

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr A
Licensee:	TopBetta Pty Ltd
Proceedings:	Gambling Dispute for determination by Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act</i>)
Heard Before: (on papers)	Ms Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran
Date of Decision:	13 August 2020

Background

1. On 26 February 2019, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the Northern Territory licensed sports bookmaker, Topbetta Pty Ltd (TopBetta).
2. At the time of this decision notice, while TopBetta still remains licensed as a sports bookmaker in the Northern Territory, there are no betting platforms currently authorised to be operated under the TopBetta licence.
3. The complainant has submitted to the Commission that TopBetta failed to detect that he was a problem gambler and as a result it failed to provide him with the necessary assistance or protection in order to minimise the harm caused by his problem gambling. As a result, the complainant is seeking the refund of the last deposit he made into his TopBetta betting account which he has submitted totalled \$1,298.
4. The Commission affords all sports bookmakers licensed in the Northern Territory an opportunity to provide a response to the Commission should a gambling dispute be made against it. In response to this gambling dispute, TopBetta has advised the Commission that in summary, the complainant's betting activity and behaviour was not of a nature to cause it to be concerned that the complainant may be experiencing problems with his gambling.
5. 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.

Consideration of the Issues

Code of Practice

6. Pursuant to the Act and licence conditions, all Northern Territory licensed sports bookmakers are required to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code).
7. The 2019 Code came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016 (the 2016 Code). Both Codes provide guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling. Online gambling providers are also currently encouraged by the Commission to implement additional strategies to further minimise harm.
8. As the activity subject of this gambling dispute occurred between 12 November 2018 and 26 February 2019, the 2016 Code applied to the activities of the complainant and TopBetta during this period.
9. The 2016 Code amongst other things required at clause 2.1, that with respect to interaction with customers, that:

Online gambling operators must have an appropriate level of management available to:

 - assist staff and clients during those hours where staff are available to speak to clients
 - provide appropriate information and assistance to clients with gambling related problems
 - support staff in providing assistance to these affected clients
 - provide confidential assistance to any staff who themselves may have gambling related issues
 - establish policies and procedures that allow customers to take steps to limit their gambling if desired
 - have available, for clients and staff, details of appropriate gambling support services.
10. Clause 2.3 of the 2016 Code also required that online gambling operators were to establish and promote mechanisms to recognise and resolve issues relating to client problem gambling incidents.
11. Further, clause 3.1 of the 2016 Code required that all sports bookmaker staff that engaged in client interaction must have completed responsible gambling training so as to be able to identify problem gambling red flag behaviours.
12. It is implicit through both the 2016 Code and the current 2019 Code, that all sports bookmakers should interact with their customers in a way which minimises the risk to their customers, of experiencing harms associated with gambling. While there is no guarantee that this interaction will identify all customers who are experiencing or are at risk of harm, attempts should be made by all sports bookmakers to reduce harm at the earliest opportunity.

Betting Account Activity

13. The complainant has submitted to the Commission that TopBetta should have identified through his betting activity which included gambling “...*all night and day until funds ran out...*” and “...*binge deposits...*” that he may be a potential problem gambler. He has further advised the Commission that he went from not placing a bet in months to going on a two to three month gambling spree and that the value of his bets went from small amounts to bets of \$200 to \$500.
14. In response to this gambling dispute, TopBetta advised the Commission that in its view, the activity on the complainant’s betting account did not display activity that could be considered as increasing as although the complainant’s bet size does increase on occasion, this is consistently followed by a smaller bet size.
15. The 2016 Code details that increases in deposit frequency and/or escalating sums of money being deposited into a betting account may be an indicator that a sports bookmaker’s customer may be at risk of suffering harm through their gambling activity. With the ongoing advances in technology, online gambling operators are able to track customer activity and the Commission expects that where it is identified that a customer is significantly increasing their deposit frequency and/or the amounts being deposited, that an online gambling operator will intervene and at the very minimum, make contact with that customer to ascertain whether the person is gambling within their means or alternatively, suffering any negative impacts associated with their gambling activity.
16. The Commission has reviewed the complainant’s bank account records in relation to the deposit history with TopBetta as well as the TopBetta betting account records for the complainant and notes that compared to some gambling disputes that come before the Commission, that the deposit and bet amounts in this matter are relatively small. Having said that however, the Commission notes that if a person is losing more money than they can afford regardless of the amount, that this is likely to mean that the person’s gambling activity has become harmful to them.
17. The Commission notes that through the three month life of the complainant’s betting account with TopBetta, that the complainant would deposit a sum of money and continue to bet with that money and any winnings until the betting account balance would be less than \$1. This was the consistent pattern of the complainant’s betting activity excepting for on two occasions after a number of successful bets where he made withdrawals of \$600 and \$100 respectively.
18. On some days of betting activity, the complainant would, after reaching a balance of less than \$1, deposit a further amount of money and continue with the same pattern. Given the consistent pattern in the betting activity and the relatively small amounts involved up until late February 2019, the Commission has formed the view that it would be unreasonable for the Commission to expect that TopBetta should have identified the complainant’s activity as varying in any significant manner up until this time.
19. It is not until 25 February 2019 when the complainant made a single deposit of \$950 into his betting account that it could be reasonably considered that the complainant’s deposit activity changed. Having said that however, the Commission notes that a one off deposit that is larger than previous deposits in of itself is not necessarily indicative that the customer may be experiencing harms as the customer may have experienced a windfall and decided to use that windfall so as to engage in betting activity.

