

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr A
Licensee:	Hillside (Australia New Media) Pty Ltd - Bet365
Proceedings:	Gambling Dispute for determination by Racing Commission - pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i>
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr Allan McGill
Date of Decision:	21 January 2021

Background

1. On 22 February 2020, the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) pursuant to section 85(2) of the *Racing and Betting Act* (the Act) against the licensed sports bookmaker Hillside (Australia New Media) Pty Ltd which operates the betting platform Bet365.
2. The substance of the gambling dispute is that after Hillside (Australia New Media) Pty Ltd (Bet 365) identified that the complainant was a previously self-excluded person and closed a Bet365 betting account that he had opened, he was able to open a new betting account with Bet365 the following day using the same funding bank account that was used to operate the betting account that had just been closed.
3. The complainant has admitted that when he opened the new betting account with Bet365, he used different personal identification details to that which he used when he opened the betting account that had just been closed. The complainant stated however, that he used the same computer to open the two betting accounts with Bet365, in addition to the same funding method.
4. The complainant has expressed a view to the Commission that sports bookmakers should be able to detect when a person who has self-excluded from using that sports bookmaker's services uses the same funding method to open another betting account, regardless of the fact that the person may have used different personal identification details to create the new account.
5. The complainant advised the Commission that despite Bet365 knowing that he had previously self-excluded himself from using the services of Bet365, it also continued to pay out winnings on betting accounts that he had continued to open in different names after they had been detected. The complainant submits that this encouraged him to keep opening further betting accounts using different identification details. The complainant submits that if a person who is excluded from using a sports bookmaker's wagering services knows that he will not receive any winnings regardless if he has been able to open another betting account using different

identification details, this will discourage that person from attempting to create duplicate betting accounts.

6. Information was gathered from each of the parties involved by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the gambling disputes on the papers.

Consideration of the Issues

7. For many people, gambling is a harmless entertainment. The Commission however, recognises that this is not the case for all people who engage in gambling activity and that in some circumstances, some people are unable to control the urge to gamble despite knowing that it is having a negative impact on their lives. With this in mind and in order to minimise the harm that may be caused by online gambling, the Commission introduced the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016. All Northern Territory sports bookmakers and betting exchanges licensed by the Commission are required to comply with the 2019 Code and are also currently encouraged by the Commission to implement additional harm minimisation strategies not currently contained in the 2019 Code.
8. With respect to the obligation that is imposed on all licensees regarding self-exclusion, the 2019 Code states:

4. Self-Exclusion

Online gambling providers are to make available to any person the option of excluding themselves temporarily or permanently from the provider's gambling service and ensure information on how to self-exclude is available on their website and other platforms utilised by their customers.

The option should also be offered to the person to exclude from all Northern Territory online gambling providers.

4.1 Customer responsibility

The provider's customers will be encouraged to take responsibility for their gambling activity through the online gambling provider's provision of clearly defined terms and conditions, rules, odds and player returns and pre-commitment features.

4.2 Self-exclusion features

- (a) *Online gambling providers must provide self-exclusion features on their website to enable their customers the opportunity to exclude themselves from accessing the provider's gambling products either temporarily (for a specified period of time) or permanently.*
- (b) *The provider must offer self-exclusion via an online process or a form based process, and must ensure suitable internal procedures are in place to have any self-exclusion request dealt with immediately. The*

option for self-exclusion from all Northern Territory online gambling providers must be included.

- (c) In addition to having its own process for a customer to activate a self-exclusion, the online gambling provider must also have in place:
 - (i) procedures or a form that is available to allow non-customers who wish to self-exclude to exclude themselves; and*
 - (ii) procedures that will allow it to process a self-exclusion request on a form developed by the regulator and available from the Departmental website, when lodged at the Department by a person who wishes to self exclude.**
- (d) All self-exclusion actions must be recorded in the Gambling Incident Register.*
- (e) Where a person requests that they be permanently self-excluded for any reason or is permanently excluded by the online gambling provider due to problem-gambling concerns, the online gambling provider must not knowingly permit that person to re-open or open a new account.*
- (f) Where a person requests they be temporarily self-excluded, the online gambling provider must not knowingly permit that person to wager with the provider prior to the expiry of the specified self-exclusion period (whether by opening another account or reactivating or re-opening their original account).*

4.3 Funds paid out

Online gambling providers will ensure all outstanding funds due or in their account are paid out to a customer who has self-excluded, subject to appropriate and necessary checks and verifications and applicable laws.

4.4 Counselling contact information

Online gambling providers will promptly offer customers who seek self-exclusion contact information for appropriate counselling agencies.

