

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	PlayUp Interactive Pty Ltd
Heard Before: (on papers)	Ms Alastair Shields (Presiding Member) Ms Cindy Bravos Mr Kris Evans
Date of Decision:	17 March 2022

Context

1. On 7 February 2020, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), a customer of the Northern Territory licensed sports bookmaker, PlayUp Interactive Pty Ltd (PlayUp) lodged a gambling dispute with the Northern Territory Racing Commission (the Commission).
2. Following information being gathered from the parties involved by Licensing NT officers appointed as betting inspectors, the Commission determined that there was sufficient information before it to consider the gambling dispute on the papers.
3. Subsequently, the parties came to an agreement and while the Commission is pleased that the parties did ultimately settle the dispute, the Commission remained interested in the matter and determined to finalise its consideration of the matter through the use of its general statutory powers (rather than its dispute resolution power).

Background

4. The allegations raised in the gambling dispute when lodged were that PlayUp:
 - (i) acted in contravention of the Northern Territory Code of Practice for the Responsible Service of Online Gambling 2019 (the 2019 Code);
 - (ii) allowed bets to be placed from a prohibited jurisdiction;
 - (iii) made phone contact with its customer on an unrecorded phone line; and
 - (iv) recorded phone conversations without the customer's consent.
5. The Commission was advised by the customer that:
 - a. shortly after he opened a betting account with PlayUp, he attempted to withdraw \$34,149 (being the full balance of the betting account at that time), however the withdrawal request was refused and his betting account suspended due to irregularities between the deposit method he used and the bank account to which he was attempting to withdraw funds to;
 - b. after advising PlayUp that he was in Canada at that time and after agreeing to provide PlayUp with documentation when he returned to Australia relating to his source of funds and details of the Internet Protocol (IP) addresses for the devices that he used to operate his betting account, his betting account was re-opened and the funds that he had requested to withdraw were returned to it prior to the requested documentation being provided to PlayUp;

- c. while he was in Canada between 16 January 2020 and 26 January 2020 he deposited approximately \$210,000 and placed numerous bets (during this period, the customer advised the Commission that he was unaware that Canada was listed by PlayUp as a prohibited jurisdiction from which to gamble from);
- d. on 27 January 2020, he made seven deposits into his betting account totalling \$185,000 and a further \$50,000 deposit the following day;
- e. on 29 January 2020, he provided PlayUp with the requested documentation which he submits showed that he had an annual net income of approximately \$200,000 and that by this stage, he had already deposited approximately \$445,000 into his betting account;
- f. upon submitting the requested documentation, he was advised by PlayUp that it would take 3-4 business days for it to verify his details in order to allow withdrawals from the betting account;
- g. on 30 January 2020, he lost the money in his betting account that he had wanted to withdraw and he then deposited a further \$150,000;
- h. as a result of making contact with a PlayUp representative and inquiring why it was taking so long to be able to withdraw money from the betting account, he was advised by text message that he was now able to withdraw money (the customer submits that this occurred after he had lost nearly \$1 million through his PlayUp betting account);
- i. late in the afternoon the following day and after having earlier deposited a further \$300,000, he received a phone call from the same PlayUp representative during which he was asked whether he was okay (the customer submits that he thought the inquiry was related to customer service and not an inquiry about his welfare);
- j. on 3 February 2021, he deposited a further \$200,000 into his betting account;
- k. on 4 February 2020, he requested to be permanently excluded from using the PlayUp betting platform; and
- l. during the lifetime of the betting account, the PlayUp representative that was the contact for his betting account contacted him on numerous occasions via the PlayUp representative's mobile phone, advising that the phone calls were not recorded as the PlayUp representative was using his personal mobile phone.

Consideration of the Issues

6. Given the now widespread availability and ease of access to the providers of online gambling services through smartphones and personal computers, the Commission expects all sports bookmakers and betting exchange operators licensed by it, to maintain a consistently high level of protection for customers of their online gambling services. In this respect, it is the view of the Commission that a licensee must interact with its customers in a way that minimises the risks of those customers experiencing harm that can be associated with gambling.
7. While the Commission recognises that not all online gambling customers who are experiencing harm associated with their gambling activity will be able to be immediately identified by an online gambling provider, the Commission does expect that its online gambling licensees will have policies, procedures and practices in place that support the prevention of harm and that are focused on consumer interests as against the potential revenue that may be realised from those customers.

