

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

---

<b>Complainant:</b>	Ms D
<b>Licensee:</b>	Unibet
<b>Proceedings:</b>	Pursuant to Section 85(4) of the <i>Racing and Betting Act</i> – Referral of Dispute to Racing Commission for Determination
<b>Heard Before:</b>	Mr John McBride (Presiding Member)
<b>(on papers)</b>	Mr John Boneham Mr David Loy
<b>Date of Decision:</b>	15 August 2017

---

## Background

1. A hearing into a betting dispute between Ms D and Unibet was convened on Friday, 19 May 2017.
2. The matter was heard before Commission Members John Boneham, David Loy and Commission Chairman John McBride.
3. The Complainant Ms D self-represented at the hearing and had one support person, Mr T, in attendance throughout.
4. Unibet were represented by their head of Customer Service Mr K. Also in attendance through telephone conferencing facility was Unibet's General Manager Mr S.
5. Submissions were heard by the Complainant and both representatives of Unibet referred to above.
6. The Northern Territory Racing Commission hearing brief of evidence was formally received by the Commission and by consent of the parties relied upon as forming the substantive evidentiary material relied on by the parties to this dispute.
7. Oral testimony was invited from the parties but no new evidence or materials were presented outside what had already been received within the hearing brief of evidence.
8. The hearing brief of evidence prepared and collated by the Racing Commission Senior Compliance Officer and Acting Manager Compliance, Gambling and Racing comprised of the following:
  - a) Background Outline and chronology of communications and responses requested by the Racing Commission's dispute investigator.
  - b) Transcripts of call recordings of all relevant exchanges
  - c) Complainant's account history with Unibet.

- d) Copy Complainant's self-exclusion form with Unibet dated 21/3/2014.
- e) Copy correspondence from Clinical Psychologist dated 19/12/2016.
- f) All written responses to investigators requests for information including timeline of events as documented.

## **Facts of the Matter**

- 9. Betchoice Corporation Pty Ltd is licensed in the Northern Territory to conduct the business of a Sports Bookmaker. Unibet operates under this licence.
- 10. On 20 October 2015, The Racing Commission approved the Northern Territory *Code of Practice for Responsible Gambling 2016*, and the *Northern Territory Code of Practice for Responsible Online Gambling 2016*.
- 11. The approvals were published in the Northern Territory Government Gazette, No S103 on 22 October 2015.
- 12. The facts and circumstances as provided by the parties are contained within the brief tendered before the Racing Commission.
- 13. The following is an overview of that brief.
- 14. The parties involved in this dispute are Ms D and Unibet.
- 15. On 10 November 2016, Ms D lodged a gambling dispute alleging she was able to gamble during a 5 year self-exclusion period and requests a refund of \$58,670.
- 16. On 11 November 2016, the Commission acknowledged receipt of the dispute and provided it to the bookmaker for their response. All materials obtained from the parties were through e-mails.
- 17. Between the period of 11 November 2016 and 25 January 2017 Ms D provided numerous documents in support of her position, responded to requests for further information and the like all of which are contained in the brief at Annexures 'A' through 'A21'. All of this information was provided to the bookmaker for their consideration and response.
- 18. Between the period of 11 November 2016 and 3 February 2017 the bookmaker provided numerous documents in support of their position, responded to requests for further information and the like all of which are contained in the brief at Annexures 'C' through 'C25'. In addition the bookmaker also provided fourteen (14) telephone recordings from April 2016 through to November 2016.
- 19. Ms D is a self-acknowledged problem gambler and has been receiving treatment from a registered medical practitioner.
- 20. On 21 March 2014, Ms D submitted a witnessed self-exclusion form to the bookmaker for a period of two (2) years which was acknowledged by the bookmaker by making a notation on Ms D' account.
- 21. On 14 April 2016, Ms D requested the bookmaker reopen her account.

