

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr C
Licensee:	Bet365 Crownbet Ladbrokes Sportsbet Unibet
Proceedings:	Pursuant to Section 85(4) of the <i>Racing And Betting Act</i> – Referral of Dispute to Racing Commission for Determination
Heard Before:	Mr John Boneham (Presiding Member)
(on papers)	Mr Andrew Maloney Mr Jim McNally
Date of Decision:	12 May 2017

BACKGROUND

1. On 22 February 2017, Mr C lodged a gambling dispute against a number of bookmakers as detailed above in the licensee section of this determination.
2. It should be noted from the outset that enquiries with Ladbrokes revealed that the activity relating to Mr C's account with them occurred prior to Ladbrokes being licensed by the NT Racing Commission, which commenced on 28 September 2016.
3. Accordingly the NT Racing Commission determines that it has no jurisdiction in the matter of Mr C's wagering activity with Ladbrokes. However, we do note that his account with them has been closed.
4. Mr C is advised that the relevant licensing body in the case of his Ladbrokes account is the Norfolk Island Gambling Authority.
5. It is alleged by Mr C that his gambling activity with the named bookmakers has resulted in him sustaining losses in the vicinity of \$30,000 to \$100,000. Although he was initially unable to accurately quantify the amount or indeed the specific bookmakers with whom he conducted accounts.
6. Further correspondence with Mr C and in turn the bookmakers he subsequently identified a total combined loss of \$20,653.72.
7. Mr C is seeking a refund of all deposits made (he estimates at between \$30,000 and \$100,000).

The law of equity suggests any claim would be to return him to his original position and therefore based on the information provided by the bookmakers would be a claim of \$16,243.72 (after the exclusion of his Ladbrokes account balance).

8. It should be noted that the Commission does not have the power to order bookmakers to effect refunds to clients.

This determination will address the issues around the legality of the wagers, compliance by the bookmakers in their licence conditions and adherence by them to the Northern Territory Code of Practice for Responsible Gambling (The Code) and to the application of common law principles.

9. Mr C has had frequent telephone and email contact with all bookmakers involved and NT Racing Commission investigative staff. This information has been scrutinised by the Members at great length, including transcripts of telephone conversations between Mr C and each of the bookmakers staff.
10. It is clear to the Commission that Mr C does indeed have a gambling problem and whilst not confirmed with his medical practitioner, it would appear that his claims of mental health issues, namely Anxiety Depression Disorder Chromosome 22 Deletion are legitimate.

FACTS OF THE MATTER

11. Over a period of several years Mr C has opened and operated accounts with the following bookmakers, who are regulated by the NT Racing Commission:
 - Bet365
 - Crownbet
 - Sportsbet
 - Unibet
12. His wagering patterns with these bookmakers have resulted in a current net monetary loss of \$16,243.72.
13. Mr C is seeking a refund of all deposits made with the bookmakers, an amount he claimed to be in the vicinity of \$30,000 to \$100,000, although he is unable to quantify the amount.
14. Mr C's claim was lodged with the Commission on 2 February 2017.
15. The Commission appointed one of its in-house investigative staff to gather the relevant information from the bookmakers named and to liaise with Mr C in order to ascertain full details of his claim.
16. This investigative process was commenced immediately on 3 February 2017. An email was sent to Mr C requesting more detailed information, at that time.

17. Of particular relevance, this email contained questions around Mr C's mental health condition, any treatment he was receiving and what date he was diagnosed with the disorder. It also sought advice as to when the various bookmakers were notified of both his disorder and his ongoing treatment regime.

18. On 8 February 2017, Mr C provided the following response:

'Yes I would like a total refund of deposits and total bets on every account from every agency.

I was diagnosed chromosome 22deletion which is a part of many disorders including but not limited to anxiety and depression in January/1995, my parents do not have an exact day.

I see doctor XXX at XXX ph: XXX also seeing counsler XXX XXX ph: XXX.

I am taking medication for this and I am stable at the moment however stress of not being able to get my money back is very tough on me and my mum and dad.

