

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr D
Licensee:	William Hill (now BetEasy)
Proceedings:	Pursuant to section 85(2) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Mr James Pratt Ms Amy Corcoran
Date of Decision:	20 August 2019

Background

1. On 5 August 2017, pursuant to section 85(4) of the *Racing and Betting Act (the Act)*, Mr D (**the complainant**) lodged a gambling dispute against the licensed sports bookmaker, William Hill (**the bookmaker**).
2. This dispute centres around the complainant requesting the permanent closure of his wagering account on 25 May 2017. After the bookmaker allowed it to be reopened, the complainant suffered wagering losses in the vicinity of \$82,000. The complainant is seeking a refund of his wagering losses made after 25 May 2017.
3. In summary, the Complainant's case is:
 - a. on 25 May 2017, the complainant telephoned the bookmaker and requested a permanent closure of his wagering account. The bookmaker acknowledged the request and provided a confirmation email of the permanent closure;
 - b. although he made no admission to having a problem with gambling during that phone call, he did unequivocally request a permanent closure of his account;
 - c. just 2 days later on 27 May 2017, the complainant's account was reopened by the bookmaker with bonus bets placed into his account and the complainant continued to use his account to gamble until 19 July 2017;
 - d. on 19 July 2017, the bookmaker closed his account permanently after a live chat in which the complainant stated "*i have financial trouble bcos [sic] of this and its affecting mental health.*"
4. The bookmaker submits:
 - a. prior to 25 May 2017, the complainant had an established history of betting with the bookmaker and had on several occasions closed the account due to either lack of bonus promotions or better offers by competitors;
 - b. at no time did the complainant mention he had a gambling problem nor did he ask for permanent self-exclusion prior to 19 July 2017.

- c. based on the live chat on 19 July the bookmaker immediately closed the complainant's account under 'Permanent Self-exclusion'. The complainant's accounts with all the bookmaker's related entities are now closed and marked "gambling problem"
5. Information was gathered from both parties through Licensing NT and provided to the Commission to consider the matter on the papers.

Chronology

6. Both parties have acknowledged there were a number of account closure requests made by the client prior to the events of 25 May 2017.

First Account Closure

7. On 2 July 2016, during a live chat the complainant and bookmaker discussed the availability of bonus bets. After being advised he was not eligible the complainant stated "... ok...can you pls close my account permanently". The bookmaker asked for the "... reason for this request ..." and the client responded by typing "... no bonus ... for every 500-1000 spent on ladbrokes they use to give 200+ bonus... here not a penny ... worst site, my bad that i put so much money on william hill ...".
8. The bookmaker advised the complainant his request will be forwarded to management to close the account "*For now, your deposit and withdrawal options has been disabled.*" The client responded "*no i want full permanent closure*".
9. On 4 July 2016, the bookmaker sent the client the account closure confirmation email advising him in part "*... should you wish to use our services in the future, please contact our Customer Service team ...*".
10. The notes made on the account by the bookmaker as a result of this closure stated: "*... Permanent Closure Request (Non-RG Related ... Request via live chat permanent closure. No bonus, worst site. 7/1/2016. (KN) ...*"
11. The bookmaker submits that on 5 July 2016, a member of their VIP team reviewed the account closure, contacted the client and left a message advising of a matched deposit bonus. No notes were made on the account when it was reopened or the reasons why it was reopened.

Second Account Closure

12. On 3 April 2017, during a live chat the complainant advised the bookmaker "*... i would like to close my account ...*". When the bookmaker asked for the reason the complainant advised "*... there is no bonus in here after playing a lot i have my other account with ladbrokes and always get very good bonus ...*". The same day the bookmaker sent the complainant the account closure confirmation email, having the same content used in the first closure response as set out above.
13. On 3 April 2017, the complainant contacted the bookmaker's business development manager (**BDM**) via SMS and stated "*... I deposited another 1k yesterday but no luck with loyalty bonus so got frustrated and closed the account ... but anyways thanks for your offers till date... Hav a good one*". The BDM responded by SMS with "*... Apologies mate I wasn't working yesterday. I can match your next \$1000 deposit. That will mean I've given you \$2,500 bonus in total. We also have a rewards program where you get bonus bets and velocity ...*".

