

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr D
Licensee:	Neds.com.au
Proceedings:	Pursuant to Section 85(4) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Mr John Boneham (Presiding Member) Mr Jim McNally Mr Andrew Maloney
Date of Decision:	22 June 2018

Background

1. On 26 December 2017, the client lodged a gambling dispute against NT registered bookmaker Neds.com.au.
2. The client had opened an account with Neds on 13 December 2017, and made several large deposits on that day by way of his credit card, totalling \$19,999.00.
3. Within a six hour period of the account opening the client had wagered through his entire account balance.
4. The clients account with Neds was opened in the name of Mr D whereas the credit card used to fund the deposits to the account is in the name of Mr D.
5. The client's complaint is twofold.
6. Firstly given the spelling of his name on the account is slightly different to that on the credit card used to fund the account, he claims that Neds have breached Rules 4.2 and 4.3 of their terms and conditions. Part of which states that the account name should be the same as the name on any credit card used to fund deposits.
7. Secondly the client claims that Neds have failed in their duty of care to him by failing to identify him chasing his losses, he claims as evidenced by his ever increasing wagered amounts on the day of 13 December 2017. He further claims that the bookmaker also failed him by not making contact with him immediately after account opening to verify his identity.
8. Accordingly the client seeks to have the bookmaker return all of his deposits made on that day.

9. It should be noted that the bookmaker moved to close the account and place a self-exclusion restriction on the clients account on 15 December 2017.
10. This was as a direct result of a phone conversation between the client and the bookmaker, in which the client indicated that he had a problem with his gambling habits.
11. The client also stated that he could not recall opening the account on 13 December 2017, or the subsequent wagering activity that took place as he was intoxicated and on medication (Duromine) at the time.

Facts of the Matter

12. It is important to note at this juncture that the Commission does not have the power to determine matters of compensation, this being the jurisdiction of the Courts.
13. The Commission can however determine whether the bookmaker has properly applied the rules applicable to wagering, settled them correctly and whether the bookmaker has complied with its obligations under relevant legislation and the NT Code of Conduct for Responsible Online Gambling 2016.
14. Therefore this Determination will focus on whether the bookmaker has acted contrary to any of the relevant laws or rules, thereby determining whether the wagers were either lawful or unlawful.
15. The Commission has sought further details from both the client and the bookmaker in this dispute and has been able to examine in detail the recording of the phone call of 15 December 2017, in which the client claims no recollection of both the account opening or wagering activity due to being affected by drugs and alcohol.
16. For his part the client has not responded to a phone call and email from the Commission (16 and 17 January 2018), which sought to glean further information in relation to his complaint.
17. The bookmaker however has provided fulsome information at the Commission's request, which has assisted in consideration of this matter.
18. In support of its position, the bookmaker has responded as follows:

“ There was a slight difference with the spelling between the Neds betting account holder details and the credit card holder, but they were close enough that we assumed they were one and the same person, which turned out to be the case.

I think the client was just checking to make sure our KYC and credit card authorisation procedures were working properly, which they are...”

19. The bookmaker in an email dated 16 January 2018 also stated:

“... our internal client identification systems and credit card authorisation and verification systems are part of our internal fraud and risk mitigation systems and our AML-CTF obligations and we take these matters extremely seriously.

We use an industry accepted random charge challenge response process to verify credit card deposits ie the Neds account holder must have access to the card holders bank statement to obtain and verify the random charge amount.

If the Neds account holder has access to the cardholder’s statement, then Neds (and our card merchant facility provider) considers that this is sufficient evidence that the Neds account holder and the credit card holder are the same person (or that they at least have authority to use the credit card).

We also rely on our Account and Betting Platform Terms of Use, clause 4.3.4.2 which state (and which the account holder undertakes and agrees to comply with):

The credit card nominated for the deposit of credit card funds to your Account must be in the same name as your Account, unless NEDS otherwise agrees.”

Consideration of the Issue

20. The Principal matter for the Commission to determine is the difference in spelling between the account holder name and the name on the credit card and whether this difference (albeit minimal) was sufficient to trigger a breach of Neds stated terms and conditions.
21. We must also look in detail at the betting patterns following the opening of the account in order to ensure there was no breach of the NT Code of Conduct for Responsible Online Gambling 2016 and whether the clients claim of having been affected by prescription drugs and alcohol have any credence.
22. The client has further alleged that by its actions or rather inactions surrounding the large bets he placed shortly after account opening, Neds has neglected its duty of care to him.

Decision

23. From the Information provided it appears that the bookmaker is meeting its obligations with regards legislative requirements and the observance of established and accepted AML-CTF procedures.

24. We do not consider that the minimal difference in spelling of Mr D's first name is sufficient to trigger a breach of conditions 4.2 or 4.3 of Neds licence conditions.
25. We consider the application of the reasonable person test, as applied in a Court of law would support this decision. Accordingly we rule that the wagers as placed are legal and binding.
26. We now turn our attention to any possible breach of the Northern Territory Code of Conduct for Responsible Online Gambling 2016.
27. Whilst the clients betting activity could be considered heavy given the short time after account opening we do not consider it to be outside what industry participants might expect, given the volume and size of wagers made by clients.
28. Accordingly we do not consider this to be a 'Red Flag' situation, as described in the NT Code of Practice and no breach of the Code is considered to have occurred.
29. With regards to the clients claims of a breach of duty of care by Neds.com.au, we find that his accusation of being under the influence of drugs and alcohol at any time during the course of his interaction with the bookmaker to be totally lacking in evidence. Indeed when given the opportunity to provide further information to the Commission he failed to do so.
30. We make the following comment in relation to Neds.com.au duty of care to the client. 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.
31. The law relating to duty of care and liability for pure economic loss is well established and has been examined in great detail by the Courts. When it comes to gamblers the Courts in general and specifically relating to wagering have long upheld the autonomy of the individual. In the current Australian authority of *Kakavas v Crown Melbourne Limited* (2013) HCA Court found apposite the decision of Spigelman CJ in *Reynolds 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”

The Court in *Kakavas* went on to find:

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.

In *Reynolds*, Spigelman CJ held in a matter in which it was alleged a Service Club had breached their duty of care by not preventing an acknowledged problem gambler from continuing to gamble and lose money, on considering the interests that must be protected:

‘In my opinion the law should not recognise a duty of care to protect persons from economic loss, where the loss only occurs following a deliberate and voluntary act on the part of the person to be protected. There may be, however, an extraordinary case where a duty should be recognised. The present case is not such.’

32. Given the common law precedents established in the above matters, it is clear to the Commission that in the absence of any indication of Neds.com.au indulging in any malicious or gross misconduct towards the client, they have no case to answer with regards the client’s complaint of a breach of duty of care.
33. As such and in accordance with Section 85(4) of the Act, on the basis of the information provided in respect of the dispute and for the reasons set out above, the Commission has determined the wagers lawful.



John Boneham
Presiding Member
Racing Commission

22 June 2018