Gambling has made my life very difficult as I mentioned to Glynn on the phone. Adds on TV are very annoying on repeat in some sports games. They need to cut amount of time adds shown on tv in all states of Australia....'

19. On the 1 March 2017, the investigator referred the matter to the relevant bookmakers in an effort to clarify, what was fast becoming a very confused and difficult investigation due to a barrage of disjointed emails from Mr C.

20. The bookmakers provided detailed wagering records and copies and/or transcripts of a number of phone calls from Mr C to Customer Service and Responsible Gambling staff.

21. All bookmaker responses were received by the investigator by 11 April 2017.

22. It should be noted that in his response email of 8 February 2017, Mr C did not address the question as to when or indeed if the various bookmakers were made aware of his problem gambling tendencies, allegedly linked to his mental health condition.

23. To clarify the above point, the investigator asked the client by email on 5 April 2017, "Prior to being allowed to wager with any of the bookmakers did you notify them of your disorder? If so, when and how? Can you please provide evidence".

24. In reply Mr C provided the following response:

"Yes I notified bookmakers but it was too late, I lost all my money as I was not myself. When I told them they closed my account".

25. From this response it is clear that the bookmakers were not aware of Mr C's condition and upon being advised of it, all acted to close Mr C's account.

26. It is also notable that since account closure a number of bookmakers have been contacted on numerous occasions by Mr C requesting reopening of his account, which has all been refused.
27. Indeed on 2 October 2016, Mr C registered a new account with Crownbet using an amended spelling of his given name. This was automatically blocked and no wagering activity took place.

CONSIDERATION OF THE ISSUES

28. In determining this matter the Commission has turned its attention to the following matters:
 - a) Have all bookmakers adhered to their terms and conditions, as set out by the Commission, in their dealings with Mr C?
 - b) Have all bookmakers acted in accordance with the Northern Territory Code of Practice for Responsible Gambling 2016 (The Code)?
 - c) At any time, prior to closure of Mr C's account, did any bookmaker become aware of his problem gambling issues or mental health condition?
 - d) If so did any bookmaker seek to take advantage of Mr C's difficulties?
29. As a result of our exhaustive enquiries with the bookmakers involved it would appear that each did indeed follow all the correct procedures at the time of account opening and during the course of maintaining Mr C's account. We are also satisfied that all wagers were made in the appropriate format.
30. All NT regulated bookmakers are well aware of the requirements of the Northern Territory Code of Practice for Responsible Gambling 2016 (The Code). This Code sets out detailed procedures to facilitate identification of problematic gambling patterns, strict protocols around account opening and identification and the actions to be taken should a bookmaker become aware that a client may have a gambling problem.
31. In this instance as a result of our extensive perusal of recordings of phone conversations between Mr C and various bookmakers, we are satisfied that all the named bookmakers acted appropriately, closing Mr C's account upon notification of a problem.
32. Furthermore, without exception he was offered information relating to support services that he could utilise to assist his rehabilitation process.
33. It is also of note that despite a considerable number of calls, subsequent to account closure, to all the bookmakers involved none has sought to reinstate his closed account, instead once again offering him information on support services available.

34. We then turn our attention to the application of common law in matters such as this where an individual claims diminished responsibility for their gambling activities due to a mental health impairment.
35. A wager between two parties is deemed to be a contract enforceable at law. However, unlike nearly all other contracts a wager is unique in that both parties seek to do damage to each other.
36. In this matter Mr C entered into these contracts with each bookmaker with the intention of inflicting financial damage on them and they in turn on him.
37. As previously mentioned the *Racing and Betting Act* requires bookmakers to comply with the Responsible Gambling Code. The Code places requirements on the bookmaker.

“The Northern Territory community expects gambling sources to be provided in a responsible manner and in harmony with community expectations. This Code sets out certain practises to be adopted by Northern Territory gambling providers in the provision of their services, so as to minimise the harm to consumers that may be adversely affected by gambling”.

