosure whatsoever.

Presently there seems to be no consequence, so influencers are slowly going backwards and once again hiding their collaborations. As content creators we need to build trust and be transparent, but the brands and PRs should be just as accountable and ensure appropriate disclosure is made wherever required.



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Elle Linton – Keep it simpElle

When I first began blogging, I spent a lot of my time interacting with bloggers in the USA and it was always fascinating how far ahead they were when it came to advertising law and disclosure. It was inevitable that the same standards would eventually be applied in the UK. There are a lot of areas covered by disclosure – such as advertising, use of affiliate links or even paid for links in blogs – all of which seem to fall under the regulations of differing authorities, which is the beginning of where the confusion lies.

Personally, I'm a big advocate of disclosure, but I will be the first to admit that I don't believe the guide to be all that clear. Blogging is still an industry in its infancy and many of us do not come from a professional background so getting to grips with laws, regulations and standards is not the easiest. The requirements to disclose have meant that I limit 'product for post' collaborations as I do not want my social channels or blog to turn into one big advertisement, which I suspect would switch off my audience.

It is frustrating when I scroll through Instagram and see so many of these posts with no disclosure at all. When working on paid campaigns though, it has been great to see brands and PRs communicating the need to disclose and hopefully this will start to set a precedent.



Jo Middleton – Slummy Single Mummy

As far as I'm concerned, disclosure on blogs and social media posts really shouldn't be a thing anymore – it's just what you have to do and honestly, I don't know why we are still having the conversation. If you left your car in a car park you'd buy a ticket, you wouldn't try to hide your car under a sheet and hope no one noticed. We need to get over it and just start following the law!

I've been blogging for nearly ten years now and my readers know that it's how I make a living. I think they would actually be LESS likely to take a sponsored post seriously if I didn't disclose it as a paid partnership, as it would be obvious that was what it was and they would wonder what I was trying to hide. Just because I have been paid to work with a brand, doesn't mean that what I say isn't the truth – my filtering process happens way before a post makes it anywhere near my blog or social media accounts, so if you do see an ad you will know it's something that I genuinely think is worth promoting or finding out more about. Believe me when I say that I get offered a LOT of rubbish that I simply refuse to give space to!

Whenever I see bloggers and influencers writing about brands or promoting products and NOT disclosing a relationship, it makes me feel very suspicious of them and less likely to want to see more of their content. I'd definitely be less likely to trust them or take recommendations from them – for me, open and straightforward disclosure is definitely something that promotes trust and respect. If everyone took this approach then I think the industry would have a much better reputation, which can only be a good thing for everyone – influencers and the general public alike.

CMA answers to influencer FAQs

1. Will the CMA be advising journalists who, in similar ways to influencers, receive press trips and write about them but currently don't have to disclose this?

These principles outlined in the guide are not exclusive to social media – they apply to any other form of media and advertising: be open, upfront and honest with audiences about your intentions and motivations.

All individuals and businesses operating in the digital economy should keep their commercial practices, and contract terms and conditions under review, and make sure they comply with UK consumer protection law. Should any potential breaches come to our attention as part of our ongoing interest in online and digital markets, the CMA or other enforcers could decide to take appropriate action.

2. What will happen to influencers and brands that repeatedly fail to disclose?

Earlier this year, we secured undertakings from 16 celebrities to more prominently disclose any incentives they had received for posting about products or services. Once we have closed an investigation because we have received undertakings, if an individual or a company does not comply with the undertakings, we could decide to pursue further enforcement action if there is evidence of harm to the collective interests of consumers. For example, the CMA could apply for a court order requiring an individual or company to make specific changes to how they behave. As part of our application to court, the court must take account of the fact that the individual or company had agreed to make certain changes or cease certain conduct and had subsequently failed to do so.

For adverts that fall within the scope of the CAP Code, the ASA has the power to ban adverts that are deemed to be misleading which means that they are not shown in that form again.

3. What's the process for reporting those you suspect of not disclosing?

In the case of adverts, people can report their concerns about unlabelled advertising to the ASA.

For individual complaints that are not within the ASA's remit (ie those that might breach consumer law more widely), people can report their concerns to Trading Standards or Citizens Advice.

4. What is required by law (ie you could be prosecuted) vs what is a guideline or recommendation?

Consumer law is relevant here – the Consumer Protection from Unfair Trading Regulations 2008 prohibits 'unfair commercial practices'. This means:

- You should not engage in misleading actions – e.g. pretending a product is responsible for your glossy hair when you have never actually used it
- You should not mislead your audience by omitting important information about your motivation for mentioning a product – e.g. not disclosing that you've received a payment, gift, loan etc. in connection with an endorsement, since this is important information which may cause them to take a different decision had they known about it, such as a decision about whether or not to buy that product themselves
- Some practices are banned in all circumstances, such as falsely representing yourself as a consumer or using editorial content in the media to promote a product, where a trader has paid for the promotion, without making this payment clear
- Brands are expected to practice professional diligence, for example by ensuring that their clients are informed of the obligation to properly disclose their incentivised endorsements and provide guidance, in order to prevent consumers being confused or misled

Practically, this links to other practices of concern such as:

- Not making it clear when the influencer benefits financially when their audience buys something they have recommended, for example through affiliate links

- Not making it clear when something was a free gift or free product loan, whether solicited or otherwise. If an influencer chooses to post about something, they should make it clear how they got it and not imply they chose to buy it (with the inference for consumers being that the influencer thinks it is good value for money etc.)
- Endorsing a product that hasn't actually been used but implying that it has
- Endorsing a product/service for results that the influencer hasn't actually experienced themselves
- Not disclosing any incentivised endorsements prominently

The CMA's guide explains what the law means for influencers in practical terms. It is not designed to be prescriptive about how disclosure is made and is not a legal document, but is intended to help influencers ensure that they are more likely to comply with the law. If you have questions about specific posts or circumstances, you should seek independent legal advice.

