

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr K
Licensee:	Sportsbet
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)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran
Date of Decision:	31 January 2020

Background

1. On 26 November 2018, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Commission against the licensed sports bookmaker, Sportsbet.
2. The substance of the complainant's dispute is that after having excluded himself from Sportsbet's wagering services in 2015, he was able to open a new betting account with Sportsbet in November 2018 using the same surname, first name and date of birth which he was then able to use to engage in betting activity. After losing the money that he had deposited into the betting account, the complainant stated that he then realised that Sportsbet was a sports bookmaker that he had previously self-excluded from and as a result, he contacted Sportsbet to request a refund of the money that he had deposited, which Sportsbet declined to do. The complainant is further aggrieved that after Sportsbet closed this betting account, the complainant received promotional material via a Sportsbet Cash Card in the mail. The complainant has also stated that Sportsbet did not immediately close his 2015 betting account despite him having asked it to do so many times. The complainant stated that Sportsbet would only close his account temporarily for a few hours or days and then his account would be re-opened. The complainant is also seeking a refund of the deposits he made into the 2015 betting account from the date he first asked for the account to be closed.
3. The Commission affords all sports bookmakers licensed in the Northern Territory an opportunity to respond to each gambling dispute made against it. In response to this gambling dispute, Sportsbet advised that in 2015, Sportsbet closed the complainant's account immediately upon being requested to do so and that the account remained closed despite the complainant requesting that it be reopened on the same day it was closed and again in 2016 and 2017. In relation to the complainant's 2018 betting account, Sportsbet advised that its account matching algorithm matches surname, date of birth and postcode and/or mobile number or email address and that as the complainant used a different address, mobile number and email address, the account was not matched to the 2015 self-excluded account. Sportsbet advised that after the complainant raised his dispute directly with Sportsbet, the complainant attempted to open two more accounts with Sportsbet

with slightly different details, however these were detected by Sportsbet and closed. Sportsbet advised that using only a name and date of birth during the account matching process would result in a very high false positive rate and cause unnecessary harm or confusion for its customers. With respect to the Sportsbet Cash Card being received after the complainant's 2018 betting account was closed, Sportsbet advised that the complainant had ordered the card six days prior to his account being closed. When a card is ordered, the order is sent to a third party to generate the card which is then sent to the customer via mail within seven to fourteen days.

4. Information was gathered from both parties by a Licensing NT officer appointed under the Act as a betting inspector by the Commission and provided to the Commission to consider the dispute on the papers.

Consideration of the Issues

Code of Practice

5. All Northern Territory licensed sports bookmakers' licence conditions and the Act currently require licensees to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code).
6. 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). Prior to this, online gambling operators were required to comply with the Northern Territory Code of Practice for Responsible Gambling which was gazetted on 7 June 2006 (the 2006 Code). All three 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.
7. The activity subject of this gambling dispute occurred in 2015 and in 2018. As such, the 2006 Code applied to the 2015 activity while the 2016 Code was in force at the time of the 2018 activity.
8. The 2006 Code amongst other things required that licensed gambling operators were to provide their customers with the option of excluding themselves from the gambling site. The 2006 Code stated specifically for sports bookmakers that:

The website is to operate such that the submission of a completed self-exclusion triggers technical responses that block access by the player to the site, and this action is written to the audit log for the system.
9. The 2016 Code also required that licensed sports bookmakers have a system in place that allowed customers of the sports bookmaker to self-exclude themselves from the sports bookmaker's services should they wish to do so. Specifically, clause 4.2 of the 2016 Code stated that:

4.2 Self-exclusion features

Online gambling operators must provide self-exclusion features on their website to enable their clients the opportunity to exclude themselves from accessing the operator's gambling products. The

operator must offer this option via an online process or a form based process, and must ensure suitable internal procedures are in place to have any self-exclusion request dealt with immediately. The option for exclusion from all Northern Territory online gambling operators must be included.

In addition to having its own process for a client to activate an exclusion, the online gambling operator must also have in place procedures that will allow it to process a request on a self-exclusion form developed by the regulator and available from the Departmental website, when lodged by a client.

All self-exclusion actions must be recorded in the Gambling Incident Register.

10. As can be seen from the above self-exclusion requirements of both the 2006 Code and the 2016 Code, the Commission expects that sports bookmakers will implement a self-exclusion immediately upon being requested to do so and that they will have appropriate systems in place to match account details in order to prevent self-excluded customers from returning to use their services.
11. The issues for consideration therefore in this respect is whether Sportsbet immediately implemented its self-exclusion processes upon being requested to do so by the complainant in 2015 and whether it had an appropriate system in place to prevent the complainant from returning to use its service in 2018 when the complainant opened his second account.

