

NORTHERN TERRITORY RACING COMMISSION

CONCLUSIONS AND PROPOSALS ARISING FROM ISSUES CONCERNING DEALINGS WITH GAMBLER AND ACCOUNT HOLDER IN 2019

Licensee:	BetEasy Pty Ltd
Heard Before: (on papers)	Mr Alastair Shields Ms Amy Corcoran Ms Cindy Bravos
Date of Decision:	18 October 2021

The Northern Territory Racing Commission (**the Commission**) has carefully considered the detailed submissions provided to it by BetEasy Pty Ltd (**BetEasy**) dated 18 May 2021 and 9 July 2021 (**Submissions**) in response to issues raised by the Commission arising from BetEasy's dispute (**Dispute**) with a gambler (**Gambler**) and an account holder (**Account Holder**), despite the Dispute being privately settled by the parties in April 2021.

These conclusions and proposals are based on the material contained in the Submissions and on documents and telephone recordings previously given to the Commission by BetEasy.

Drafts of these conclusions and proposals were supplied to BetEasy for comment before their finalisation, as a matter of procedural fairness to BetEasy, and BetEasy's comments have been taken into account in this decision. The Commission has also sought comment from the individuals named in this document, both through BetEasy and directly, but has not received any response from them.

Context

As was apparent to BetEasy, the Commission was concerned by some regulatory, procedural and operational issues revealed by the Dispute, even ahead of determining the various disputed questions of fact. The issues of concern arose from the circumstances of the transactions, the outcomes faced by the gamblers and by the licensee, and information revealed by primary documents and telephone recordings supplied to the Commission by the parties. Some of the Commission's issues of concern were referred to in a letter to BetEasy dated 13 April 2021. Those issues have been addressed in the Submissions.

While the Commission is pleased that the parties settled the Dispute, it remained interested to examine the issues of concern. The Commission therefore resolved to investigate and evaluate the issues through use of its general statutory powers (rather than its dispute resolution power). It is grateful to BetEasy for its Submissions. A large number of telephone call recordings were provided to the Commission by BetEasy during the course of the Dispute and these have been listened to carefully by the Commission.

Factual background

The following factual background sets out some relevant events and circumstances that have given rise to the Commission's concerns that are not disputed; they are acknowledged by BetEasy.

Gambler was a self-excluded customer of CrownBet, BetEasy's predecessor. His self-excluded status was known to BetEasy and BetEasy's affiliates John Dow and Jamie Myers. Those affiliates, and more significantly Dow, communicated with the Gambler about resuming betting and facilitated the opening for the Gambler of a BetEasy account in the name of the Gambler's partner, the Account Holder. In Dow's initial contact with the Gambler which was made via sms on 11 January 2019, Dow identified himself to the Gambler as being from BetEasy. The Account Holder's personal details and copies of her identity documents were supplied by the Gambler to Dow. Dow arranged the opening of the account, selected the username and password and supplied the Account Holder's details to the BetEasy account opening team for the purposes of online identity verification. The account was opened on 15 March 2019. The betting on the account was conducted by the Gambler.

The Gambler and Dow communicated about the Account Holder account, and the Gambler sought and received free bets assigned to the account by Dow.

Dow communicated frequently with BetEasy telephone staff regarding the Account Holder account and either held himself out to be a staff member during those calls or otherwise was assumed by staff as a person who worked for BetEasy's Melbourne office or in "business development".¹ Staff generally complied with Dow's requests or instructions.

BetEasy communicated with the Account Holder by sending her an email notification of the account having been opened, to which it received no response. Within 24 hours of account opening BetEasy staff identified a possible link between the account and the Gambler, that being a shared residential address. Other emails were sent to the supplied email address.