22. On 15 April 2016, the bookmaker advises Ms D that there was a five (5) year exclusion period and their preference was for it to remain.
23. On 18 April 2016, Ms D responds by providing the two (2) year self-exclusion form as proof and requested the ban be lifted.
24. On 20 April 2016, Ms D's account is reopened. There is a notation on her account - customer requested two year self-exclusion as per proof but was migrated on a 5 year self-exclusion. Self-exclusion removed (one off and approved by legal/RG)
25. In order to reopen please inform customer about all RG (responsible gambling) tools and that she is fine to start gambling again.
26. Between the period of 20 April and 3 November 2016 there is no gambling activity on the account.
27. Between the period of 3 November and 9 November 2016, Ms D commenced the wagering which gave rise to this dispute.
28. Ms D submits she provided the bookmaker with a five (5) year self-exclusion form on the same day she self-excluded for two (2) years. Ms D is unable to produce evidence of this due to her computer files being corrupted.
29. Conversely the bookmaker claims they only received the two (2) year self-exclusion form and never received the five (5) year self-exclusion form.
30. There is no evidence that the bookmaker had a responsible gambling conversation with Ms D at the time of self-exclusion in 2014.
31. The bookmaker has admitted that they did not have a responsible gambling conversation with Ms D at the time of reopening her account.
32. Ms D has stated she advised the bookmaker prior to self-excluding that she was seeing a psychologist for problem gambling. While Ms D is unable to recall precisely when this occurred she did provide evidence of calls prior to self-excluding.
33. The bookmaker was requested to provide these calls. The bookmaker subsequently advised that due to a system change all call backups prior to February 2015 are unable to be retrieved.
34. It is submitted by Ms D that the bookmaker knew of her gambling problem, had a five year self-exclusion in place and they had a duty to prevent her from wagering while being excluded. It is on this basis that she is seeking the return of her losses.
35. The bookmaker has rejected the request for a refund and submits that they were unaware of Ms D being a problem gambler, she was not self-excluded at the time of her wagering and as such they are entitled to keep the money.

## Consideration of the Issues

36. Relevantly the Commission is being asked to determine whether the wagering activity of Ms D during the period 2nd through 9th November 2016 during which deposits totalling \$58,670.00 were made by her were lawful wagers.
37. There is no dispute over the level of activity, the amounts lodged into the customer account, the wagers placed and the resultant account balance.
38. The issue evident from the materials before the Commission for determination that will ultimately decide whether we determine the wagering during the period 2nd through 9th November lawful is the issue of claimed self-exclusion at that time.
39. In determining that issue we note the bookmaker acknowledges the code for responsible gambling in place in accordance with the approved and published Codes of Practice for Responsible Gambling and Responsible Online Gambling 2016.
40. In accordance with its licence conditions it is acknowledged adherence to this code is required at all times since approval and publication and in accordance with best practice standards for licenced Sports Bookmakers.
41. The Sports Bookmaker acknowledges that it had recorded onto Ms D' account details, a self-exclusion notation of five (5) years from March 2014 and expiring in March 2019. A screenshot of this notation was provided the Commission by the Sports Bookmaker.
42. It was included in a number of screenshots summarised for reference purposes at page seven (7) on the Northern Territory Racing Commission Report (pages 1-25 refers). Marking C on the screenshot dated 15 April 2016 quotes:
 

*“When excluding yourself from gambling, you requested a 5 year exclusion and not a 2 year exclusion as you mentioned. Your account can be reopened again on the 20<sup>th</sup> March 2019 after 10am.*

*We appreciate that you may have made a mistake when submitting this request, but we prefer to leave the 5 year self-exclusion in place just in case it wasn't at the time the option was selected.”*
43. Some five (5) days after the above position stated on Ms D' account screenshot marked D confirms the self-exclusion status removed as a one-off and approved by legal/RG. Marking D on the screenshot dated 20 April 2016 refers:
 

*“RG- customer requested initially a 2 year self-exclusion (as per proof) but was migrated on a 5 year self-exclusion. Self-exclusion status removed (one-off and approved by legal/RG)*