4.5 Self-exclusion from other gambling providers

Online gambling providers will ensure customers who have self-excluded are given support and encouragement to seek self-exclusions from other Australian gambling providers.

4.6 Correspondence or promotional material

Online gambling providers are to ensure they have in place suitable procedures to ensure correspondence or promotional material is not sent to any persons who are either excluded from their services, or who request that this information not be sent to them.

9. In order to determine whether a licensee has complied with the self-exclusion provision of the 2019 Code with respect to not knowingly permitting a person that has self-excluded from using its betting services from re-opening or opening a new account, the Commission will primarily examine the actions of the licensee to see if the licensee has done all that it practically could do to detect a customer attempting to again use its betting services despite having been self-excluded from doing so.
10. In this respect, the Commission notes that the complainant has an extensive history with Bet365 having first opened a betting account with the sports bookmaker in 2007. Between 2007 through to 2020, the complainant opened a total of 13 separate betting accounts. The Commission has examined the Bet365 records in relation to each of these betting accounts and notes that as has been candidly admitted to by the complainant, the personal information used by the complainant to register the accounts such as name, date of birth, address, email address and telephone number differs across each account. The Commission also notes that the complainant also registered a number of different debit/credit cards to make deposits to the various betting accounts as well as making deposits to some betting accounts through the POLI payment system.
11. In examining these 13 betting accounts further, the Commission notes that between 2007 and 2011, the complainant opened three separate betting accounts with Bet365 with only one of these accounts being an active account - with the last activity on this account being in 2010. In early 2013, the complainant then opened a new account with Bet365 and actively used this account up until 18 August 2013 at which time the complainant sought to have a six month self-exclusion applied to the account. Bet365 subsequently applied the six month self-exclusion to this account as per the complainant's request, along with the three earlier accounts that had been opened between 2007 and 2011.
12. On 6 July 2015, the complainant created a new account with the surname that he used to register being the only personal detail that was consistent with any of the four previously created accounts. In order to make deposits to this account, the complainant used the POLI payment system. As none of the identity details excepting the surname matched the previous accounts, the complainant was able to use this account to place bets but as the account holder's identity had not yet been verified, the complainant was unable to make any withdrawals. Two days later on 8 July 2015, the complainant amended the date of birth on the account and as a result, Bet365 suspended the account due to it having similar details (being surname and date of birth) to the previous six month self-excluded account. The complainant then provided his driver's licence to Bet365 as which time Bet365 identified that the first name of the complainant was also the same as the previous six month self-excluded account. While the six month self-excluded period on the earlier account had expired, Bet365's internal procedures required that the account could not be used until a 'cooling off' period of 24 hours had expired.
13. The following day, the complainant advised Bet365 that he had a gambling problem and requested that his account be permanently self-excluded. Bet365 applied the permanent self-exclusion to this betting account along with the four earlier betting accounts created by the complainant.

14. Some three weeks later on 29 July 2015, the complainant created a further account with Bet365 with none of the personal details used matching any of the earlier accounts. The complainant again used the POLI payment system to make deposits into this newly created account. As none of the identity details matched the previous accounts, the complainant was able to use this account to place bets but as the account holder's identity had not yet been verified, the complainant was again unable to make any withdrawals. Later on the same day that the account was created, the complainant contacted Bet365 and advised that he had held previous betting accounts with Bet365 that were subject to self-exclusion and as a result, this account was also excluded.
15. The following day on 30 July 2015, the complainant again registered to open a new account with Bet365 however, on this occasion Bet365 detected that he was a self-excluded customer as the complainant used the same first name, surname and date of birth to create the account. As a result, the complainant was unable to use this account to engage in betting activity.
16. Some four years later on 26 December 2019, the complainant again created a new account with Bet365. On this occasion, the complainant used a different first name, surname, address and email address to create the account however, used the same date of birth and telephone number as used to create some of the earlier accounts. These two identification details alone were not enough to trigger a match to previous accounts and as a result, the complainant was able to use this account to engage in betting activity. However, the following day an internal report was created that detected that the telephone number used was the same as that of a previously self-excluded account and as a result the account was immediately suspended and subsequently excluded.
17. On 30 January 2020 and 31 January 2020, the complainant again created new accounts with Bet365 however, as several of the personal identification details used to do so did match previously created accounts, the accounts were excluded a short time later with neither of these accounts being able to be used by the complainant to participate in betting activity.
18. On 20 February 2020, the complainant created another account with Bet365. On this occasion, the identification details used by the complainant to create the account included the same surname, date of birth and telephone number that had been used to create previous accounts albeit that the surname used was an alias that had been used three times before to create accounts and was not the complainant's correct surname. Bet365 has advised the Commission that these identification details alone were not enough to trigger a match to previous accounts and as a result, the complainant was able to deposit to this account using the POLI payment system and then use this account to engage in betting activity. Some two hours later, the complainant contacted Bet365 and advised that he had entered his name incorrectly when creating the account. The complainant provided Bet365 with a copy of his passport and as the identification details on the passport matched the real name attached to the complainant's previously excluded betting accounts, this latest betting account was immediately suspended and subsequently excluded.