Initially betting through the account was funded mostly by free bets arranged by Dow but later large credit card deposits were made into the account. Following BetEasy's customer security staff detecting a link between the Account Holder and a permanently self-excluded customer on 16 March 2019, withdrawals on the account were suspended pending identity verification of the Account Holder. A copy of the Account Holder's credit card and I.D. was supplied to the relevant BetEasy staff by Dow. A telephone identity check was conducted on 21 March 2019 upon an inbound call from a woman who stated that she was the Account Holder. The discussion during the call satisfied BetEasy that the Account Holder's identity was verified, despite some answers to BetEasy's questions being incorrect. Gambling continued involving larger amounts funded by a mixture of deposits and free bets. On one occasion the account password was reset at the instigation of Dow as the Account Manager. Ultimately gambling losses of \$719,350 on the account by the Gambler were sought to be recovered from BetEasy by the Gambler and the Account Holder. BetEasy reported the issue to the Commission in July 2019 and in August 2019 the Gambler and Account Holder submitted the dispute to the Commission. BetEasy denied liability to repay the claimed gambling losses. The dispute was settled between the parties on confidential terms in April 2021 on the eve of a scheduled four day hearing by the Commission.

¹ Examples: Telephone call recordings on 15.03.19, 16.03.19, 21.03.19, 23.03.19 and 9.04.19

BetEasy's proposed conclusions

In its 18 May 2021 Submission BetEasy contended that the Commission should "conclude that there is a reasonably arguable case that:

- a. *BetEasy had in place at the relevant time appropriate systems and processes for the identification of responsible gambling and fraud/AML issues;*
- b. *those systems were deliberately circumvented by the complainants with the assistance of Mr Dow in a way that disguised the fact that the [Account Holder's] Account was actually being operated by a self-excluded customer;*
- c. *Dow and Myer were not BetEasy's employees and, if they were BetEasy's agents at law, they acted outside the scope of their agency as to the opening of the [Account Holder's] Account and [the Gambler's] betting through that account; and*
- d. *[The Account Holder] verified the Account (and [the Gambler's] betting through that account) on 21 March 2019, prior to the complainants accumulating the gambling losses which were the subject of the Dispute."*²

The Commission's observations on these propositions are outlined in the sections below.

The Commission is unable to reach conclusions **a** and **d**.

It acknowledges a reasonably arguable case in respect of conclusion **b**, but also concludes that there is a reasonably arguable case that BetEasy could have done more to minimise the risk of its systems being circumvented.

It acknowledges a reasonably arguable case in respect of conclusion **c**, but also concludes that there is a reasonably arguable case that BetEasy did not do enough to minimise the risk of Dow acting as he apparently did. It also raises a systemic concern, discussed below, that the licensing regime should unconditionally expect responsibility for affiliates to be accepted by the relevant licensee.

BetEasy also submitted "that the Commission should find that there is a reasonable argument that the betting activity on the [Account Holder's] Account did not raise 'red flags'."³

For the reasons set out below, the Commission is unable to reach that conclusion, and is inclined to the contrary view. Quite apart from red flags, the Commission can identify simpler breaches of BetEasy's responsible gambling obligations.

Affiliates generally

The Commission is concerned where licensees conduct important parts of their business with or through affiliates, but seek to disown responsibility for their actions. There would be a weakness in the system if a licensee enabled the work of an affiliate, but did not accept sufficient responsibility for its actions.

² Submission 18 May 2021 [1.12].

³ Ibid [8.15].

BetEasy states that the "*circumstances surrounding this matter are in equal parts unusual and unfortunate*."⁴ The Commission shares that view, and notes that BetEasy was not a disinterested observer. BetEasy holds a licence which entails obligations in relation to the conduct of its business.

In this matter the affiliate, with the authority of the licensee, arranged critical elements of the "*circumstances*", including account opening, account changes and the granting of free bets, which BetEasy has said were subject to monitoring by it.⁵ The Commission has not seen any evidence that the monitoring was in fact carried out or was in any way effective, assuming that a purpose of monitoring would have been, or should have been, to minimise the prospect of any "*fraudulent enterprise*" or transacting contrary to the generally accepted norms of responsible gambling behaviour.