38. The Code is also in line with established common law principles of autonomy of the individual in that:

4.1 Patron Responsibility

Gambling patrons will be encouraged to take responsibility for their gambling activity. Gambling providers are to provide patrons who feel they are developing a problem with gambling with the option of excluding themselves from the gambling venue or site.

39. When it comes to problem gamblers the Courts in general and specifically relating to wagering have long upheld the autonomy of the individual. In the current Australian authority of *K v Crown Melbourne Limited* (2013) HCA Court found apposite the decision of Spigelman CJ in *R v Katoomba RSL All Services Club Ltd* (2001) 53 NSWLR 43 at 53 (48) in which his Honour held:

“it may well be that the appellant found it difficult, even impossible, to control his urge to continue gambling beyond the point of prudence. However, there was nothing which prevented him staying away from the club”

Their Honours in *K v Crown Melbourne Limited* went on to find:

25 It is also a circumstance relevant to the justice of the appellant’s appeal to the conscience of equity that the activities in question took place in a commercial context in which the unmistakable purpose of each party was to inflict loss upon the other party to the transaction. Gambling transactions are a rare, if not unique, species of economic activity in a civilised community, in that each party sets out openly to inflict harm on the counterparty.

Invariably the matters before the Courts have involved claims against the operators for pure economic loss based on three distinct causes of action, negligence, breach of

statutory duty and unconscionable conduct under the provisions in the *Australian Consumer Law (Competition and Consumer Act 2010, Schedule 2)* formerly the *Trade Practises Act*. Any decision by the Commission in matters such as these would of course be *ultra vires*, the Commission is bound to consider and apply the common law principles established in those matters.

40. The Commission has also taken guidance in this matter from a previous determination it made on 26 June 2014, in the case of *M v Sportsbet Pty Ltd*.
41. In that matter the Commission found in favour of the bookmaker as it was proven that Sportsbet Pty Ltd had no prior knowledge of the client's mental health conditions and accordingly could not be held responsible for their client's wagering conduct.

DECISION

42. From the authorities above and based on the evidence in this matter it may well be accepted that the client has deliberately sought to wager and has not provided the bookmaker with the requisite knowledge of his problem gambling or of his mental illness. As such the common law principles would ultimately hold him responsible for any losses and as held by Gleeson CJ in *A v Hyde*, "the only way to avoid risk of injury is not to play".
43. All bookmakers identified above are the holders of a Sports Bookmaker's Licence pursuant to the *Racing and Betting Act (NT)* and are therefore a "lawful bookmaker" pursuant to Section 3 of the *Unlawful Betting Act (NT)* making wagers placed with the bookmaker "lawful" in general terms.
44. Section 85 of the *Racing and Betting Act* allows for the Commission to consider legal proceedings in respect of bets.

Specifically Section 85(2) allows for:

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.

To the Commissions knowledge the client has not commenced any legal proceedings in relation to this matter and Section 85 is arguably designed to facilitate such proceeding, however, it would appear the client is requesting a determination and Section 85 (4) places a requirement upon the Commission with the operative word "shall":

85 Legal proceedings in respect of bets

...

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

45. On the evidence before the Commission it is not disputed that the client is a problem gambler or that he suffers a mental illness.

The client has asked the Commission for a determination which might ordinarily be the jurisdiction of the Courts through civil litigation. The client has advised that he has not engaged or sought counsel in relation to this matter however, given the authorities currently on the subject such a fight may prove rather difficult. It would be inappropriate for the Commission to make any judgements or provide advice as to the likelihood of success should he seek to commence civil proceedings.

46. All of the bookmakers have rejected the client's request for a refund and based on the evidence were unaware of his problem gambling and his mental illness.

47. There is no evidence to suggest any of the bookmakers have breached the *Racing and Betting Act* or Regulations, nor have Bet365, Crownbet, Ladbrokes, Sportsbet, and Tatts Group – Unibet breached a condition of their licence or the Code.

Accordingly we find that they have no case to answer in this matter.



JOHN BONEHAM
Presiding Member
Racing Commission

19 May 2017