19. Two days later on 22 February 2020, the complainant created another betting account with Bet365 using the same surname that he had now used on four prior occasions to create accounts, albeit that this surname was an alias and not his real name. The complainant used his correct date of birth however, all other identification details used were different to all of the previously created accounts. Bet365 has advised the Commission that there was not enough duplicated information to trigger a suspension of the account and as a result, the complainant was able to deposit to this account using the POLI payment system and engage in betting activity. A short time later on the same day, the complainant contacted Bet365 and advised that he was a problem gambler and as a result, the complainant's latest account was also excluded.
20. Bet365 has advised the Commission that:

Our systems are designed to recognise when a customer registers the same details across multiple accounts, however should an individual intentionally create multiple accounts using unique details, this makes it more difficult for us to identify the customer. We are satisfied that we have rigorous verification processes and the relevant measures in place to protect vulnerable customers, however [the complainant] has attempted to manipulate our processes on many occasions which has led to the successful deposits made into four accounts.

To summarise, all of the accounts have since been excluded accordingly and the activity which took place on each has been left to stand, whether the customer was in profit or not. [The complainant] was fully aware that he had previously excluded with bet365 and deliberately used different details in order to circumvent any restrictions which would prevent him from being able to deposit and place bets.

21. In addition, Bet365 has advised the Commission that:

Our standard approach in order to group accounts together as the same individual is to require forename, surname and date of birth to match, along with one more detail(s).

However, we also have extended measures in place for customers with responsible gambling concerns whereby links across other details such as payment details, would flag for review, regardless of whether the names on the accounts match. It is clear from the details registered that [the complainant] has intentionally circumvented the measures we have in place.

[The complainant] requested a 6-month Self-Exclusion on 19 August 2013 and subsequently self-excluded permanently on 10 July 2015. At the point of exclusion customers are made aware that bet365 will do all it can reasonably do to stop them from opening any new bet365 accounts and by self-excluding they agree not to attempt to open any new bet365 accounts during the specified exclusion period. We also strongly encourage customers to seek self-exclusion from other operators as well.

22. The Commission has previously expressed its view that all users of online gambling operators are responsible for their own betting activity and that it is well established that an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. The Commission's role in dealing with gambling disputes involving problem gambling is not to simply rectify self-inflicted economic losses from gambling following the lodging of a gambling dispute but rather, to make a finding as to whether the online gambling operator acted in compliance with the relevant legislation, its licence conditions and the 2019 Code.
23. The Courts have set a very high threshold of responsibility for the gambler as to their own actions and have ruled that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is suggested by the Courts, that only in the most extreme cases of deliberate and gross misconduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.
24. Having examined the complainant's account creation history with Bet365, it is clearly apparent to the Commission that following the complainant permanently self-excluding from Bet365, the complainant continually attempted to open new accounts with Bet365 using various adaptations of his personal identification details.
25. Bet365's terms and conditions state amongst other things, that:

Although bet365 will use its reasonable endeavours to enforce its responsible gambling policies, bet365 does not accept any responsibility or liability if you nevertheless continue gambling and/or seek to use the Website with the intention of deliberately avoiding the relevant measures in place and/or bet365 is unable to enforce its measures/policies for reasons outside of bet365's reasonable control...
26. The Commission however, accepts the complainant's admission that he is a problem gambler who has difficulty in controlling his compulsion to gamble and while he may be in breach of Bet365's terms and conditions, in determining this gambling dispute the Commission must look to see whether Bet365 has done all that it could practically do to detect the complainant attempting to use its betting services despite having been self-excluded from doing so.
27. It is evident to the Commission from the complainant's history with Bet365 as outlined earlier in this decision notice, that when the complainant initially used or later corrected his personal identification details to those that match his government issued identity documents, Bet365 was able to identify that he was a previously self-excluded customer and suspended and subsequently excluded his accounts accordingly, which is in compliance with the 2019 Code.