5. How do the rules apply to international influencers and brands, and UK influencers and brands with international audiences

The law which the CMA enforces is UK law, and is reflected across European countries which have similar rules. However, there is common agreement amongst many regulators around the world that consumers living in their jurisdictions should not be misled by influencers who fail to disclose commercial relationships they have with businesses.

The CMA may take enforcement action against traders based outside the UK where their activities are directed towards consumers in the UK.

6. On social media platforms, influencers are crying out for a simple tick-box system to label content as a paid-for endorsement, a gift from a brand or a loan of a product. Is this something you're considering?

Some platforms do offer certain tools (such as 'Paid Partnership' on Instagram) but each post needs to be reviewed individually and influencers need to make sure disclosures are clear and prominent. While such features might be useful, people should not assume that their use alone would be sufficient to comply with the requirement to make prominent and clear disclosures where these are required.

The law is not prescriptive about how disclosures are made and the CMA takes the view that there is likely to be more than one clear way to label posts – it is not a case of finding an easy way to 'tick off' compliance, but about really making sure audiences get the full picture.

Ultimately where a post includes an incentivised endorsement, this must be made clear. The use of a disclosure such as #Ad, #Advert is likely to assist but might not be enough on its own – for example, if the disclosure is not prominently displayed, or appears in a string of other text such as a brand name followed by Ad (for example #AddidasAd).

7. Influencers are keen to demonstrate honesty and transparency – do you have plans to offer accreditation to people who demonstrate best practice?

No. The CMA is not able to endorse particular businesses or individuals.

However, we have published a guide that sets out what people need to do to comply with consumer law when endorsing, promoting or reviewing products in circumstances where they have received or been promised any type of payment, reward or incentive.

This also describes practices we have seen during our investigation that we consider do not go far enough to comply with the law.



About the CMA

The CMA is a non-ministerial department that works to promote competition for the benefit of consumers. We work to ensure that consumers get a good deal when buying goods and services, and businesses operate within the law.

We do this in a number of ways, including investigating entire markets if we think there are competition or consumer problems, taking action against businesses and individuals that take part in anti-competitive behaviour and protecting consumers from unfair contract terms and trading practices.

The CMA investigated social media influencers during 2018, specifically looking at whether paid-for endorsements were being clearly disclosed. This follows earlier work in 2015 that considered online reviews and endorsements, and which led to four companies agreeing to change how they label online advertising to make sure it is clearly distinguishable from the opinions of bloggers or journalists.

Further investigation work is looking at the role and responsibilities of social media platforms.

While we work closely with the Advertising Standards Authority (ASA), our roles are different. At the CMA, we are interested in how markets work as a whole, and can prioritise action to protect consumers, for example against practices that may mislead large numbers of people.

The ASA is the UK's independent advertising regulator. They respond to complaints from consumers and businesses and take action to ban ads across UK media which are misleading, harmful, offensive or irresponsible, in breach of the Codes written by their sister organisation the Committees of Advertising Practice (CAP).

We published a [joint guide with the ASA and CAP](#), which gives more information about our roles and further practical advice for influencers when using social media.

If you have queries about how this relates to your specific circumstances or posts, you should seek independent legal advice.

For adverts that fall within the scope of the CAP Code, the [CAP's Copy Advice team](#) can offer free, bespoke advice.





About Vuelio

In the age of information overload when it's harder than ever to cut through the noise, Vuelio helps organisations make their story matter providing monitoring, insight, engagement and evaluation tools for politics, editorial and social media in one place.

We help you determine who and what is most influential to your audience and brand. Then, with a wealth of reporting and relationship management options, you get real-time feedback to create even more effective communications.

From MPs to journalists, expert bloggers to YouTube stars, we provide influencers with timely and relevant content, while giving you the insight and connections you need for your communications to have impact.

Our technology is used by more 3,000 organisations across the world, from large enterprises and communications agencies to public sector bodies and not-for-profits.

Online Influence Awards

Each year, we celebrate the fantastic work done by the UK's influencers and communications people at the Online Influence Awards. From fashion and food to travel and tech, the awards bring together 300 of the biggest names in blogging, vlogging, podcasting and Instagramming, who together have a combined social media reach of over 30 million. Finalists are shortlisted using our industry recognised impact ranking and winners chosen by an expert judging panel including influencers, agency leads and stakeholder groups.

The Online Influence Awards are a mark of quality and excellence; we will never ask for public votes or make finalists work for their win, so every victor knows their triumph is truly deserved.

This year's Online Influence Awards takes place on 22 November at the Bloomsbury Ballroom.

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