

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr F
Licensee:	Lottoland
Proceedings:	Pursuant to section 85(2) of the <i>Racing and Betting Act</i> - Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr James Pratt
Date of Decision:	19 March 2019

Background

1. On 20 April 2018, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the Complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, Lottoland.
2. The Complainant states that after receiving misleading information from a Lottoland employee, the Complainant was able to open a wagering account with Lottoland and place three bets totalling \$50 despite the fact that the Complainant is a citizen of a country whose citizens and residents are excluded from opening a wagering account with Lottoland.
3. The Complainant is concerned that had any of his wagers been successful, Lottoland would not have paid out the wagers as winning bets which may have resulted in negative health consequences for the Complainant.
4. Two of the bets resulted as losing wagers prior to the Complainant's third bet being voided as a result of Lottoland identifying that the Complainant was a citizen of an excluded country.
5. The Complainant is seeking payment from Lottoland of \$201 million being the amount he would have won had his third wager been a winning wager. The Complainant is also seeking for the Commission to penalise Lottoland in the amount of \$700 million being the total of the winning wagers for each of the lotteries that the Complainant placed a wager on.
6. In response to the complaint, Lottoland advised the Commission that on 18 April 2018, the Complainant contacted Lottoland via its 'Live Chat' facility to inquire about opening an account. Lottoland advised the Commission that the Complainant, "... also asked if he was able to open an account as a citizen of Sri Lanka whilst living in Perth. Unfortunately he was given the incorrect information that this was allowed".
7. Lottoland advised the Commission that according to their Terms and Conditions, "...customers acknowledge they are not a person on the Excluded List, which by definition includes any citizen of a country currently listed as posing risk according to the Financial Task Force..."

8. Lottoland further advised the Commission that once the account was opened, the Complainant deposited \$50 into the account and then made three bets.
9. On 19 April 2018, after receiving the Complainant's identification documents, Lottoland blocked the Complainant's account and advised the Complainant of this. Lottoland advised the Commission that they voided and refunded to the Complainant a \$15 wager being a wager made by the Complainant that had not yet resulted. Lottoland further advised that a short time later, they also refunded \$35 to the Complainant being for the bets he had placed that had already resulted.
10. Lottoland stated to the Commission that the, *"...error made by the Lottoland agent has been addressed with her and the correct process has been reiterated to all customer service agents"*.

Chronology

11. The Complainant made contact with Lottoland via its 'Live Chat' facility on 18 April 2018 and inquired about how to bet with Lottoland. Lottoland advised the Complainant that he would need to download the Lottoland App and would then need to create an account before he could commence betting with Lottoland.
12. The Complainant then stated to Lottoland that:

My other concern is I'm currently residing in Western Australia. But I'm not an Australian resident. I'm on temporary residence. Do (sic) I eligible to bet?

I'm a temporary resident.
13. The Complainant was asked which country he was from to which the Complainant replied that he was from Sri Lanka but living in Perth.
14. In response, Lottoland advised the Complainant that in order to have his account verified, the Complainant would need to provide, *"...proof of identity and proof of address."* The Complainant responded that he had a Western Australian address.
15. Lottoland then advised the Complainant to visit the Lottoland website and go over the *"...Lotteries and terms and conditions."* The Complainant was advised that if he then wanted to continue that he would need to open a new account. Lottoland then advised the Complainant what information would be required to register and also stated that, *"[b]y signing up to a Player Account you are agreeing to our Terms and Conditions..."*
16. The Complainant asked Lottoland whether he should select Australia or Sri Lanka as his country of residence to which Lottoland advised the Complainant to select Australia.
17. Of relevance are the terms and conditions in place at the time of this complaint which included Term and Condition 1.1 which stated:

Each player warrants at all times that...they are not persons on the Excluded List...

Lottoland is entitled to void a Bet at any time if the Player is found to be or have been in breach at any time of any of these warranties,

(including, for the avoidance of doubt, even after a relevant draw has taken place which would have entitled the Player to certain Winnings except for a breach of these warranties).

18. On the same day, the Complainant opened an account with Lottoland and deposited \$50 into his wagering account. The Complainant then placed a \$30 wager on the outcome of a US PowerBet draw which resulted as a losing wager.
19. On 19 April 2018, the Complainant placed two further wagers being a \$5 wager on the outcome of Keno 24/7 and a \$15 wager on the outcome of EuroMillions. The Keno 24/7 \$5 wager resulted as a losing wager.
20. On the same day, prior to the resulting of the \$15 EuroMillions wager, Lottoland reviewed the Complainant's identification documents which were used to open his account. This review identified that the Complainant was a citizen of Sri Lanka, a country that is listed on the Financial Action Task Force Excluded List utilised by Lottoland as part of its anti-money laundering and counter-terrorism financing compliance processes.
21. On 20 April 2018, Lottoland advised the Complainant in writing that they had closed the Complainant's wagering account in accordance with Lottoland's Terms and Conditions in that, "...Lottoland is forbidden to allow players to register with us who are **Citizens** and/or Residents of any of the countries currently on this list". The list Lottoland was referring to was the Excluded List detailed above.
22. Lottoland advised the Complainant that they were voiding the \$15 EuroMillions wager and would provide a refund of \$15 to the Complainant.
23. Following further discussions between the Complainant and Lottoland, Lottoland also refunded a further \$35 to the Complainant being for the wagers he had placed that had already resulted.
24. In addition, Lottoland repeatedly apologised for the error that had been made that resulted in the Complainant being able to open a wagering account. Lottoland further advised the Complainant that they had raised the issue with the Lottoland employee involved so as to avoid a similar incident in the future.