14. The notes made on the account as a result of the closure were “... *Mktg - Not happy with current offers*” and “*Account Closed, Client Req, Reason: there is no bonus in here after playing a lot. i have my other account with ladbrokes and always get very good bonus, Via Live Chat, Sent temp B, CVP. ...*”
15. On 4 April 2017, the complainant telephoned the bookmaker and requested the account be reopened. The bookmaker accommodated the complainant’s request and opened the account. The bookmaker provided the call recording in which the complainant confirms the reason for his closure was a lack of bonus bets received when he made “large deposits” and he couldn’t get hold of the “special person” connected to his account who usually provided those bonus bets.
16. Based on the information provided and the phone call referred above it is reasonable to presume that the complainant accepted the offer from his BDM, reopened the account and continued to wager.
17. Notes made on the account as a result of the reopening included: “... *Account Re-opened, Client Req. Reason: Changed his mind and wants to keep the account.*”
18. In regards to these above two closures, the complainant requested a ‘permanent closure’ on the first occasion but on both occasions the complainant received the ‘standard’ email confirmation advising in part: “... *should you wish to use our services in the future, please contact our Customer Service team*”.
19. Further the notes made by Customer Service as a result of the closure requests confirm the bookmaker’s position that account closures were made by the complainant due to service dissatisfaction. It is noted that the complainant made no direct reference to having any issues with his gambling but neither was he directly asked that question. Both closures were marked ‘Non-RG related’.
20. What is clear is the complainant had a history of requesting bonus bets and when he didn’t receive them, he closed his account.

Third Account Closure

21. On 25 May 2017, the complainant telephoned the bookmaker and requested his account be closed permanently. It is this call and the subsequent actions of the bookmaker that have given rise to this complaint.
22. This telephone call has been transcribed partly below from the recording provided by the bookmaker:

B = bookmaker

C = client

- B: *Alright, just bear with me. *long pause* Can I ask the reasons why you wish to close your account?*
- C: *Umm, no, no , I’m just um ... it was going out of control so... (the bookmaker interrupts)*
- B: *Okay so you just wanna take a break?*
- C: *Yeah, and I would prefer a permanent closure.*
- B: *You’d prefer a permanent closure?*
- C: *Yep*

- B: Okay. **long pause** permanent closure **long pause**. Okay, can I just put in on hold for a very short time [complainant's first name]?
- C: Sure, no worries.
- B: Okay, thanks a lot.
- B: ... I just, just have to ask you as part of our duty of care, umm like whether you, whether you think umm that the reason you wish to close your account is due to a gambling problem?
- C: Err, no, not really just **inaudible** (the bookmaker interrupts)
- B: Oh okay
- C: **inaudible** it's just lately that I umm its just lately I have not been winning much and umm
- B: Yep.
- C: And then err the bonus, **inaudible** the good amount of bonus and the then the **inaudible** rewards program, I don't feel is that substantial in terms of the way I play.
- B: Okay, alright. Umm, so if you do request a permanent closure though then that will mean logically that you're not able to re-open an account with us.
- C: Yes, I understand that.
- B: Alright, well we shall effect that closure for you and um, we'll um, send out an email shortly as well.

23. The bookmaker then sent the email the same day confirming the account closure which in part states:

"... Permanent Closure

- 1. Permanently closed your Betting Account. Your Betting Account will not be able to be re-opened;*
- 2. We will take reasonable measures to ensure that you are not able to open any future Betting Accounts with our company; and*
- 3. We will take reasonable measures to ensure that you do not receive any marketing information from us."*

24. Notes made on the account as a result of the closure are reproduced below:

"Client request permanent closure of WH a/c 25/5/17

Client called and said he wished his a/c to be permanently closed. Said he was losing a deal, wanted a break, did not feel he had any gambling issues (apart from losing!) and was not overly impressed with the WH 'rewards' program for the volume of punting he was doing. Said I would close a/c and send him an email – email send in kana Template D."

25. In addition to the above, the bookmaker also submits the complainant's BDM advised that *"In regards to the permanent closure he called me to tell me he was closing his account due to again not receiving enough bonus and if I was to give him a decent offer he will re-open and deposit."*

26. Notwithstanding the request to permanently close the account on 25 May 2017, the bookmaker submits the complainant during a phone conversation with his BDM on 27 May 2017, was offered and the complainant accepted bonus bets matched to his deposit and his account was reactivated.
27. The bookmaker advised that this call was made on a 'non-recorded' line. The notes on the complainant's account state:

"Client Request - Account Re-opened, Client Req, Reason: changed his mind and wants to keep the account"

"Reopened as per ML request"
28. The bookmaker has confirmed that 'ML' was the complainant BDM.
29. The bookmaker has not provided any substantive evidence that the complainant contacted customer service or the BDM in order to re-open his account. The notes on his file indicate that the account was re-opened at the BDM's request. The reasons for the re-opening request by the BDM were not specified in the complainant's account notes and no phone recordings have been provided of the phone call the BDM says he had with the complainant on 27 May.
30. Licensing NT sought comment from the bookmaker in regards to the role of a BDM. In the bookmaker's response, they advised: *"... Our Business Development Managers are commercial staff who predominantly work from their mobile phones, not recorded lines. ..."*
31. Licensing NT also sought comment from the complainant in regards to the dealings with the BDM. The complainant could not recall any conversation with the BDM noting that this person usually sent him texts with bonus offers. He stated *"when i had my account permanently closed, post that there was a message text on bonus for my losses, and i did informed that i have closed my account permanently but because of the bonus offer i was pulled in. Infact when i re-logged in to my account i had the bonus in my account without any matching deposit."*
32. It is noted from the complainant's betting activity statement provided by the bookmaker that on 26 May 2017, the account balance of \$15.36 was withdrawn. On 27 May 2017, the complainant made 2 bets totalling \$875 however from the transaction history also provided by the bookmaker indicates no monies were deposited into the account by the complainant until 6 June 2017. It would logically follow that the bets made by the complainant on 27 May 2017 were the bonus bets provided by the bookmaker.

