

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr G
Licensee:	Lottoland Australia Pty Ltd
Proceedings:	Pursuant to section 85(2) and (4) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Ms Amy Corcoran (Presiding Member) Mr James Pratt Mr Allan McGill
Date of Decision:	21 March 2019

Background

1. On 16 October 2017, pursuant to section 85(2) of the *Racing and Betting Act* (**the Act**), Mr G (**the Complainant**) lodged a gambling dispute against the registered bookmaker, Lottoland Australia Pty Ltd (**Lottoland**).

2. Section 85(2) of the Act states:

85 Legal proceedings in respect of bets

(2) Where a dispute relating to lawful betting occurs between a bookmaker and a person, the dispute shall be referred by the bookmaker, and may be referred by the other party to the dispute, to the Commission.

3. The dispute relates to a United States 'MegaMillions' lottery draw conducted on Friday, 13 October 2017 at 11.00pm ET (United States Eastern Time). The Complainant claims he lawfully entered the draw with Lottoland before the advertised cut-off time and successfully nominated all numbers in the United States (**US**) lottery draw entitling him to a share of \$USD50,000,000. The Complainant seeks a determination from the Commission that his bet placed on 13 October 2017 on the lottery held the same day was lawful.

4. This determination is sought pursuant to Section 85(4) of the Act which states:

(4) The Commission shall hear and determine all disputes referred to it under this section.

5. Lottoland submits that the Complainant placed the bet after the lottery had been drawn on 13 October 2017 and therefore he placed a lawful bet on the following draw held on 18 October 2017 and is not entitled to the money claimed.

6. Both parties, over the course of a 6 month investigation of the complaint by Licensing NT, provided information and materials to support their respective arguments. This, as well as some separate investigations by Licensing NT, was then collated by the Investigator at Licensing NT and provided to the Racing Commission by way of a report. Pursuant to section 85(3) and (4) of the Act, a

hearing was conducted by the Racing Commission on 5 June 2018 before Commissioners Mr John McBride, Ms Cindy Bravos and Mr David Loy. Unfortunately, the tenure of Mr McBride and Mr Loy as members of the Racing Commission expired prior to a decision being issued in this matter.

7. Accordingly, after new members of the Racing Commission were appointed by the Minister in August and September 2018, this matter was re-delegated to a new panel of Commissioners to determine on the papers. The papers in this matter include:
 - a. the Investigator's report to the Racing Commission which was tendered by Licensing NT at the hearing on 5 June 2018 as Exhibit PG1 and was unopposed by both parties (**the Report**);
 - b. the transcript of the hearing held at the Darwin Local Court on 5 June 2018 (**the Transcript**);
 - c. the written submissions of the Complainant dated 5 June 2018 handed up at the hearing on the same date (**Complainant's Written Submissions**); and
 - d. the written submissions of Lottoland dated 5 June 2018 handed up at the hearing on the same date (**Lottoland's Written Submissions**).
8. In summary, the Complainant's case is:
 - a. on 14 October, the Complainant sought to place a bet on the 'MegaMillions' lottery draw (**Draw 2129**) through Lottoland's website which was being drawn in the United States at 11.00pm United States Eastern Time (**ET**) time on 13 October 2017;
 - b. the website of Lottoland advertised the MegaMillions draw time as 11.00pm ET being "1pm AEST / 3pm AEDT" but did not specify the cut-off time for acceptance of bets;
 - c. the Complainant entered the desired bet and placed it into his shopping cart with the intention to wager on the outcome of Draw 2129, however he did not finalise the transaction at that time as he had to leave the computer briefly to go to the bathroom due to illness;
 - d. the Complainant returned to complete the transaction at 11.27am Australian Western Standard Time (**AWST**) (which was prior to Lottoland's advertised draw time of 3pm AEDT, being 12 noon AWST) and the bet was accepted by Lottoland's website - at no time did he observe any advisory pop-ups or information advising him the bet had not been accepted for Draw 2129;
 - e. unknown to the Complainant, when he placed the bet, Draw 2129 had already been drawn and despite accepting his bet, Lottoland moved his bet to the next draw of the MegaMillions lottery on 18 October 2017 (**Draw 2130**);
 - f. although during the hearing the Complainant accepts that his bet was placed after Draw 2129 had been drawn, he submits that the bet was lawful because:
 - i. it was placed prior to the draw time *advertised* on Lottoland's website for the lottery draw; and