Consideration of the Issues

25. For the purposes of section 85 of the Act, a bet is not lawful if following an investigation, the Commission declares the bet to be not lawful. In order for the Commission to make a determination in this respect, the Commission must look to amongst other things, the substance of the betting transaction and whether it should be enforced or not. In doing so, the Commission must look at the fundamental qualities of the betting transaction itself including examining whether the bet is one which is permitted by the Act and the terms and conditions of the sports bookmaker's licence which include the terms and conditions of agreements entered into between sports bookmakers and their customers.
26. Where it is the view of the Commission that a contravention of a condition of licence by the sports bookmaker or a contravention of the sports bookmaker's terms and conditions by either the sports bookmaker or the sports bookmaker's customer may be regarded as so serious as to undermine the integrity of the betting transaction

itself, it is open to the Commission to conclude that the betting transaction was not lawful.

27. Sports bookmakers licensed in the Northern Territory have a comprehensive suite of terms and conditions that customers are deemed to be familiar with prior to opening and operating an account with the sports bookmaker. These terms and conditions operate to ensure legislative compliance and the commercial efficacy of the business model of a sports bookmaker.
28. On 18 April 2018, Lottoland agreed to provide the Complainant with a wagering account following the Complainant's agreement to abide by the terms and conditions as set out by Lottoland at the time. These terms and conditions included an acknowledgement by the Complainant that he was not a person on the Excluded List.
29. The Excluded List lists those countries who in the opinion of the Financial Action Task Force pose a risk to the international financial system. The Financial Action Task Force is an international intergovernmental body established in 1989 at the G-7 Summit in response to mounting concerns over money laundering. Its objectives are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.
30. Prior to the opening of the account and as is evidenced in the chronology above, the Complainant was provided with advice by Lottoland to nominate Australia as his country of residence when registering his account. The Complainant however, was also advised to review Lottoland's terms and conditions prior to opening an account and should he decide to register with Lottoland that *"[b]y signing up to a Player Account you are agreeing to our Terms and Conditions..."*
31. It is generally accepted by the Commission that in opening an account, a customer agrees to abide by terms and conditions provided by the relevant sports bookmaker with whom the client is opening an account. The Commission also accepts that this applies equally to the sports bookmaker in that they must also abide by terms and conditions in their transactions with the customer.
32. The terms and conditions that Lottoland had in place at the time of the Complainant's account being opened included verification being made by the Complainant that he was not a person on the Excluded List. As evidenced following the submission by the Complainant to Lottoland of his identification details, this verification was incorrect as the Complainant was a citizen of Sri Lanka, a country listed on the Excluded List.
33. The Complainant went on to place a number of wagers until such time as Lottoland identified that he was a citizen of a country listed on the Excluded List and as a result, immediately closed his account and voided one outstanding wager. All monies deposited into the account (for both the resulted and voided wagers) were refunded to the Complainant by Lottoland.
34. Whilst the Complainant was advised to put Australia as his country of residence by a Lottoland employee prior to the opening of his account, the Complainant was also advised to review Lottoland's terms and conditions prior to registering an account and that by, *"signing up to a Player Account you are agreeing to our Terms and Conditions..."*

35. It is the view of the Commission that despite the advice provided by Lottoland prior to the registering of the account to put Australia and not Sri Lanka as his country of residence, the Complainant was in breach of the terms and conditions of the agreement between Lottoland and himself when he 'warranted' that he was not a person on the 'Excluded List' when registering his account.

Decision

36. In determining whether the bets made by the Complainant were lawful or not lawful, the Commission has looked at the betting transaction itself including examining whether the bet is one which is permitted by the Act and the terms and conditions of the bookmaker's licence which include the terms and conditions of agreements entered into between bookmakers and their customers.
37. Having done so through a review of the wagering account of the Complainant, the terms and conditions of the agreement entered into between the Complainant and Lottoland at the time of the opening of the Complainant's account and associated correspondence including Live Chat records between the Complainant and Lottoland, it is the Commission's view that the Complainant breached Lottoland's terms and conditions when he provided incorrect information to Lottoland through his declaration that he was not a citizen of a country on the 'Excluded List' when registering his account.
38. As such, the Commission is of the view that the bets made by the Complainant were not lawful pursuant to section 85 of the Act. This being the case, had the wagers that were placed been winning wagers (which all three wagers were not), they were bets in the Commission's view that were not lawful in accordance with the Act and as such would not have been payable as winning lawful bets.

Review of Decision

39. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the Act shall be final and conclusive as to the matter in dispute.



Cindy Bravos
Presiding Member
Northern Territory Racing Commission

19 March 2019