Consideration of the Issues

33. The Racing Commission considers problem gambling to be the most serious of issues and holds all gambling operators to a high standard with regards to any breaches.
34. All licensed bookmakers' licence conditions and the *Racing and Betting Act (the Act)*, require compliance with the *Northern Territory Code of Practice for Responsible Online Gambling 2016 (the Code)*.

35. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. This Code sets out certain practices 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.
36. "Responsible gambling" is a broad concept and involves the conduct of gambling in a manner whereby the potential for harm associated with gambling is minimised. It respects the responsibility of individuals for their own actions, but also acknowledges a responsibility on the part of the service providers.
37. Responsible gambling has regard to the context in which gambling occurs, the inducements made to gamble, the way the gambling service operates and the integrity of the gambling operator. The aim is to enable persons to make informed decisions about their participation in gambling and, if harm has occurred, to provide access to gambling help services.
38. It is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions. It is suggested that only in the most extreme cases of deliberate and gross conduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.
39. As outlined above, the dispute arises due to the bookmaker re-opening the complainant's account on 27 May 2017 after the complainant had requested his account be permanently closed by telephone on 25 May 2017. The bookmaker submits that they had no prior knowledge of the complainant having a gambling problem and based on his behavioural history of closing and re-opening his account on previous occasions due to dissatisfaction with the bonus bets the account was reopened.
40. The bookmaker submits "... *The Client's account was able to be re-opened based on his phone call of 25 May 2017 wherein he stated that his account was being closed for lack of bonuses, not due to a gambling problem.*" Further, the bookmaker submits "*the customer service agent who forwarded the account closure email to the complainant on 25 May 2017 unfortunately used the wrong account closure template. The email should not have included the words "Your Betting Account will not be able to be re-opened, We will take reasonable measures to ensure that you are not able to open any future Betting Accounts with our company; and We will take reasonable measures to ensure that you do not receive any marketing information from us."*
41. The final closure of account occurred on 19 July 2017 when the complainant contacted the bookmaker via LiveChat requesting a loyalty bonus. At the time the operator advised that there were no bonus offers available that night but they would check with the relevant team and revert back to the complainant. As a result the complainant queried how he was allowed to re-open and place wagers on an account for which he had previously requested permanent closure. The complainant then stated "*i have financial trouble bcos of this and its affecting mental health.*" It is based on this advice that the bookmaker closed the account under 'Permanent Self-exclusion'.
42. The bookmaker asserts that the complainant made no references to problem gambling and no inferences could be drawn during the telephone discussion on 25

May 2017 that the complainant may have had issues with gambling but rather it was purely a “bonus bet” issue or customer dissatisfaction being the reason for the account closure.

43. The operator clearly picked up on the comment by the complainant that [his gambling] “*was going out of control*” and asked if he would like to take a break, to which the complainant replied “*I would prefer a permanent closure*”. Although the complainant also raised bonus bets later in the conversation, it is clear from the conversation above that the issue of bonus bets was not the main reason he was requesting a permanent closure in this instance but rather the complainant admitting to a lack of control in regards to his gambling. Admission to losing control, concerns over big losses and indicating he needs a permanent break from gambling, are all clear red flags under clause 3 of the Code. It is also noted that despite this request for a permanent closure and enough red flags to raise concerns that the complainant may be experiencing problems with gambling, no contact information for counselling agencies was provided to the complainant pursuant to clause 4.4 of the Code.
44. The notes made on file by the operator indicated the complainant has concerns over “big losses” and the request was for a permanent closure. The recording of the phone call between the complainant and the customer service agent clearly indicates that the request by the complainant was for a permanent closure. The complainant was made fully aware and accepted that he was requesting a permanent closure of his account and it would not be able to be reopened. The subsequent closure email properly reflects the conversation had on 25 May 2017. A customer does not have to expressly advise the bookmaker that they have a problem with gambling in order to request a permanent closure of their account and it is likely that many problem gamblers would not admit to such. The Commission does not accept the bookmaker’s tenuous distinction between a permanent closure of an account for non-gambling reasons and permanent self-exclusion. Both are permanent. Accordingly, based on the evidence, the Commission does not accept the bookmaker’s submission that the complainant was not in fact requesting a permanent closure of his account on 25 May 2017. It follows that the bookmaker should not have in any circumstances re-opened the account.
45. The bookmaker has a duty under the Code to monitor any red flags which may indicate a customer may have issues with gambling and to follow up with the customer if red flags appear. It is noted that despite the comments made by the complainant in the conversation on 25 May 2017 in respect to losing control of his gambling, large losses, needing a permanent break as well as the continued requests for bonus bets the complainant’s account was not referred to a responsible gambling officer to review even prior to re-opening the account on 27 May 2017. Instead, the BDM enticed the complainant to continue betting with the offer of further bonus bets and re-opened the account.
46. The BDM asserts that a telephone call was had with the complainant on 27 May in which the complainant re-opened his account because he had “changed his mind”. There is no recording of that telephone conversation and accordingly this evidence is unsubstantiated. In any event, given the complainant had knowingly requested a permanent closure of his account just 2 days prior, the Commission does not consider there would have been any reason or excuse to re-open the complainant’s account even upon his own request. It is not sufficient to reopen a permanently closed account due to similar behavioural history of the complainant, nor if the