- ii. at no time did the website indicate that the draw was closed or notified the Complainant that his bet would be placed in a different draw.
9. Lottoland submit:
- a. the bet in question was paid for and submitted by the Complainant at 11.27am AWST on 14 October 2017 which was 27 minutes after the MegaMillions lottery draw in question (**Draw 2129**) had been drawn;
 - b. as the Complainant placed his bet after the lottery draw had taken place, the bet went on the next draw being Draw 2130 taking place on 18 October 2017 in accordance with clause 10.6 of Lottoland's Terms and Conditions;
 - c. the Complainant's bet on Draw 2130 was not a winning bet; and
 - d. Lottoland's Terms and Conditions in any event provide for this situation:
 - i. *"instructions to accept or the apparent acceptance of a bet after the start of a specific draw or a draw that has actually occurred will not be valid, irrespective of any automatic confirmation, that may be generated via email or the Website, or irrespective of a wrong deadline displayed on the Website."* [Clause 10.6]
 - ii. *"A Player is not entitled to claim any Winnings or receive a payout from Lottoland and/or Lottoland may at its discretion decide about the validity of a Bet or a Player's entitlement to Winnings or void a Bet if i. Bets were placed after the relevant deadline or after the start of the relevant draw..."* [Clause 12.1(i)].

Consideration of the Issues

10. It is well established by both the Courts and the Racing Commission that the relationship between a bookmaker and client is one firmly set in the law of contract. As held by Commissioner Timney in the matter of *Mr L v IASbet*, 13 February 2013 at [30], "...the striking of a wager between a bookmaker and a punter is an agreement founded in contract law".
11. It is also long established that it is the responsibility of the client to ensure they are conversant with the rules and contingencies upon which they are wagering. Bookmakers require all clients to acknowledge and accept their Terms and Conditions prior to being able to open an account with them.

Time of the bet and lottery draw

12. The MegaMillions lottery is drawn at the same time every Tuesday and Friday in the United States, being 11.00pm ET in the US. Lottoland's website advertised the time of the MegaMillions lottery draw times as: *"Tue & Fri in the USA at 10.59pm ET (Wed & Sat 1.00pm AEST / 3pm AEDT)"*.
13. Lottoland submitted that bets are cut-off 1 hour prior to the MegaMillions lottery draws which *"ensures all the bets placed with Lottoland are appropriately insured or hedged before the draw."* It was accepted by the Complainant that the cut-off time

to the MegaMillions draw was 1 hour prior to the draw time¹ however that this was not explicitly specified on the website and he was not aware of it at the time the bet was placed.