Affiliate John Dow

BetEasy has stated that affiliates:

1. *Generally* were not conferred any authority, privileges, access or roles beyond those set out in the documented Affiliate Terms;⁶
2. *Ordinarily* did not deal with customers in relation to the management of their accounts, or with BetEasy's customer service team, and were not authorised to open accounts;⁷
3. *Occasionally* were assigned as the account manager for a client or account;⁸
4. *Ordinarily* did not have access to customer information such as account numbers, usernames and passwords;⁹
5. *Rarely* played any role in opening an account other than providing a hyperlink to allow the client to open their own account;¹⁰
6. *Ordinarily* were not given a BetEasy email address;¹¹ and
7. *Ordinarily* were not given access to BetEasy's premises.¹²

The powers and privileges of John Dow fitted every exception to the general and ordinary scheme of affiliates,¹³ so much so that he was a different type of affiliate and arguably something more.

Dow was designated by BetEasy as an account manager,¹⁴ with authority to offer various free or bonus bets,¹⁵ and "*could negotiate additional bonuses for a particular customer*".¹⁶ In these activities he was, apparently, monitored by BetEasy.¹⁷ He was cloaked with the ostensible authority of BetEasy.

⁴ Ibid [11.1].

⁵ Ibid [2.10] and [2.14].

⁶ Ibid [2.5].

⁷ Ibid.

⁸ Ibid [2.8].

⁹ Ibid [2.9].

¹⁰ Ibid [2.11].

¹¹ Ibid [2.15].

¹² Ibid [2.16].

¹³ Ibid [2.10],[2.12],[2.14] and [2.17].

¹⁴ Ibid [4.4a].

¹⁵ Ibid [5.1].

¹⁶ Ibid [4.4b].

¹⁷ Ibid [2.10] and [2.14].

The Commission considers it would be instructive to be informed as to who decided to confer such powers and privileges on Dow, and why? Such enquiry would be assisted by release of a copy of the business acquisition agreement in respect of Punting Pal, entered between Dow and BetEasy.¹⁸

It appears from telephone recordings that Dow was also permitted to use accounts he set up in his name for use by other persons. Of significant concern to the Commission was Dow's telephone conversation with BetEasy staff¹⁹ to close an account "under his name" that he "was using for a client". This conversation did not appear unusual to the BetEasy staff member speaking to Dow who even clarified which of his accounts Dow was referring to with "is it... does it have funds in that one?" He told the staff member he had now set up an account for that "bloke" and asked to "withdraw that money?" Dow further explained to the staff member that "Matt... Matt knew all about it but I put too much money in there." After placing Dow on hold the staff member later returns to the conversation advising Dow that she would "have that one sorted out for you" and confirmed that the refund was to go back to his bank account listed on that account.

The Commission considers that this arrangement does not comply with responsible gambling protocols nor BetEasy's own terms and conditions as addressed below.

The Commission also considers that it would be dishonourable for BetEasy to not accept responsibility for Dow's actions as an agent in relation to BetEasy customers.

BetEasy has submitted that Dow's knowledge should not be attributed to BetEasy as a matter of law, because "*the usual presumption that the knowledge of an agent is to be imputed to their principal is displaced in at least two contexts relevant to this case*".²⁰ One such context of exception is said to be that "*knowledge will not be imputed where the agent obtains that knowledge in the course of engaging in a fraud against their principal*".²¹ On our understanding the applicable law is not that simple. The Federal Court has expressed the test this way:

*The exception to this rule is where the [agent] is acting totally in fraud of the company, that is, where all the [agent]'s activities are directed against the interests of the company, and not partly for the benefit of the company. If the [agent] is guilty of fraudulent conduct which is not totally in fraud on the corporation, and by design or result the fraud partly benefits the company, the knowledge of the [agent] in the transaction will be attributed to the company.*²²

Viewed this way, BetEasy could be taken to have the knowledge of Dow because Dow's activities generated significant revenue for BetEasy.

The Commission's purpose in making the above observation is not to purport to rule on the applicable law, but simply to note that the courts can take an approach that that would see a principal liable for the activities of a wayward agent. The Commission is also not in a position to make a finding about whether BetEasy had any actual knowledge of the "*fraudulent enterprise*" prior to the complaint that was lodged with it and the Commission.

¹⁸ Ibid [4.3].

¹⁹ Telephone call recording of 4.04.19

²⁰ Ibid [10.10].

²¹ Ibid.

²² *Beach Petroleum NL & Anor v Johnson and Ors* (1993) 115 ALR 411 [22.34] with 'agent' substituted for 'director' in the above quote to aid readability.