2015 Account Closure

12. With respect to the 2015 closure of the complainant's account, the Commission has examined various live chat and email records between the complainant and Sportsbet dating back to 2013 and notes the following relevant activity:

20 November 2013	Complainant requested his account to be closed as he had not been provided with any free bets. Several hours later, the complainant requested that his account be re-activated
30 November 2014	Complainant was operating 2 accounts (1 with former Sportsbet brand & 1 with Sportsbet) - complainant requested duplicate account be closed which Sportsbet did
15 May 2015	Complainant requested bonus bets as he had lost heavily the past weekend and that day. Sportsbet queried whether he believed that his gambling was causing problems to which the complainant responded <i>"Not at all...but I reached my limit which I set"</i>
16 May 2015	Complainant requested bonus bets which Sportsbet again declined to provide. Complainant requested account to be closed permanently and confirmed that he would not be able to re-open it in the future. Sportsbet confirmed that account permanently closed
16 May 2015	Complainant requested that the account be re-opened - Sportsbet declined to do so
12 January 2016	Complainant requested that the account be re-opened - Sportsbet declined to do so
2 September 2017	Complainant requested that the account be re-opened - Sportsbet declined to do so

13. It is clear from the above chat and email history, that upon receiving a request from the complainant to close his Sportsbet betting account in 2013 as he was not receiving free bets, Sportsbet did so. The account was then re-opened at the complainant's request a few hours later.

Again it is clear from the above chat and email history, that upon receiving a request from the complainant to close his Sportsbet betting account in 2015 again after not receiving free or bonus bets, Sportsbet immediately did so. Additionally, when requested by the complainant to re-open the account in 2016 and 2017, Sportsbet refused to do so.

2018 Account Opening

14. On 8 November 2018, the complainant opened the Sportsbet betting platform and created a new betting account using the same first name, surname and date of birth that the complainant's previous account that was closed permanently in 2015 was registered with. The complainant used a different address, email address and mobile phone number than registered with the 2015 closed account.
15. The complainant states that he had left Australia in early 2016 and when he returned in late 2016, he acquired a new mobile phone number and email address. The complainant also states that he used the same banking details for both accounts.
16. As detailed at paragraph 3 above, Sportsbet has advised that its account matching algorithm matches surname, date of birth and postcode and/or mobile number or email address. If these rules are met and the account links with a previously self-excluded account, the new account will be automatically suspended and betting and depositing blocks will be placed on the account. Sportsbet further advised that a person with the same surname and date of birth only, will not trigger its account matching rules. As the complainant used a different address, mobile number and email address when registering the 2018 betting account, the account was not matched to the 2015 self-excluded account.
17. In a previous decision of the Commission relating to Sportsbet's ability to identify previously self-excluded customers (A v Sportsbet dated 18 April 2019), the Commission determined that it was satisfied that Sportsbet had an appropriate system in place to match account details in order to prevent self-excluded customers from returning to use its betting services through the matching of the full name, mobile phone number, address and email address. As the complainant in that matter had used only the same first name and date of birth when opening the second betting account, the Commission determined it was not reasonable to expect Sportsbet to have identified that the second betting account was to be operated by the same person who opened and closed the original betting account with Sportsbet.
18. At the time of that decision, it was understood by the Commission that the Sportsbet algorithm used to match betting accounts matched full name, mobile phone number, address and email address. However, through the responses provided by Sportsbet in this matter, it would appear that this is not the case and that rather than doing so, the Sportsbet algorithm matches surname, date of birth and postcode and/or mobile number or email address. As the complainant in this matter used only the same surname and date of birth (but not the same postcode, mobile number or email address) the two accounts were not linked.
19. Sportsbet has submitted that its current matching rules are ones that make every reasonable effort to detect potentially matched accounts and that using only a

surname and date of birth during the account matching process would result in a very high false positive rate and cause unnecessary harm or confusion for its customers.