8. The Commission understands that high value customers generally provide a disproportionate level of revenue for online gambling providers compared to the remainder of their customers. This naturally presents the opportunity for online gambling providers to be vulnerable to the accusation that an online gambling provider's commercial motivation may outweigh its compliance with the regulatory regime within which it is licensed to operate. Given this, the Commission expects that licensees will be able to easily demonstrate to the Commission that the source of funds for their high value customers has been adequately explored and continues to be verified at regular intervals throughout the life of a betting account.
9. The Commission further expects that a licensee will be able to demonstrate to the Commission that it has considered a customer's source of funds against the sustainability of that customer's spend levels and has assessed that the spending is an affordable part of that customer's ongoing entertainment and leisure spend, and that the licensee has not just verified that customers have access to immediate funding.
10. For the sake of clarity and the avoidance of any doubt, the Commission expects that all online gambling operators licensed by the Commission have implemented effective policies and procedures which include appropriate oversight arrangements to ensure that all of their customers (not just high value customers) are gambling with money that they can afford to lose and without experiencing harm.
11. With respect to high value customers, the Commission understands that these customers tend to be more engaged gamblers by spend and/or frequency and that as a result, heavily engaged gamblers can be at a greater risk of gambling related harm. This, in the Commission's view demands that an online gambling provider's 'source of funds checks' provide clarification over the actual source of the funds used by the high value customer to gamble rather than simply the conduct of an open source assessment of potential income and wealth. The Commission is also strongly of the view that an online gambling provider's processes and procedures with respect to high value customer checks, should ensure that there is an appropriate separation between those with responsibility for customer checks and those managing the day-to-day relationships with that customer.

Northern Territory Code of Practice for the Responsible Service of Online Gambling 2019 (the 2019 Code)

12. Clause 3.2 of the 2019 Code states that:

3.2 Recognising potential problem gamblers

Where appropriate, a customer who displays some, or a number, or a repetition of red flag behaviours should be monitored by an online gambling provider and appropriate customer interaction should take place to assist or protect that customer which reasonably corresponds to the circumstances. Online gambling providers should ensure responsible gambling policies and procedures are in place to allow staff to detect and assist customers who may be experiencing problems with gambling.

13. In reviewing the PlayUp betting records for this customer, it is clear to the Commission that he was a heavily engaged gambler throughout the lifetime of the PlayUp betting account, both in time and money. This is demonstrated by the following activity which occurred after the customer's betting account was opened on 16 January 2020:

- 25 deposits totalling \$1.1 million in 18 days, including:
 - 22 January 2020 with deposits of \$55,000
 - 23 January 2020 with deposits of \$60,000
 - 27 January 2020 with deposits of \$185,000
 - 30 January 2020 with deposits of \$150,000
 - 31 January 2020 with deposits of \$375,000
 - 3 February 2020 with deposits of \$210,000
 - High level of gambling frequency, particularly on:
 - 22 January 2020 - 5 hours, 40 minutes
 - 23 January 2020 - 16 hours
 - 26 January 2020 - 5 hours, 2 minutes
 - 27 January 2020 - 12 hours, 53 minutes
 - 28 January 2020 - 16 hours, 14 minutes
 - 29 January 2020 - 6 hours, 24 minutes
 - 31 January 2020 - 15 hours, 50 minutes
14. As detailed earlier in this decision notice, the Commission is of the view that a licensee must interact with its customers in a way that minimises the risks of those customers experiencing harm that can be associated with gambling. Given this expectation, it is the view of the Commission that at the very minimum, PlayUp's customer interaction to ascertain its customer's source of wealth and affordable entertainment and leisure spend should have started at least on 22 January 2020 following its customer making deposits totalling \$55,000. While the Commission accepts that any customer interaction at this stage may have resulted in PlayUp identifying that its customer was a high income earner and may have been spending within his means, adequate inquiries should have been made and a regular monitoring program should have then been put in place by PlayUp.
15. Following that, it is the Commission's view that the customer's gambling activities both in terms of value of deposits and frequency of gambling from at least 27 January 2020 onwards (if not earlier), should have prompted PlayUp to undertake a detailed enhanced due diligence process to ascertain that gambling remained a source of leisure and entertainment for its customer and that it would not place him at risk of the financial, psychological and physical harm that may result from compulsive and excessive gambling.
16. PlayUp has advised the Commission that their 'adequate' customer interactions with respect to its customer occurred on:
- 20 January 2020 - when PlayUp commenced a due diligence process as its customer's deposit and withdrawal bank accounts differed; and
 - 31 January 2020 - when PlayUp undertook a welfare check with its customer by telephone.
17. In this respect, the Commission notes that the due diligence process commenced by PlayUp on 20 January 2020 was due to its customer's deposit and withdrawal bank accounts not matching rather than as a result of PlayUp identifying that the amount of time its customer was engaged in gambling could be considered excessive or that the value of the deposits made by him may have been beyond his financial means. The Commission also notes that while the due diligence process resulted in the betting account initially being suspended, the suspension was lifted upon its customer advising PlayUp that he would provide documentation requested by PlayUp (which the

Commission notes did not occur until some nine days later on 29 January 2020) and not after PlayUp had received the documentation and made an assessment as to whether its customer had sufficient source of wealth to engage in the level of betting activity that was occurring.