14. Lottoland submitted that details of the draw and cut-off times for world lotteries are provided when a client navigates to the world lotteries page and a further countdown is provided to the draw when the client navigates to the “all international lotteries” page.
15. It is apparent from the evidence and also accepted by both parties that the Complainant’s bet was placed at 11.27am AWST (Australian Western Standard Time) on 14 October which was at a time of the year daylight savings had commenced in Australia. Accordingly, the time the bet was placed by the Complainant converts to 2.27pm AEDT (Australian Eastern Daylight Time) being prior to the advertised time on Lottoland’s website for the MegaMillions draw at 3.00pm AEDT (or 12.00 noon AWST).
16. On the day in question, the time that the draw actually took place was in fact 2.00pm AEDT (or 11.00am AWST) and not at the advertised time of 3.00pm AEDT.
17. The Complainant at the hearing advised that despite betting on the site numerous times previously – at least 5 to 6 times - he was not aware of what the exact cut-off time was but accepted that there would have been one stating that “everyone has a cut-off time”. His de facto partner, Ms T, on the other hand, who on her own admission “tends to be Mr G’s (the Complainant’s) voice” was fully aware that there was a cut-off time and was “surprised” the website “accepted his money” as the bet was placed after the cut-off time. Ms T and the Complainant are also business partners and were working in the office together at the time of the bet and she has also been heavily involved in assisting the Complainant with his complaint.
18. The Complainant made a number of submissions that his bet on Draw 2129 (despite acknowledging it has been made after the draw) was in any event accepted by Lottoland and therefore a lawful bet. The Complainant submits that Lottoland at that time it accepted his bet did not advise him his bet was too late for Draw 2129 or had been postponed to the following draw, being Draw 2130.
19. Lottoland submitted that pop-up notification windows appear on the screen to confirm late or delayed bets by stating the bets placed have “been adjusted to correspond to the draw date” or the “cart had been changed in the meantime and was reloaded”. The Complainant asserts that no pop-ups windows occurred advising of such when the bet was placed.
20. When investigated by Licensing NT, they found “the Lottoland production system confirmed that the bets not paid prior to the draw closing time (in this case 1 hour before the actual draw) are allocated to the nearest future draw. The client is notified of this when they next continue the wagering dialogue during their current session ...”. The Complainant argued that the investigator was not able to reproduce the pop-up notifications for the MagicMillions draw itself but another lottery.
21. In the Commission’s view, given these pop-ups are system driven it is unlikely that they would pop-up for some lotteries and not others. However, it is noted that the Complainant placed his bet after Draw 2129 was closed so it may be that unbeknown

¹ Paragraph 6, Complainant’s Written Submissions

to the Complainant, he placed his bet directly on Draw 2130 meaning that no pop-up windows would have appeared on screen.

22. Lottoland's staff member 'Mr A' during a "Live Chat" with the Complainant on 16 October 2017 also stated the above options were possible - either the pop-up windows will appear if the bet was placed in cart prior to the cut-off time but not confirmed until afterwards or if the bet was entered afterwards, no pop-ups would occur as the bet would be placed automatically on the next draw.
23. The Complainant did indicate he was feeling very unwell that day and went to bed immediately after the bet was made to rest and it is conceivable that his illness may have impaired his cognitive abilities. What is clear is that the bet was placed into the cart well after both the cut-off time and the time Draw 2129 actually took place. The bet was placed at 11.27am and the Complainant stated in the hearing that he had placed the bet into the cart, left the computer to go to the toilet before returning 5 to 6 minutes later to complete the checkout process. Accordingly, the bet would have been added to the cart around 11.20am – still well after Draw 2129 had taken place.
24. It is noted that the Complainant received a confirmation email from Lottoland of his bet on Draw 2130 within 1 minute after the bet was placed. The Complainant submitted that he did not see the email until much later as he went to bed unwell.
25. In any event, if the Complainant's submission is correct that they had in fact entered Draw 2129, the Commission does not accept that the automated system of pop-ups would not have worked in this case if they work for other lotteries. These are automated IT systems and were verified by Licensing NT during the investigation.
26. It could be concluded that as the Complainant was feeling very unwell that day, he could have missed either the pop-ups or mistakenly not realised he placed his bet directly on Draw 2130. The Commission is satisfied that Lottoland has systems in place to generate automatic pop-up windows in circumstances such as the Complainant's bet and on the basis of the evidence believes it is more likely that the Complainant had in fact bet directly on Draw 2130.