20. Sportsbet further advised that after the complainant's account was closed in 2018, the complainant attempted to open a further two betting accounts with Sportsbet, both of which were detected. Sportsbet has advised that it is of the view that as the complainant *"...has attempted multiple times to reopen his previously self-excluded account and has deliberately circumvented our controls ...his claims have no basis and therefore we will not be offering him a refund of any deposits and all bets stand."*
21. With respect to the two further accounts that the complainant attempted to register after the 2018 betting account was closed, the Commission notes that based on Sportsbet's current account matching algorithm, neither of these accounts would have triggered a match with the complainant's 2015 self-excluded account although one of the accounts would have triggered a match with the account that was closed in 2018. When the Commission's betting inspector asked why the further two accounts were detected by Sportsbet, Sportsbet advised that these two accounts were identified in the process of investigating the gambling dispute and it was Sportsbet's belief that the complainant was testing *"...our system for unknown reasons."* Sportsbet advised that upon detection, both of these accounts were closed as a result of the complainant breaching its terms and conditions.
22. It is clear that Sportsbet's account matching algorithm did not identify that the complainant had previously self-excluded from using Sportsbet's betting platform in 2015. The issue for the Commission therefore, is whether the system utilised by Sportsbet at the time the complainant opened the 2018 betting account was sufficient to prevent a self-excluded customer from using its services as required by the 2016 Code.
23. The very purpose of clause 4.2 of the 2016 Code was to lessen the risk to people who may be suffering from gambling related harm, by allowing a person to ban themselves from using a sports bookmaker's products. The complainant in this matter availed himself of the opportunity to do this in 2015 however, the system Sportsbet has in place to prevent self-excluded customers from opening a new account failed to meet the objectives of the 2016 Code.
24. In the Commission's view, it is irrelevant whether a person has or has not deliberately tried to circumvent a sports bookmaker's system to open a new account after having previously self-excluded from it. The system a sports bookmaker has in place should prevent a previously self-excluded person from opening an account regardless of the number of attempts made or the reasons motivating a person to attempt to do so. While Sportsbet advise that data matching on surname and date of birth would produce a high level of false positives which would result in an inconvenience to customers, the Commission is of the view that the inconvenience of conducting a number of further checks on those potential customers who fall into the 'false positive' category is a relatively small inconvenience if its result is to prevent a person who has previously identified that they may be suffering from gambling related harm from opening a new account.

Terms and Conditions

25. The objects of the Act under which sports bookmakers are licensed 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.
26. 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 doing so, the Commission approves the terms and conditions of sports bookmaker licences which include the terms and conditions of agreements entered into between sports bookmakers and their customers. Both the sports bookmaker and the customer are bound by these terms and conditions when a betting account is opened and each time a bet is struck.
27. With respect to self-exclusion, Sportsbet terms and conditions state that Sportsbet will make every reasonable effort to prevent self-excluded customers from returning and using its service and that to do so, it provides a self-exclusion service that at the customer's request will prevent the customer from using their account indefinitely. The terms and conditions also state that a self-excluded customer must not attempt to open an account or place any bets with it otherwise the customer will be fully liable for all activity and bets placed on the account. Further that if Sportsbet considers that a customer has deliberately circumvented its controls and placed bets while self-excluded open/pending bets will be voided and the original stake returned to the account and resulted bets will stand with the balance of the account returned to the self-excluded customer.
28. The Commission continues to support terms and conditions such as the above in the terms and conditions entered into by the both the sports bookmaker and its customers when an account is opened. The three occasions that the complainant attempted to open a new account with Sportsbet after having previously self-excluded would certainly appear to be a breach of Sportsbet's terms and conditions by the complainant. Whether or not the activity of the complainant can be considered to be action to deliberately circumvent Sportsbet's control however, is questionable given that the complainant used the same first name, the same surname and the same date of birth to register another account with Sportsbet. In the Commission's view, it cannot be considered particularly unusual that in a three year period a person has changed their address, mobile phone number and email address and that by doing so, a person is deliberately circumventing a sports bookmaker's data matching process.
29. The complainant in this matter did not use a different first name, surname or date of birth, identifying details that in most people's cases remain constant, when he opened the account with Sportsbet in 2018. Other details such as addresses both physical and email, and mobile phone numbers are often not constant and as has occurred in this matter, these identifying details can easily change over time.
30. This being the case, it is again whether the system Sportsbet had in place was sufficient to prevent self-excluded customers from returning to use its service that is at the forefront of the Commission's considerations. Can a system that did not identify that the complainant had previously self-excluded when he used the same

first name, the same surname and the same date of birth to register another account with Sportsbet be considered to be a 'reasonable effort' on behalf of the sports bookmaker? In this respect, the Commission is of the view that as the system Sportsbet has in place to prevent self-excluded customers from opening a new account failed to meet the objectives of the 2016 Code, then Sportsbet cannot be considered to have made a 'reasonable effort' to prevent self-excluded customers from returning to use its betting services as required by their own terms and conditions.

