

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

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| Licensee: | Centrebet Pty Ltd |
| Complainant | Mr P |
| Proceedings: | Dispute – Sections 18(2)(d) and 148A of the <i>Racing and Betting Act</i> – (On Papers) |
| Heard Before: | Mr Richard O’Sullivan (Chairman) |
| Date of Decision: | 28 April 2014 |

BACKGROUND

- 1) On 9 April 2013 Mr P lodged a letter of complaint over the lack of the duty of care by Centrebet Pty Ltd (“Centrebet”) in allowing him to open a betting account on 1 January 2013. Previously on 14 December 2005 an account was opened with Centrebet by Mr P under the name of Mr Ps, with regular trading activity taking place until 8 February 2010 when he requested his account be closed. At that time he advised that he wanted a permanent closure of his account and that he did not want to have an account again with Centrebet.
- 2) Mr P states in his complaint that in allowing the opening of a new account on 1 January 2013, Centrebet did not exercise duty of care. His complaint refers to his “gambling addiction” and states: *“I accept that I have and will always have a problem with gambling and need to totally abstain and refrain from even a small single bet similar to alcoholics.”*
- 3) While the matter is not a betting dispute pursuant to Section 85(2) of the *Racing and Betting Act* (“the Act”) Mr P has linked his complaint over alleged lack of duty of care to his condition in having a problem with gambling. As Mr P has referred to his condition as *“having a problem with gambling”*, an issue for the Northern Territory Racing Commission (“the Commission”) to determine becomes whether Centrebet has met its obligations under the Code of Practice for Responsible Gambling (“the Code”), a Code which has been introduced through gazettal.
- 4) Section 148A of the Act provides for the Code which all NT licensed Sports Bookmakers must adhere to and states:

148A Codes of practices

- (1) *For the purpose of providing practical guidance to bookmakers on any matter relating to this Act, the Commission may, by notice in the Gazette, approve a code of practice.*
- (2) *A code of practice may consist of a code, standard, rule, specification or provision relating to matters in this Act formulated, prepared or adopted by the Commission and may apply, incorporate or refer to a document*

formulated or published by a body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.

- (3) *A notice under subsection (1) must indicate where a copy of the code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public and the times during which it may be inspected.*
- (4) *A bookmaker must not contravene or fail to comply with a code of practice approved under this section.*
- 5) Betting Inspector Mark Wood's investigation report, including account details obtained from Mr Anthony Waller, (Finance Director and Legal Counsel, Sportingbet Pty Ltd, parent company of Centrebet) was submitted to the Commission at its meeting of 18 March 2014 at which it was determined that the Chairman would consider the matter and write the Decision.

ACCOUNT DETAILS

- 6) An initial account with Centrebet was opened on 14 December 2005 in the name of Mr Ps with an email address of ...@hotmail.com. It is evident that Centrebet subsequently ascertained the full and correct surname of the account holder as in a log entry in May 2008 and again in September 2009; the account holder is identified through the following log entry, "*full name P*".
- 7) The letter of complaint of 9 April 2013 from Mr P refers to losing around \$50,000 in a six month period, through the operation of the initial account opened in the name of Mr Ps. He sought closure of this account and this was complied with by Centrebet on 8 February 2010 when the log entry recorded "*permanent closure, doesn't want to have an account again with Centrebet*".
- 8) There is no evidence or claim that a self-exclusion notice was filled in or lodged by Mr P. The Centrebet website provides for the downloading of a self-exclusion notice which is able to be filled in and submitted by account holders who wish to be self-excluded.
- 9) Following application, a new account was opened with Centrebet on 1 January 2013. This time the full and proper name, Mr P, was recorded on the application and the email address was ...@molnlycke.com, a different email address to that of his former account. It should be noted that the account originally opened on 14 December 2005 was in the name of Mr Ps with an email address of ...@hotmail.com.
- 10) In relation to opening up this new account, Mr P in his complaint refers to "*... I had a lapse and was able to open another account with Centrebet. This time unconsciously I opened up the account in my full legal name Mr P as with the initial account there was a minor issue with using my user name as Mr Ps ...*". The complaint goes on to state "*with this latest relapse the loss has been in excess of \$20,000 and has not only placed strain financially on both my family and myself but caused problems and possible separation from my family*".

