

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr M
Licensee:	Betfair Pty Ltd
Proceedings:	Gambling Dispute for determination by the Northern Territory Racing Commission (pursuant to section 109Y(2) of the <i>Racing and Betting Act 1983</i>)
Heard Before: (on papers)	Ms Amy Corcoran (Presiding Member) Mr James Pratt Mr Kris Evans
Date of Decision:	19 November 2021

Background

1. On 31 December 2019, pursuant to section 109Y(2) of the *Racing and Betting Act 1983* (**the Act**), the Complainant lodged a gambling dispute with the Northern Territory Racing Commission (**the Commission**) against the Northern Territory licensed betting exchange operator, Betfair Pty Ltd (**Betfair**).
2. Information was gathered from 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 dispute on the papers.
3. The dispute relates to the Complainant's account being 'hacked' by an unauthorised third party using the entire balance to strike seven (7) different bets. These bets were unsuccessful and the Complainant's account balance was reduced to nil.
4. The total value of bets struck from the unauthorised third party is \$1,322.50 and the Complainant is seeking a reimbursement of that amount from Betfair on the basis that 'if an account is hacked the institution [should] protect[s] the customer'.
5. Betfair has acknowledged the bets were not within the Complainant's normal activity and it was probable the account was hacked. However, Betfair submit that in accordance with Betfair's terms and conditions, the Complainant is responsible for all activity on his account notwithstanding it was unauthorised.
6. Betfair confirmed the unusual betting activity occurred on 18 December 2019. That same day, Betfair's risk investigations team suspended the Complainant's account after they detected the unusual activity and sent him as email requesting he contact Betfair to discuss the security on his account. On 31 December 2019, the Complainant contacted Betfair regarding his account suspension and during this phone call, the Complainant confirmed the activity was not his as he was overseas at the time.

Consideration of the Issues

7. The objects of the Act are the promotion of probity and integrity in racing and betting in the Northern Territory; maintaining the probity and integrity of persons engaged in betting in the Northern Territory; promoting the fairness, integrity and efficiency in the operations of persons engaged in racing and betting in the Northern Territory; and reducing any adverse social impact of betting.
8. In furtherance of those objects, section 109Y of the Act provides the Commission with the jurisdiction to determine all gambling disputes between a betting exchange operator 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.
9. In order to further the objects of the Act, the Act provides for the Commission to make rules for the control and regulation of sports bookmakers and in order to do so, the Commission approves the conditions attached to sports bookmaker licenses as well as reviewing and approving the terms and conditions of agreements entered into between sports bookmakers and their customers.
10. Both the betting exchange operator and its customers are bound by the betting exchange operator's terms and conditions when an account is opened and each time a bet is struck.
11. At the time the dispute arose, Betfair's terms and conditions contain the following condition (*italics added*) under Part B – Account Terms and Conditions of Use:

‘Provided that we have been correctly supplied with the account information requested, we are entitled to assume that offers and payments are made by you. You should change your password on a regular basis and never disclose it to any third party. You undertake to protect your username and password in the same way that you would in respect of your bank cards and any failure to do so shall be at your sole risk and expense. *If another person accesses your account, you are solely responsible for all their actions whether or not their access was authorised by you and you hereby indemnify us and hold us harmless against all costs, claims, expenses and damages howsoever arising in connection with the use of or access to your account by any third party.*’
12. It is clear from the above condition that the risk of the account and any unauthorised use of the account is the sole responsibility of the customer.
13. It is noted that the bets were place by an unauthorised third party in relatively quick succession on 18 December 2019 and as soon as Betfair detected the unusual betting activity it acted swiftly to suspend the Complainant's account. In the Commission's view, Betfair did all that was reasonable in the circumstances and can properly rely on its term and condition (set out above) that deems the Complainant is responsible for all activity on his account, including any unauthorised activity.

Decision

14. The Commission is authorised following an investigation, to declare that a disputed wager is lawful or not lawful so far as the requirements of the Act are concerned.

15. The Commission has determined that the bets struck on 18 December 2019 from the Complainant's account (notwithstanding they were made by an unauthorised third party) are lawful and must stand as the Complainant is responsible under Betfair's terms and conditions for that unauthorised activity. Accordingly, there is no outstanding monies payable by Betfair to the Complainant.

Review of Decision

16. Section 109(7) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 109Y(2) of the Act shall be final and conclusive as to the matter in dispute.



Amy Corcoran
Presiding Member
Northern Territory Racing Commission