20. After depositing this amount, the complainant placed a number of larger losing bets in amounts not dissimilar to bet amounts that he had placed previously. Consistent with his previous betting activity, when the complainant's betting account balance was less than \$1 he made a number of further deposits and losing bets which ultimately resulted in an account balance of 95 cents.
21. It is apparent however, that the complainant himself had come to realise that he was spending more than his budget allowed as it was on 26 February 2019 following a losing bet that he made contact with TopBetta and advised that he was a problem gambler and requested that he be self-excluded from TopBetta, which it actioned immediately.

Bonus Bets

22. The complainant has submitted to the Commission that he requested bonus bets from TopBetta on at least seven occasions via email and while most of these requests were rejected by TopBetta, he is of the view that this behaviour should have raised concerns with TopBetta that he may be a problem gambler. The complainant stated to the Commission that in some of the requests that he made, he advised that he had "...lost a lot of money," that he was "...out of form" and was "...struggling."
23. In support of this submission, the complainant has advised the Commission that he sent an email to TopBetta on 5 February 2019 in which he asked for a bonus bet and that a few days later on 9 February 2019, he again sent an email requesting a bonus bet. The complainant has stated that in one of those emails he wrote, "*Sorry for asking for that deposit bonus. Really would have come in handy though :*"
24. In order to ascertain the veracity of the information provided by the complainant in relation to his requests for bonus bets, the Commission's betting inspector requested the complainant to provide copies of the emails and live chats that he was relying upon. As a result, the complainant made contact with TopBetta and requested that it provide him with copies of all correspondence that related to his betting account from the time it was opened until the time it was closed when he requested to be self-excluded from TopBetta. In this respect, the complainant has submitted to the Commission that while TopBetta did provide him with copies of some correspondence, TopBetta did not provide him with all of the emails that he had sent and that it had not provided him with the emails that are referred to in paragraph 23 above and in particular the email of 9 February 2019 of which the complainant stated that he had evidence of sending.
25. The Commission has sighted various email and live chat messages between the complainant and TopBetta (including the communication of 9 February 2019) and notes that the complainant requested bonus bets on four occasions. The substance of each of those requests is detailed below:

- a. 29 December 2018

"I have deposited quite a lot of money, over a thousand, and have not received any sort of bonus bet. Was hoping I could receive one before the year runs out :)"

- b. 31 January 2019

“Just a quick one. Don't want to seem like I am special, because I am definitely not. Its just that I have deposited over \$2,000 recently, without a withdrawal or win, and I love your odds and website hence why I keep coming back. I am wondering if there is a loyalty bonus available since we are in the new year?”

I did ask about a deposit bonus and was asked to email once I deposited , but I forgot. I don't want special treatment, but just making my case :)”

Still love TB regardless

c. 5 February 2019

“I will be making a deposit of \$400 later. Any way I could receive a deposit bonus for being your best customer?”

d. 19 February 2020

“Was given a deposit bonus on my next deposit by henry last night

Just deposited \$45

Thanks heaps”

26. TopBetta advised the Commission that requests for bonus bets is one of the more common requests that it receives from its customers. TopBetta further advised that during the period of 29 December 2018 to 19 February 2019, the complainant had bonus bets added to his account on four occasions with a total value of \$146.25. TopBetta has submitted that given the large volume of requests that it receives from its customers for bonus bets, it would be difficult to identify the activity associated with the complainant’s betting account regarding bonus bets as a red flag behaviour.
27. The Commission has also sighted the communication between the complainant and TopBetta of 26 February 2019 and notes that it is in this communication that the complainant advises TopBetta that he has had “no luck at all,” that he was “struggling” and is a “problem gambler”. It was as a result of this communication that the complainant was self-excluded from using TopBetta’s betting services as detailed at paragraph 21 above.
28. With respect to the 9 February 2019 communication, the Commission has sighted this and notes that it is in this communications that the complainant states:
- “Sorry for asking for that deposit bonus. Really would have come in handy though :(Will be depositing \$200 tonight.”*
29. The Commission expects that licensed sports bookmakers will continually monitor customer accounts from the time they are opened in order to identify those of its customers who are experiencing or at risk of harm associated with gambling so as to be able to intervene at the earliest opportunity. While in reflection, the complainant considers that the communications between TopBetta and himself as detailed above should have been identified as red flag behaviour, as noted in previous Commission decisions, the Courts have set a very high threshold of responsibility for the gambler as to their own actions. 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

30. Noting the view of the Courts and having reviewed the communications between the complainant and TopBetta, the Commission has formed the view that the contents of this communication, be it singularly or collectively was not of a sufficient nature for TopBetta to have been expected to identify that the complainant may have been experiencing harms associated with his gambling activity. Given this view, the Commission does not consider that the actions of TopBetta with respect to the complainant are in breach of the 2016 Code.

Decision

31. The Commission is of the view that while the complainant through his own admissions is a person who has experienced harm associated with his gambling activity, that his betting activity and behaviours were not of such a nature that TopBetta should have identified those activities as red flag behaviours.
32. As a result, the Commission has determined that the complainant's bets are lawful bets pursuant to section 85(1A) of the Act given that they were struck in accordance with the Act, relevant Codes of Practice, the conditions of the sports bookmaker licence held by TopBetta and TopBetta's terms and conditions.
33. As such, it is the view of the Commission that there is no outstanding monies payable by TopBetta to the complainant.

Review of Decision

34. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the Act shall be final and conclusive as to the matter in dispute.



Alastair Shields
Chairperson

13 August 2020