

CASE UPDATE: WINLINK MARKETING V LIVERPOOL FOOTBALL CLUB

Introducer Agreements

Practical takeaways from the *Winlink v Liverpool* dispute

Background

Marketing agencies perform a key role in the sponsorship market by introducing rights holders and prospective sponsors. This case highlights the importance of ensuring that it is clear in the contract when a marketing agency is entitled to commission.

Key facts

In October 2013, Winlink (a marketing agency) and LFC entered into a non-exclusive introducer agreement under which Winlink was entitled to commission if:

- › Winlink *introduced* BetVictor to LFC; and
- › BetVictor subsequently entered into a *Relevant Contract* with LFC.

Nearly three years later, in May 2016, BetVictor entered into a **£15million** sponsorship agreement with LFC.

The claims

Winlink brought a claim against LFC for **£1.125million** in commission, arguing that (i) it had *introduced* BetVictor (as it had connected LFC with BetVictor's (then) CEO in December 2013) and (ii) the May 2016 contract amounted to a *Relevant Contract* for the purposes of the introducer agreement.

LFC argued that Winlink should only be entitled to commission if it was the "*effective cause*" of the May 2016 contract between BetVictor and LFC. In other words, LFC argued that Winlink had to have played a significant or causative role in bringing about the deal.

Decision

The [judge agreed](#) with LFC: no commission was payable as Winlink needed to be the "*effective cause*" of the deal and on the facts was not. The judge explained the rationale for applying the "*effective cause*" principle:

- › That the parties are assumed not to have intended for the risk of two commissions to be owed on one deal.
- › That a marketing agency is expected to do more to earn its commission than simply to make an introduction.

Winlink is [seeking to appeal](#) the decision.

Key practical takeaways

Deal with "effective cause" expressly

Although LFC was able to 'fall back' on the "*effective cause*" principle to avoid paying commission to Winlink (as this point was not dealt with expressly in the contract), this is not the recommended approach. Court proceedings are expensive and public. And, whilst consistent with previous [CAS cases](#), this judgment is not the final word on the matter – it's under appeal.

Rather, parties to introducer agreements should clearly outline what the marketing agency must do to earn commission and [expressly](#) address whether they must be the "*effective cause*" of any future deal in order to earn that commission.

- › For **exclusive agreements**, it should not be controversial to expressly [exclude](#) the "*effective cause*" principle (as there should be no risk of double commission in an exclusive arrangement).
- › For **non-exclusive agreements**, it will depend on the nature of the deal and bargaining power of the parties e.g. if the valuable act is just the initial introduction, a marketing agency may seek to exclude "*effective cause*" or specify that the initial introduction will be treated as, or deemed to be, the effective cause of any subsequent deal (or at least should attract some % level of the commission).

Use precedents / templates carefully

The contract in this case was based on a commonly used Practical Law template introducer agreement, but (as LFC admitted) it was "*poorly drafted*": a definition of *Introduction Period* was missing despite being part of the trigger for commission. If LFC had not won on the "*effective cause*" point, Winlink would have been entitled to the commission because of this error.

Keep good records of active contracts

LFC and Winlink never terminated their agreement (and, it appears, forgot about it). If LFC had not won on "*effective cause*", it could still have avoided payment of commission if it had terminated the Winlink contract once it was clear a Winlink-negotiated deal was not happening.