The Commission's view is that a licensee should accept responsibility for the activities of its affiliate, and particularly so in a matter as unusual as this. An unwillingness to do so does not reflect well on a licensee.

Account opening and account security

The following aspects of the interactions between the Gambler, the Account Holder, Dow and BetEasy are of concern to the Commission:

- a) The username and password for a customer account was selected by a third party, not by the customer;²³
- b) A BetEasy staff member was untroubled to enter an address in the system in order to open an account which was not that of the customer's but that of an affiliate²⁴;
- c) A password was reset by a third party;²⁵
- d) A credit card associated with a customer account was supplied through a third party.²⁶

These unchecked actions contributed to the "*fraudulent enterprise*" about which BetEasy now complains, yet were permitted and tolerated by its systems and processes. Those actions were possible even in relation to a customer account that was found (by a separate system process) to have an identified apparent link to a self-excluded customer.²⁷

The Commission is also concerned by the degree of rigour and insufficient effectiveness of the telephone verification check that was conducted to un-suspend the account at one juncture.²⁸ The Commission is particularly concerned in the circumstances that the Account Holder's account had been linked to a permanently self-excluded customer, the amounts being wagered on the account were large, and that - as stated by BetEasy staff to Dow - it was common for men to open accounts under a woman's name to gamble.²⁹

For each interaction, the process and safeguards should have been stronger and more onerous.

The Commission notes that some broader legal obligations are attracted by the above customer interactions.³⁰

BetEasy is subject to the *Privacy Act 1988* (Cth), which requires compliance with the Australian Privacy Principles (**APP**). APP 3.6 requires that an entity must collect personal information about an individual "*only from the individual*" unless required or authorised otherwise by law or unless "*it is unreasonable or impracticable to do so.*" A number of other APPs are relevant to the practices of concern to the Commission.

²³ Submission [2.12].

²⁴ Telephone call recording of 15.03.19; noting that the affiliate's address was not used because the BetEasy staff member could not find the address when he was searching online for it.

²⁵ Ibid [9.3].

²⁶ Ibid [2.12].

²⁷ Ibid [10.27].

²⁸ Ibid [1.8c] and [10.36]-[10.37].

²⁹ Telephone call recording on 21.03.19 [1441hrs]

³⁰ Compliance with applicable law is a requirement of Sports Bookmaker Licences, condition 4.

The AML/CTF legislation and rules require BetEasy to have an effective system of identifying and verifying the identity of customers.³¹ This involves more than verifying the identity of a person who is subject to identity processing; it requires the identification of the actual person who is to be in the customer relationship. Rule 4.2.2 of AUSTRAC's *Anti-Money Laundering and Counter-Terrorism Financing Rules (AUSTRAC Rules)* requires that a reporting entity be reasonably satisfied "*that **the customer** is the individual that he or she claims to be*" (emphasis added).

The customer verification that was undertaken in relation to the account seemed to be flawed from its first step. A 'Green ID' process was applied to someone's documents in purported compliance with the company's AML/CTF Program,³² but that process relied on a third party's representation that the person was to be a customer. In the absence of verified authorisation by the customer of the intermediation by the third party, there arguably was not effective customer identification. Part 4.11 of the AUSTRAC Rules requires the collection of evidence of a customer's authorisation of an individual to act as their agent for customer identification purposes.

The Commission is concerned that, in the circumstances, BetEasy's AML/CTF Program may not have been complied with or was ineffective.

'Red Flags'

BetEasy identified the link between the new active account and the former self-excluded customer's account.³³

It also apparently analysed the betting activity on the active account.³⁴ However the analysis of the betting activity seems to have been viewed from the perspective of a regular customer. It appears that the link to a former self-excluded customer's account did not feature in the analysis of betting activity; the analytical perspectives were disjunctive. While hindsight does assist, the Commission considers it reasonably arguable that a real time fusing of all information could have led to sporadic transactional activity being viewed in a different light.

The Commission sees a process deficiency in BetEasy not making RSG reports³⁵ available to the staff members who undertook analysis of turnover activity.

The link between the new active account and the former self-excluded customer's account should have been made known also to the persons responsible for conferring, approving and monitoring free bets for the account holder.