*In order to reopen, please inform customer about all RG tools and that she is fine to start gambling again.”*
44. Marking E on the screenshot dated 20 April 2016 refers:
 

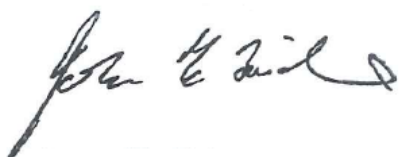
*“Account block is removed – Allowed to use account now.”*

45. It has been now been confirmed at hearing that no information was shared or offered at this time about responsible gambling tools or at all, as noted would be as a precondition to reopening Ms D' account. Rather the account block was removed the very same day. This was in direct contravention to the recorded precondition for unblocking the self-excluded account as well as the responsible gambling code of best practice. There is no evidence before the Commission that any action was taken by the licensee to satisfy its stated requirement.
46. Relevantly and importantly we can find no evidence of any effort made by the Sports Bookmaker to properly satisfy itself or this Commission of the imperative to change its recorded status of a five (5) year self-exclusion status for Ms D.
47. Unibet as we have learnt since that time had not been able to secure the retention of recordings of conversations between Ms D and Unibet about this disputed matter. This arises from a planned migration of data to a new program which failed to retain certain data and relevantly recordings of phone conversations between the Sports Bookmaker representative and Ms D. We are greatly disadvantaged in our deliberations without this material the responsibility of the licenced Sports Bookmaker to have and retain at all times.
48. In this regard the Commission finds the Sports Bookmaker is in breach of condition 20 of the general conditions of licence attaching its operating licence conditions. Condition 20 states:

*“The Sports Bookmaker will ensure that all conversations with customers involving discussions relating to wagers, complaints or disputes, regardless of medium, are recorded on approved recording equipment”*
49. Were there recordings available of the conversations had between Ms D and the Sports Bookmaker's representative, the Commission would have the benefit of same to hear and more easily determine and verify the parties recorded exchanges about the dispute in issue.
50. The significance of non-compliance with Condition 20 of the Sports Bookmaker's licence for the reasons given is not lost on the Commission. It particularly reinforces the imperative for recordings to be made and retained for occasions when scrutiny of evidence presented before this Commission is required and or relied on by either party to a wagering dispute. The obligation for compliance with Condition 20 rests squarely and at all times with the licenced Sports Bookmaker.
51. The failure to retain data pertaining to this dispute and possibly we suspect other data during a time of planned migration of data to a new program is not an excuse this or any other licenced Sports Bookmaker may rely on to mitigate their licence responsibilities for compliance with licence conditions.

## Decision

52. We find the Sports Bookmaker in failing to record conversations relevant to this dispute has breached condition 20 of its licence conditions.
53. We find the Sports Bookmakers has failed to adhere to its responsibility to the Northern Territory Gambling Code of Practice in so far as the Code of Practice commits gambling service providers to responsible gambling practices with a focus on strong patron protection.
54. In particular we find the recommended practice for the provision of information set out in the Northern Territory Gambling Code of Practice was not followed nor was the Sports Bookmaker's own precondition expressed to be a requirement and precondition in order to reopen the self-excluded customer's account, found to have been adhered to.
55. Removing the account block on Ms D' account without evidence of any adherence to such preconditions and Code of Practice requirements shows a clear disregard of the Sports Bookmaker's obligations in the circumstances and for these reasons the bookmaker must not be permitted to profit from same by retention of the account holder's deposits.
56. We find Ms D remained a self-excluded customer of the Sports Bookmaker at the time of her gambling activity between the period 3 November 2016 to 9 November 2016 and beyond. The wagers taken by the Sports Bookmaker from Ms D about this time were therefore in contravention of the bookmakers licence conditions and Code of Practice for responsible gambling obligations and were therefore unlawful wagers. The deposits made totalling \$58,670.00 by Ms D we conclude to be unlawful wagers.



**John McBride**  
Chairperson  
Northern Territory Racing Commission

15 August 2017