complainant changed his mind nor the fact that the complainant had not expressly mentioned he had a problem with gambling.

Unrecorded telephone conversations

47. Where a bookmaker is found to have failed to comply with a condition of its licence under section 80(1)(d) of the *Racing and Betting Act (the Act)*, the Commission may discipline the bookmaker by “reprimanding him, imposing on him a fine not exceeding 17 penalty units or, in the case of a sports bookmaker, not exceeding 170 penalty units or suspending or cancelling a licence or permit”.
48. Condition 20 of the bookmaker’s licence requires the bookmaker to ensure “all conversations with customers involving discussions relating to wagers, complaints or disputes, regardless of medium, are recorded on approved recording equipment.”
49. There would in the Commission’s mind be very few conversations with a client of a bookmaker which did not relate broadly to a “wager, complaint or dispute”.
50. In this situation, the BDM submits he was talking to the complainant on 27 May 2017 about the re-opening of his account and bonus bet offers which can be summarised in the Commission’s view as matters relating to wagering and complaints. The Commission cannot rightfully accept that any discussions between the BDM and the complainant on 27 May 2017 would not have been related to a “wager, complaint or dispute” and therefore such discussions should have been duly recorded in accordance with the bookmaker’s licence conditions.

Decision

51. Section 148A and condition 20 of the bookmaker’s licence requires the bookmaker to comply with the Code. A failure to comply with the Code is also a breach of section 80(1)(d) of the Act being a failure to comply with a licence condition.
52. On the weight of evidence provided, the Commission is satisfied that the bookmaker failed to adhere to the Code specifically clause 4 by not having suitable processes in place to ensure that the complainant could properly exclude himself from accessing the operator’s gambling products permanently and by not recognising and reasonably acting upon the complainant’s red flag behaviours under clause 3 of the Code.
53. For the reasons set out above, the Commission finds the bookmaker did breach sections 80(1)(d) and 148A of the Act by failing to comply with the Code pursuant to condition 20 of the bookmaker’s licence.
54. It follows that had the bookmaker complied with the Code and not re-opened the complainant’s account, the complainant could not have wagered further using his account. The Commission declares that all bets placed after the Complainant’s account was re-opened on 27 May 2017 were in contravention of the bookmaker’s licence condition 16 and the Code and therefore unlawful bets pursuant to section 85(1A) of the Act requiring the bookmaker to refund a total of \$82,055.05 to the complainant.
55. Given the serious nature of this breach of the Code, the Commission has determined to issue a fine equivalent to 70% of the maximum penalty of 170 penalty

units being a total of \$18,445. This is the second breach of the Code by William Hill, the first breach in January 2018 related to clause 4 of the Code.

56. With respect to the bookmaker's failure to record the telephone call between the BDM and the complainant on 27 May 2017, the Commission finds that the bookmaker had pursuant to section 80(1)(d) of the Act, failed to comply with a condition of its licence, namely condition 20.
57. The Commission has determined to issue a fine for failure to comply with condition 20 of its licence pursuant to section 80(1)(d) in the amount of 25% of the maximum penalty units of 170 being an amount of \$6,587. In determining the amount of the fine, the Commission took into account that this was the first breach by the bookmaker for non-compliance with condition 20 of its licence.
58. The Commission recommends that the bookmaker review its internal processes so as to ensure that a breach of licence condition 20 will not occur going forwards.

Review of Decision

59. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to under subsection (2) shall be final and conclusive as to the matter in dispute.



Alastair Shields
Chairperson

20 August 2019