28. The only occasions of some concern to the Commission are the last two accounts created, the first of which is the account opened on 20 February 2020 that had a false surname that the complainant had previously used, same date of birth and phone number; and the second of which is the account opened on 22 February 2020 which again used the same false surname but the same correct date of birth. While the Commission accepts that due to the false surname having been input by the complainant that the Bet365 data matching algorithm did not detect these two accounts upon opening, the Commission suggests that Bet365 should examine its detection algorithm processes with a view to improving them so as to be also able to detect aliases that have been previously identified as having been used by a self-excluded customer.
29. Having said that though and after having listened to numerous telephone calls between the complainant and Bet365 staff, the Commission would like to acknowledge the ongoing efforts made by Bet365 during its interactions with the complainant during which it continued to refer the complainant to Gambling Help Online and encouraged him to self-exclude from other gambling operators.
30. During the lodgment of this gambling dispute the complainant has expressed a view that despite him having used false identity details when creating accounts with Bet365, Bet365 should have detected that he was a self-excluded customer either through matching of his bank account details or the fact that he was using the same computer. With respect to the account that the complainant opened on 22 February 2020 which triggered the lodgment of a gambling dispute due to the complainant sustaining a loss of \$9,500, the Commission notes that the complainant deposited funds into this account using the POLI payment system. In this respect, the Commission notes that POLI is simply an online payment processor which facilitates a 'pay anyone' internet banking payment from a customer's bank account to a merchant. Online payments are made by the customer to the merchant via POLI and once processed, the customer and merchant are notified of the successful deposit. It is the Commission's understanding that at no time is the merchant itself advised of the customer's bank account details and as such, it does not concur with the view of the complainant.
31. Similarly, the Commission is not persuaded by the complainant's view that as he used the same computer to create the accounts, Bet365 should have been able to detect that the opening of the accounts was being created from the same Internet Protocol (IP) address. In this respect, the Commission has previously expressed its view that while IP address matches may be sufficient to cause inquiries to be undertaken by its licensees into concerns they may have regarding their customers account usage, IP address matching is not an exact science as it is possible for different users in various locations to be allocated with the same IP address.
32. As detailed earlier, the complainant has also submitted to the Commission that as Bet365 paid out his winnings on betting accounts that he had used and which were subsequently matched to him as a self-excluded customer, this encouraged him to keep opening further betting accounts using different identification details. In the respect, the Commission notes that Bet365's policy is that:

Where a customer is able to place bets on an account and is subsequently found to have an existing exclusion on another account, our policy is that all activity will stand win or lose, therefore where a customer wins on the bets placed, we would pay in full.

33. In the view of the Commission, this is a business decision open to Bet365 and is not one which is in breach of any of its licence conditions. Of note is that during the complainant's betting activities through the various accounts, the complainant has made an overall profit of \$10,837.82. It was not until the complainant suffered a loss of \$9,500 through the betting activities associated with the final account opened that the complainant lodged a gambling dispute with the Commission that included raising dissatisfaction about being paid out previous winnings despite his accounts being matched to his self-exclusion.

Decision

34. Section 85 of the Act provides the Commission with the jurisdiction to determine all gambling disputes between a sports bookmaker and its customer regarding lawful betting. In this respect, section 85 sets out the decision making regime for the making of a determination by the Commission as to whether the disputed bet is lawful and provides that a person may take legal proceedings to recover monies payable on a winning lawful bet or for the recovery of monies owed by a bettor on account of a lawful bet made and accepted.
35. On the evidence before it, the Commission is satisfied that given the differing personal identification provided to Bet365 by the complainant when opening the various betting accounts, it is not reasonable to expect Bet365 to have identified each account at its creation. Nor in the Commission's view, given the manner in which the POLI payment system operates, is it reasonable to expect Bet365 to have detected that the complainant was using the same funding method as used on previously self-excluded accounts. The Commission is also of the view that matching accounts via IP addresses alone, is also not a reliable methodology to detect self-excluded customers who are attempting to open new betting accounts with the same provider.
36. On the weight of the evidence before it and as detailed above, the Commission has determined that all bets struck during the life of each of the betting accounts with Bet365 are lawful and that all of the complainant's resulted bets - win or lose, should stand. Given this, the Commission is not of the view that the complainant is entitled to receive a refund of the deposits he made and subsequently lost into the final account opened with Bet365.
37. While making this determination and as detailed at paragraph 28 above, the Commission does recommend to Bet365 that it should examine its detection algorithm processes with a view to improving them so as to be also able to detect aliases that have been previously identified as having been used by a self-excluded customer.

Review of Decision

38. 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

21 January 2021