18. The Commission has also listened to the telephone conversation between the PlayUp representative and its customer that occurred on 31 January 2020, which PlayUp has advised the Commission was a welfare check. The telephone call was initiated by PlayUp at 2:20 pm and appears to have been prompted by the customer depositing \$200,000 into his betting account some 16 minutes before.
19. In respect to this welfare check by PlayUp, the Commission is somewhat surprised at its lack of probative inquiry. Given that the telephone conversation lasted barely 43 seconds, a full transcript of the conversation is provided below:

Customer: Yo.

PlayUp: *Hey sorry mate. (PlayUp representative's name) here. I just, just umm, just called, cause I, cause I see that your limits have increased right.*

Customer: Yep.

PlayUp: *I just wanted to ah.., I just wanted to umm, just, just because obviously we have a duty is everything, is everything ok and are you happy, are you happy with us or...*

Customer: *Sorry, like you mean from a customer service perspective?*

PlayUp: *Uh yeah, and also from a, from a responsible gambling perspective as well.*

Customer: *Oh yeah, yeah.*

PlayUp: *Yeah, I just, I just thought, obviously we have a...*

Customer: *Ah Sorry, Yeah, yeah, yeah. I thought you were just talking about your service.*

PlayUp: *Yeah, ha ha ha ha well, from both, from both regards, from both, ha, ha.*

Customer: *Yeah.*

PlayUp: *Nah, all good mate.*

Customer: *Cheers mate. Thanks buddy.*

PlayUp: *Have a good one. See you mate. Bye bye..*

20. While at first glance, PlayUp's actions of contacting its customer as a result of a significant deposit appears to demonstrate compliance with the 2019 Code, given the brevity of the phone call and the lack of inquiries made during it as well as the lack of any responsible gambling advice being provided, it is in the Commission's view arguable as to whether 'appropriate customer interaction to assist or protect its customer which reasonably corresponded to the circumstances' took place as required by the 2019 Code or whether the phone call was simply initiated so that it appeared that PlayUp

was acting in compliance with the 2019 Code. This doubt is further exacerbated given that its customer continued to gamble throughout the afternoon following the telephone call and into the evening until he achieved a betting account balance of zero at 8:40pm that evening.

21. However, the Commission also notes that no further bets were placed by the customer nor were any deposits made into the betting account from this time until 3 February 2020 after he had received some winnings to the value of \$38,072 into his betting account from bets that had been placed prior to the phone call from PlayUp and as such, it could also be argued that some positive benefit resulted from the telephone conversation initiated by PlayUp. This hypothesis however, is somewhat short lived given that the customer then placed two unsuccessful bets utilising these winnings and after again having a betting account balance of zero, deposited three further deposits totalling \$210,000 in order to what appears to the Commission as an attempt by the customer to chase his losses throughout that afternoon. To this extent, he was somewhat successful in that the following day, he made a withdrawal from his betting account in the sum of \$239,040 and also requested that his account be permanently closed but these actions could be classified as 'a little too late' given that throughout the lifetime of the betting account, the customer made an overall loss of over \$700,000.
22. As detailed in many previous Commission decisions, the Courts have set a very high threshold of responsibility for the gambler as to their own actions. In this respect, the Courts have ruled that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is suggested by the Courts, that only in the most extreme cases of deliberate and gross misconduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.
23. In the Commission's view, it is apparent that the customer is now suffering from some form of gambler's remorse given that he had multiple opportunities to profit from his gambling activity with PlayUp, particularly when viewed against the daily payouts made to the customer as a result of bets placed and against the customer's highest betting account balances as detailed below:

Daily Payouts

- 23 January 2020 - payouts of \$179,794
- 26 January 2020 - payouts of \$93,293
- 27 January 2020 - payouts of \$701,320
- **28 January 2020 - payouts of \$1.493 million**
- 29 January 2020 - payouts of \$130,000
- **30 January 2020 - payouts of \$2.049 million**
- **31 January 2020 - payouts of \$1.452 million**
- 3 February 2020 - payouts of \$307,814