During a number of telephone calls with BetEasy customer service staff regarding the Account Holder account, Dow referred to the Account Holder as "they" or "him" rather than "she" or "her" and in one conversation Dow said her "husband bets on the account and the husband is a gold VIP".³⁶ Such 'slips' were completely ignored by staff despite BetEasy having linked the Account Holder's account with a former self-excluded customer's account.

³¹ The federal legislation is a law in force in the Northern Territory with which BetEasy must comply under condition 5 of its Sports Bookmaker licence.

³² Submission [10.20] and [10.49].

³³ Ibid [1.8b] and [10.27].

³⁴ Ibid [8.8] to [8.14].

³⁵ Ibid [10.25].

³⁶ Telephone call recordings on 16.03.19, 17.03.19, 20.03.19, 9.04.19 and 14.04.19

In the Commission's view this further establishes systematic issues with BetEasy's protocols, and non-compliance with responsible gambling policies and even its own terms and conditions which prohibit anyone other than the account holder to bet on the account.

From the telephone discussion recordings between Dow and BetEasy staff³⁷, there is no doubt BetEasy was aware that:

- a) the Account Holder (and her partner) had "two kids dying in hospital with a heart condition" and accordingly in a vulnerable position at the time;
- b) the Account Holder's partner was a permanently self-excluded gambler; and
- c) men often open accounts under a women's name to continue to gamble undetected³⁸.

Further, as mentioned above, Dow referred to the Account Holder as the sole account holder with "they" and also with gender pronouns "him" and "his". This should rightly have raised red flags to BetEasy staff regarding the use of the betting account.

It is clear to the Commission that BetEasy's management ought to have known that Dow was breaching BetEasy's obligations regarding account use and sufficient indication that the Account Holder was not the person betting on the account.

Licence and Code breaches

The Commission's 2016 *Code of Practice for Responsible Online Gambling (RG Code)* contains the following requirements:

"3.1 All new staff engaged in client interaction must complete appropriate responsible gambling training within 3 months of commencing employment. Training should include:

- *identifying problem gambling Red Flag behaviours*
- *...*
- *the operator's self-exclusion policy and processes*
- *answer questions regarding the operator's terms and conditions, both general and for specific types.*³⁹

4.6 Online gambling operators are to ensure that they have in place suitable procedures to ensure correspondence or promotional material is not sent to clients who are excluded from their services or who request that this information not be sent to them.

5 Online gambling operators must offer harm minimization measures to protect the interests of gamblers and their friends and family, that are consistent with the responsible gambling measures cited in this Code.

³⁷ Telephone call recording on 21.03.19 [1441hrs]

³⁸ Telephone call recording on 21.03.19 [1441hrs] BetEasy staff members states: "more often than not, we get a lot of the dudes opening the girls account and their majority using the account"

³⁹ The Commission has previously determined in the decision of *M v BetFair* dated 2 November 2018 that when the RG Code is read as a whole, the requirement for training to identify red flag behaviours must be interpreted so as to require the benefit of that training to be applied in complying with the responsible gambling requirements.

- 8 *Advertising and promotions are to be delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling.*
- 8.6 *Online gambling operators are not to call or otherwise urge non-gambling clients to use their gambling services."*

In the Commission's view BetEasy breached at least the second, fourth and fifth of those requirements by the conduct and outcomes described above.

A breach of the RG Code is a breach of condition 16 of BetEasy's licence, which requires the licensee to comply with any Codes of Guidelines issued by the Commission pursuant to the *Racing and Betting Act 1983 (Act)*.