Terms and Conditions

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 bookmaker. These terms and conditions are most often referred to as 'The Rules' and operate to ensure the commercial efficacy of the business model of a bookmaker.
28. Lottoland's Terms and Conditions for 1 September 2017 are applicable at the time the dispute arose, with Lottoland relying on clauses 10.6 and 12.1 set out below in particular:

10.6. The deadline for participating in a draw is determined for each respective draw and will be posted on the Website.

Valid Bets will be placed on the next relevant draw that takes place, provided that they are placed before the respective deadline and provided that the Player has not selected something else on purpose. The deadline will be displayed on the Website. It is up to the Player to ensure that instructions are given to accept the Bet before the relevant deadline. For

the avoidance of doubt, instructions to accept or the apparent acceptance of a Bet after the start of a specific draw or a draw that has actually occurred will not be valid, irrespective of any automatic confirmation, that may be generated via email or the Website, or irrespective of a wrong deadline displayed on the Website.

12.1 A Player is not entitled to claim any Winnings or receive a payout from Lottoland and/or Lottoland may at its discretion decide about the validity of a Bet or a Player's entitlement to Winnings or void a Bet if

i. Bets were placed after the relevant deadline or after the start of the relevant draw..."

29. The Complainant submits that Lottoland cannot attempt to disclaim liability when it was assumed the responsibility of providing punters with the information as to the draw and cut-off times for the relevant lotteries.
30. What is agreed is Lottoland published the time of the draw correctly as 11.00pm ET in the United States. This time is the same time in the US all year round whether or not they are experiencing daylight savings. Lottoland also provides a countdown to the draw cut-off on their website at the "world lotteries" and "all internationals lotteries" pages.
31. The only area which has been left wanting on Lottoland's website is the conversion of the US draw time of 11pm ET to AEST or AEDT for certain weeks of the year (which the Complainant submits is actually about 8 weeks of the year). Lottoland has explained that the incorrect conversion is due to the complications with daylight savings crossing over in both countries. The conversion on the website takes into account:
- a. *AEDT to EST* (United States Standard Eastern Time); *and*
 - b. *AEST to EDT* (United States Eastern Daylight Time);
- but not*
- c. *AEDT to EDT* (United States Eastern Daylight Time)
32. Clause 10.6 states that a deadline for participating in a draw will be placed on the website. The Commission accepts that for a number of weeks of the year Lottoland's advertised conversion of the draw time is not correct, however the US time is always advertised correctly. Further, and notwithstanding the incorrect time of the draw conversions, a deadline for participating in a draw (or cut-off as often referred) is always readily available from the website by way of a countdown and is easily ascertainable by the punter. It is the Commission's view that although the deadline for participating in a draw is not specifically written on Lottoland's website as "one hour before the draw time" that it is placed on the website by way of a countdown. There was no indication or suggestion that the countdown to the deadline was not otherwise working or incorrect that day.
33. Clause 10.6 further states that a bet is placed on "*the next relevant draw that takes place, provided that they are placed before the respective deadline*". At the time the Complainant submitted his bet, the deadline for participating in Draw 2129 had already passed (being 11am AWST) and therefore his bet was validly placed on Draw 2130 pursuant to Lottoland's Terms and Conditions.

34. Not only had the bet been placed after the deadline for participation, it was also placed after Draw 2129 had in fact been drawn. Clause 12.1 provides for such an event and in such circumstances the Complainant is not entitled to claim any winnings or receive a payout.
35. The Terms and Conditions must prevail in this situation. The Complainant by signing up to Lottoland's website agreed to all of its Terms and Conditions and it is a matter for him to ensure that he is conversant with them.

Decision

36. In accordance with section 85(4) of the Act and on the basis of the information provided in respect of the dispute and for reasons set out above, the Commission declares that the Complainant's bet was placed on Draw 2030 and it was a lawful but not a winning bet.

Review of Decision

37. Section 85(6) of the Act provides that a determination by the commission of a dispute shall be final and conclusive as to the matter in dispute.



Amy Corcoran
Presiding Member
Racing Commission

21 March 2019