Highest Daily Balance

- 27 January 2020 - balance of \$163,945
- **28 January 2020 - balance of \$500,042**
- **29 January 2020 - balance of \$514,973**
- **30 January 2020 - balance of \$448,973**
- 31 January 2020 - balance of \$278,236
- 3 February 2020 - balance of \$258,260

24. However, the Commission has also formed the view that PlayUp did not effectively engage with its customer throughout the lifetime of the betting account and that it is unable to demonstrate to the Commission that the source of its customer's funds was adequately explored nor that as a result of any inquiries undertaken that it was ultimately satisfied that its customer's spending was an affordable part of his entertainment/leisure spend.
25. Had PlayUp had in place an effective process where intervention occurred based on risk identified through the knowledge PlayUp had about its customer, a graduated system of intervention would have occurred which may have resulted in the continued enjoyment of his gambling activities rather than instead, ultimately experiencing harms from those activities.
26. Given that PlayUp rely on the 31 January 2020 phone call as evidence of their commitment to identify those of their customers who may be at risk of experiencing harm from their gambling and that it was a customer interaction during which little probative inquiry was undertaken and was not of sufficient nature to determine whether its customer was betting within his means, the Commission is of the view that from at least 31 January 2020, PlayUp did not comply with clause 3.2 of the 2019 Code.

Prohibited Jurisdiction

27. Due to the laws and regulations prohibiting gambling within certain countries, online gambling operators licensed by the Commission do not allow the residents of, or persons residing in those countries to operate a betting account. If a person who already holds a betting account with an online gambling operator licensed by the Commission is staying or holidaying in a prohibited jurisdiction, that person will not normally be able to operate their betting account while they are in that country.
28. The above restrictions are normally detailed in the terms and conditions promulgated by an online gambling operator and in this respect, the Commission accepts that both the online gambling operator and its customers are bound by these terms and conditions when an account is opened and each time a wager is struck. By opening an account with a sports bookmaker, the person opening the account is accepting the sports bookmaker's terms and conditions as particularised on its betting platform website.
29. The PlayUp customer the subject of this matter has submitted to the Commission that while he was in Canada between 16 January 2020 and 26 January 2020, he deposited approximately \$210,000 and placed numerous bets. He has further stated that he was unaware at this time that Canada was a prohibited jurisdiction from which to gamble from while using his PlayUp betting account however, he has submitted that PlayUp knew he was in Canada yet still allowed him to deposit monies and place bets using his PlayUp betting account.
30. The relevant PlayUp terms and conditions at the time that the PlayUp customer states he was overseas, detail at clause 3.2.1 that Canada is a prohibited jurisdiction and further, that pursuant to clause 3.2.3 that a PlayUp customer agrees that they will not make any transactions using their PlayUp betting account while residing or located in a prohibited jurisdiction.

31. PlayUp has advised the Commission that it has put geo-blocking measures in place to determine the location of customers seeking to place bets and as a result, users of the PlayUp application are unable to access the application unless the location of their device is switched on and the location information registers that the device is located in a jurisdiction that is not prohibited. In addition, PlayUp has advised the Commission that PlayUp's systems detect if bets are made using an IP address connected with a prohibited jurisdiction.
32. PlayUp has submitted the Commission that an analysis of the IP addresses used by its customer during the time that he states he was in Canada, did not identify that he was placing bets from a prohibited jurisdiction, rather the IP address matched a state within Australia. PlayUp advised that a review of this customer's betting activity shows that the he used PlayUp's mobile website almost exclusively and each of the IP addresses used, identified as Australian. PlayUp has suggested to the Commission that given the technical controls that it has in place to detect and restrict betting on its platforms by customers who are in a restricted jurisdiction, that the customer may have been operating a virtual private network (VPN) to virtually change his location.
33. In this respect, the Commission accepts that the use of VPN's is increasing in popularity given that this form of software is not only used to virtually change a user's location but also to help keep users anonymous online, secure online banking and to evade hackers and trackers. As such, it is plausible that the customer was using a VPN either intentionally or unintentionally through an automatic setting while operating his PlayUp betting account during the period that the customer states that he was in Canada.
34. Of some concern however, is that at least from 21 January 2020 PlayUp was aware that its customer was in Canada after he advised the PlayUp compliance section of this in an email exchange relating to a temporary suspension that had been placed on the betting account due to irregularities between the deposit account used and the account to which he was attempting to withdraw funds to. Having reviewed that email exchange, it is clear to the Commission that the PlayUp compliance section was focused on conducting a due diligence process due to the irregularities between the funding and withdrawal accounts and that during this process, it did not take any action on its customer stating that he was at that time, in a prohibited jurisdiction. To the Commission's mind, it is somewhat disappointing that a compliance section of a sports bookmaker operation failed to take any action to validate its customer's claim regarding his location and once confirmed, advise its customer that he was in a prohibited jurisdiction and further, to ensure that its customer was not able to operate the betting account while he remained in that prohibited jurisdiction. In this respect, the Commission would expect on the handing down of this decision, that PlayUp immediately review its compliance section's training procedures so as to ensure that in the future, compliance officers are able to identify and react to multiple compliance concerns.
35. As detailed above, PlayUp's terms and conditions detail at clause 3.2.3 that its customers agree that they will not make any transactions using their PlayUp betting account while residing or located in a prohibited jurisdiction. At clause 3.2.4, the terms and conditions state that PlayUp reserves the right to reject any transactions made from a prohibited jurisdiction or to cancel, void, or reverse any bets that are pending or already resulted (with any winning funds forfeited and retained). As can be seen, should PlayUp accept that its customer was in a prohibited jurisdiction, in accordance with its terms and conditions it is open to PlayUp to reverse or void any transactions made on the betting account or, as PlayUp have done, take no action to do so.