Condition 10 of BetEasy's licence requires BetEasy "promulgate a set of clearly comprehensible terms and conditions (which shall include betting rules) on all betting contingencies and shall at all times adhere to those terms and conditions in its interaction with its customers". Clause 15 of BetEasy's terms and conditions (General Rules) states:

- "2. *You must not open or attempt to open an Account using another person's identity (including but not limited to using another person's name, date of birth, address, telephone number and email address). You must not access, operate or use or attempt to access, operate or use another person's account.*
3. *If BetEasy reasonably suspects that you have deliberately opened more than one account (either in your name, using an alias or using a third party acting and operating under your direction and control) for any illegal or fraudulent purpose or otherwise in breach of the Terms and Conditions, BetEasy reserves the right to immediately close all of your Accounts and void all bets placed through those Accounts."*

It is clear under BetEasy's terms and conditions that the use of accounts by persons other than the account holder is prohibited. Contrary to these terms and conditions and in breach of Condition 10 of its licence, BetEasy permitted Dow, an affiliate, to open and close an account that was in fact used for another person's wagering activity. BetEasy argues that the terms and conditions bind others but not it as licensee. Even if that is so (there is room for debate), the terms of the licence condition give force to those rules as an obligation of the licensee. To be clear, the Commission is not making a finding that BetEasy breached binding terms and conditions; rather the Commission is finding that it did not adhere to promulgated terms and conditions in its interactions with its customers.

Further, in this case the "you" was BetEasy's own affiliate who was given the designation of an account manager by BetEasy but was also acting on behalf of both the gambler and the person in whose name he opened an account. While BetEasy has submitted that the affiliate acted outside his authority in some of the actions he undertook (see earlier), it has not submitted that he did not have authority to open accounts on behalf of gamblers and account holders.

Commission's conclusions

The Commission has reached the following conclusions:

1. BetEasy breached condition 16 of its licence because it did not comply with the RG Code on multiple occasions.
2. BetEasy breached condition 10 of its licence because it did not adhere to its terms and conditions regarding use of an account by a third party.
3. BetEasy may have breached condition 16 of its licence insofar as it appears to the Commission that BetEasy did not have in place adequate systems and processes for account opening and customer identification to meet its need for effective AML measures, including the inherent need for those systems and processes to withstand wrongdoing, including circumvention, by persons with functions to perform under those systems and processes.⁴⁰ The systems and processes were also inadequate for responsible gambling and fraud prevention purposes.
4. BetEasy did not have in place adequate systems and processes to identify and act on indicators of problem gambling, in part because of a failure to aggregate and comprehensively consider all information available to the business and its business partners.⁴¹

Commission's actions

1. *Penalty*

The Commission imposes a fine on BetEasy of 170 penalty units (\$26,860) under section 80(1)(d) of the Act, for failures to comply with the RG Code. This is the maximum fine that can be imposed, and the Commission regards BetEasy's failures, and the consequences of those failures, to be extremely serious.

The Commission regards it as important to send a strong signal that licensees must do their utmost to ensure compliance with the *Code of Practice for Responsible Online Gambling*, including by ensuring compliance by their affiliates.

Further, the Commission imposes a fine on BetEasy of 170 penalty units (\$26,860) under section 80(1)(d) of the Act, for failures to adhere to its terms and conditions pursuant to condition 10 of its licence. There was a blatant disregard of BetEasy's terms and conditions and accordingly a further maximum fine has been imposed.

The Commission did consider suspending the licence for a period of time but given that the licence is not operational at this time such suspension would have little effect, and therefore determined that imposing monetary penalties would in this instance better demonstrate the seriousness with which the Commission views the matter.

⁴⁰ The Commission will not pursue that enquiry, in part because of the proposed referral to AUSTRAC (below). The Commission will defer to AUSTRAC as the appropriate regulator.

⁴¹ If the current (2019) *Code of Practice for Responsible Online Gambling* had applied at the relevant time it is likely that the Commission would be able to make a finding of further code breaches.

2. Referral to AUSTRAC

The Commission will refer BetEasy's account opening and customer identification practices to AUSTRAC for an assessment of whether BetEasy's AML/CTF Program complies with the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth).

3. Policy response

The Commission proposes to take its concerns in this matter into account when contributing policy advice and recommending stronger regulatory powers in the formulation of new legislation to replace the *Racing and Betting Act 1983* (currently under development by the NT Government). These include preliminary views that:

- a) A licensee must be required to adopt and maintain the strongest possible safeguards in relation to customer account opening, account security and data protection;
- b) Legislation should explicitly and unconditionally assign responsibility for affiliates to the relevant licensee, regardless of the actual contractual arrangements between the parties.



Alastair Shields
Chairperson
Northern Territory Racing Commission

18 October 2021