"I accept that I have an will always have a problem with gambling and need to totally abstain and refrain from even a small single bet similar to alcoholics".

CONSIDERATION OF THE ISSUES

- 11) The original account was opened in what is apparently the commonly used name by the complainant of Mr Ps. It is not uncommon for migrants to Australia to adopt or modify names to a more anglicised form to enable easier use in the wider community.
- 12) Some eighteen months into the operation and use of the Mr Ps account, Centrebet has identified the client's full name as Mr P, however, the account name was not changed to reflect the full and correct name of the client. Following a request by Mr P, that account was closed on 8 February 2010.
- 13) Mr Waller of Centrebet, has advised that due to the time that has elapsed since this account closure took place, there is no longer a copy of phone records available to identify the exact words used by Mr P in his telephone conversation with Centrebet in which he sought that his account operated under the name of Mr Ps be closed. All that is recorded is the log entry maintained by Centrebet which simply states, *"permanent closure doesn't want to have an account again with Centrebet"*.
- 14) This entry does not indicate that the client is a problem gambler. There is also no evidence that Mr P sought or completed a self-exclusion form as is provided by Centrebet.
- 15) Mr P's letter of complaint refers to advising Centrebet of *"my problem and to close my account and ban me for life"*.
- 16) Given the absence of telephone recordings of the conversation, the Commission gives some weight to the contemporaneous log entry made at the time by the staff member of Centrebet who received the telephone call. When Mr P opened a new account on 1 January 2013, Centrebet's systems did not detect that it was the same person who had previously sought closure of an account and expressed the wish to not have an account again with Centrebet.
- 17) Mr P then recommenced wagering and claimed that he incurred losses in excess of \$20,000 following the opening of this new account.
- 18) The Commission has accepted the complaint and in considering the matter has turned its mind to three related issues:
 - a) The claim by Mr P that the bookmaker has breached its duty of care;
 - b) Whether there has been any breach of the Code and;
 - c) Whether the Commission needs to determine that Centrebet's procedures are adequate and have been followed in the instance where they opened a new account with Mr P.
- 19) In relation to duty of care owed by bookmakers to their clients, Betting Inspector Wood has drawn the Commission's attention to a number of authorities in relation to duty of care connected to gambling or wagering activities. Betting Inspector Wood

has stated that the relevant authorities on duty of care in these circumstances indicate that no general duty of care exists except where exceptional circumstances prevail. He has provided an excerpt from the decision of Spigelman CJ in relation to the matter of *Reynolds v Katoomba RSL All Services Club Limited (2001) NSWCA 234 (20 September 2001)*.

“In my opinion this combination of circumstances is such that no duty of care was owed of the character for which the Appellant contended. The risks were obvious. As Gleeson CJ said with respect to the analogous situation of a participant in sport: ‘The only way to avoid risk of injury is not to play’ (Agar v Hyde at [18]). The Appellant must accept responsibility for his own actions. There was no duty of care. There was no unconscionable conduct.”

- 20) In applying the reasoning of Spigelman CJ to Mr P’s circumstances, the Commission is of the view that Mr P was conscious of the risks involved in re-establishing an account with Centrebet. As Betting Inspector Wood has pointed out in his Investigation Report, a decision of whether a party to a dispute has failed its duty of care is normally within the jurisdiction of the Courts. In this instance the Commission is persuaded by the decision of the NSW Court of Appeal noted above and finds that there were no prevailing circumstances that resulted in the duty of care alleged by Mr P. For that reason the allegation of breach of duty of care on the part of Centrebet must fail.
- 21) In respect of the Code and whether the actions of Centrebet have contravened the Code, the Commission only has the records of Centrebet in relation to the reasons for closure of Mr P’s account in February 2010. The reason for closure maintained in the audit log simply states, *“permanent closure, doesn’t want to have an account again with Centrebet”*.
- 22) Mr P’s complaint refers to his telephone conversation at the time with Centrebet and claims that he advised them of his problem. Inspector Wood’s report states:

“It is arguable an inference may be drawn from the note that a gambling problem may be behind the closure however it is equally arguable that he may simply have been unhappy with the service or the like. On the basis of the evidence available to put to the Commission an allegation that Mr P should have been placed on the Register at that time is hard to substantiate.”
- 23) The Commission concurs with the view of Inspector Wood as in the absence of telephone recordings, the only contemporaneous note taken was the log entry by Centrebet which does not indicate the reason for closure of the account is that Mr P is a problem gambler as defined or interpreted under the Code.
- 24) The third aspect the Commission has determined to consider is whether the actions of Centrebet were at fault in not properly identifying Mr P with the first account he operated.
- 25) Pursuant to Section 18 of the Act the Commission has wide powers in exercising its functions as follows:

18 Powers of Commission

(2) *Without limiting the generality of subsection (1), the Commission may, in the performance of its functions and the exercise of its powers, including powers or function conferred on it elsewhere in this or any other Act:*

...

(d) *do all such acts and things as it considers necessary or desirable for the proper regulation and control, in the interests of the public, of bookmakers, horse-racing, trotting and greyhound-racing; and*

- 26) In response to the complaint Mr Anthony Waller of Centrebet has stated that Centrebet checks the following when opening a new client account:
- a) Name
 - b) Date of Birth
 - c) Email address
- 27) Mr Waller submits that in opening a new account on 1 January 2013, the details provided were different in fields a) and c) to that provided when the initial account was opened in December 2005. However Centrebet did subsequently become aware of the full name of an account opened in the name of Mr Ps but obviously did not change the account details. This has led to the system not picking up or flagging that the person opening the new account was the person who had previously closed an account in 2010.
- 28) The Commission finds that the system used by Centrebet is deficient in allowing the ongoing use of an alias against an account name, particularly as in this case they became aware of the full name and real identity of the client. Under circumstances where the real name had been entered against the earlier account, the system operated by Centrebet would have detected that two of the fields in paragraphs 26) and 27) above would have matched those of the previously closed account. In all likelihood the new account would not then have been opened.
- 29) The Commission finds that the use of an alias by a client to identify themselves is inappropriate and that licensed Sports Bookmakers should use the proper identity of the client in establishing account records. Client identity verification requires a bookmaker to establish the correct identity of a client within ninety days of an account commencing operation and this proof of identity is usually through provision of driver's licence, passport, Medicare card, tax file number etc. It is a shortcoming of Centrebet procedures and a likely breach of the Licence Terms and Conditions approved by the Commission (Clause 19), relating to the requirement to establish the full identity of a client within ninety days of an account opening, that allowed an alias or nickname Mr Ps to be recorded and maintained as the identity of the account operator.
- 30) The Commission finds that while Mr P may have suffered hardship due to his gambling activities, there has been no breach of the Code. Under Responsible Gambling, the Centrebet website conveys information on how to identify and deal with problem gambling, including providing self-exclusion instructions and forms.

The Commission also finds that the alleged breach of duty of care on the part of Centrebet is not made out for the reasons outlined in paragraphs 19) and 20).

DECISION

- 31) That the complaint into the actions of Centrebet lodged by Mr P, while outlining the hardships which have resulted, does not constitute a breach of the Code and therefore the Act by Centrebet as Mr P was not previously (when closing an account and opening a new account) identified as a problem gambler.
- 32) The actions of Centrebet are also not found to constitute a breach of duty of care.
- 33) Centrebet, however, is warned that the practice of allowing the use of an alias by a client is not an acceptable practice and may be in breach of the Licence requirements to know the full identity of a client, as in this case it has led to the opening of an account which otherwise might not have occurred or if occurred, would have been very quickly closed. In future all accounts must be maintained by Centrebet in the full and proper name of a client to avoid occurrences such as have taken place in this matter.



Richard O'Sullivan
CHAIRMAN

28 April 2014