Telephone Communication

36. The customer has alleged that PlayUp made contact with him on an unrecorded telephone line and also that telephone conversations were recorded without his consent.
37. With respect to these allegations, PlayUp has advised that Commission that all telephone communications with its customer (except one call which will be discussed below) were recorded excepting when its customer called the PlayUp representative responsible for managing the betting account. On these occasions, PlayUp advised the Commission that the PlayUp representative elected not to answer the calls and instead rang the customer back on a recorded line.
38. PlayUp has advised the Commission that in relation to the one telephone call that was not recorded which occurred on 3 February 2020 and involved discussion in relation to a withdrawal from the betting account, the PlayUp representative sent a text message confining the contents of the call immediately after the call was concluded.
39. The Commission has sighted the PlayUp representatives mobile phone call records for the period 25 January 2020 to 24 February 2020 and notes that the above phone call is the only call listed as having been made to the customer's mobile phone number. While the Commission notes that mobile phone record commences some 10 days after the customer opened his betting account, the Commission has no evidence before it to indicate that the PlayUp version of events is not accurate.
40. With respect to the allegations that telephone calls were recorded without consent, the Commission notes that it is a requirement of the licence conditions imposed by the Commission as well as forming part of PlayUp's terms and conditions that all calls between PlayUp and its customers will be recorded (as well as other communications that may occur via live chat, email or text). As such, the Commission is of the view that there is no substance to this aspect of the allegations.

Decision

41. PlayUp is unable to demonstrate to the Commission that following its customer displaying some red flag behaviours, that it monitored its customer and took a level of appropriate customer interaction which reasonably corresponded to the circumstances. There is no evidence before the Commission that the source of its customer's funds was adequately explored nor that PlayUp made an informed decision that its customer's spending was an affordable part of his entertainment/leisure spend. This lack of appropriate customer interaction is particularly evident throughout the 31 January 2020 phone call during which there was little to no probative inquiry undertaken.
42. On the weight of evidence before it, the Commission is satisfied that PlayUp did not comply with the requirements of Clause 3.2 the 2019 Code as it did not engage appropriately with its customer in a manner that corresponded to the circumstances. Non-compliance with the 2019 Code is in breach of Condition 15 of PlayUp's sports bookmaker licence.
43. Disciplinary action available to be taken by the Commission for non-compliance with a condition of licence ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.

44. The Commission has determined to impose a fine of 85 penalty units, being 50% of the maximum penalty units available. As at 1 July 2021, the value of a penalty unit in the Northern Territory is \$157, therefore the fine imposed is in the amount of \$13,345.
45. In addition, given the Commission's strong disagreement with PlayUp's submission that the telephone call of 31 January 2020 demonstrates its strict adherence to its responsible service of gambling (RSG) policy, the Commission expects that PlayUp will review its RSG training program with a view to significantly strengthening its welfare check procedures. Once done, all PlayUp employees who engage directly with customers or who manage personnel that do, should undertake a full refresher RSG training program. In this respect, the Commission expects PlayUp to provide to the Commission a copy of the updated RSG training program and evidence of the PlayUp personnel who have completed the updated training program no later than 3 months from the date of this decision.
46. The Commission also requires PlayUp to immediately review its compliance section's training procedures so as to ensure that in the future, compliance officers are able to identify and react to multiple compliance concerns. The Commission expects PlayUp to advise the Commission of the action it has taken in this regard no later than 3 months from the date of this decision.



Alastair Shields
Chairperson
Northern Territory Racing Commission

17 March 2022