31. Given the Commission's view that the Sportsbet's system failed to meet the objectives of the 2016 Code and in turn that Sportsbet cannot be considered to have made a reasonable effort to prevent a self-excluded customer from returning to use its services as required by its own terms and conditions, that Sportsbet cannot then rely on its terms and conditions to claim that all bets made on the account stand.

Promotional Material

32. The 2016 Code also sets out that a sports bookmaker must ensure that it has suitable procedures in place to ensure that correspondence or promotional material is not sent to any of its customers who have self-excluded from using their services.
33. Several days after the complainant lodged the gambling dispute subject of this decision notice with Commission, the complainant advised the Commission's betting inspector that he had received a Sportsbet Cash card in the mail.
34. The Commission has reviewed Sportsbet records that detail that the complainant ordered the Sportsbet Cash Card six days prior to his 2018 account being closed. As advised by Sportsbet, when a card is ordered, the order is sent to a third party to generate the card which is then sent to the customer via the mail.
35. Whilst the Commission is of the view that the 2018 account should have been identified as an account belonging to a previously self-excluded customer and therefore should not have been able to be used as an active account, it is clearly evident that it was. Whilst that account was open, the complainant has used that account to order a Sportsbet Cash Card and as a result, promotional material was then sent to a self-excluded customer. In this respect, the Commission considers that as the complainant was not identified as a self-excluded customer at the time the Sportsbet Cash Card was ordered, it would not be reasonable to consider that a deficiency in Sportsbet's procedures was the cause of the complainant receiving promotional material.
36. Additionally, whilst the complainant's 2018 account was closed and linked to the 2015 self-excluded account before the complainant received the Sportsbet Cash Card, the Commission also considers that as the order for the card was outsourced to a third party prior to the account being closed, Sportsbet would not have been in a position to know whether or not the card had already been sent and or received by the complainant. As such, it would again not be reasonable to consider that a deficiency in Sportsbet's procedures was the cause of the complainant receiving promotional material.

Decision

37. Section 85 of the Act provides the Commission with the jurisdiction to determine all gambling disputes between a sports bookmaker 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.
38. On the evidence before it, the Commission is satisfied that Sportsbet did close the complainant's account in 2015 immediately upon his request. Apart from the time that Sportsbet closed the complainant's account in 2013 upon his request after not receiving bonus bets, there is no evidence before the Commission to support the complainant's assertions that he had requested Sportsbet to close his account on many occasions or that Sportsbet would only close his account temporarily.
39. As such, the Commission finds that all bets struck during the life of the complainant's account prior to its closure in 2015 were lawful bets. Given this, the Commission is not of the view that the complainant is entitled to receive a refund of the deposits made into the account.
40. The Commission however, is not satisfied that Sportsbet had an appropriate system in place to match account details in order to prevent self-excluded customers from returning to use its services at the time the complainant opened the 2018 betting account, as was required by the 2016 Code at the time.
41. As such, the Commission has determined that Sportsbet has not complied with clause 4.2 of the 2016 Code and as a result, pursuant to section 80(1)(d) of the Act, has failed to comply with condition 16 of its licence.
42. 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.
43. Given the serious nature of this matter, the Commission has determined to impose a fine of 43 penalty units. As at 1 July 2019, the value of a penalty unit in the Northern Territory is \$157 therefore the fine imposed is in the amount of \$6,751.
44. The Commission is satisfied on the basis of the evidence available to it, that the complainant was a self-excluded person at the time the betting transactions on the 2018 betting account were made and as such, the Commission has determined that the bets made during the life of the betting account were not lawful.
45. Given the bets were not lawful, it is the view of the Commission that Sportsbet are not able to rely on its terms and conditions in order to not refund the complainant's losses. As such, the Commission has formed the view that it is appropriate for Sportsbet to refund the complainant's losses of \$1,360.46 (being the difference between the deposits of \$1,971.00 made and the withdrawals of \$610.54 actioned throughout the life of the betting account).

46. On the evidence before it, the Commission is not of the view that a deficiency in Sportsbet's procedures was the cause of the complainant receiving promotional material and as such has determined that there has been no breach of the 2016 Code in this regard.

Review of Decision

47. 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
Northern Territory Racing Commission

31 January 2020