

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	Sportingbet Australia Pty Ltd
Complainant:	Mr I
Proceedings:	Pursuant to Section 85(4) of the <i>Racing and Betting Act</i> – Referral of Dispute to Racing Commission for Determination
Heard Before:	Mr Andrew Maloney and Mr John McBride
Date of Decision:	22 August 2014

BACKGROUND:

- 1) On 27 November 2013 Mr I sent an email complaint against Sportingbet Australia Pty Ltd (“the Bookmaker”) in which it is alleged the Bookmaker allowed him to continue to gamble using his betting account after he had advised them that he had a betting problem.
- 2) A request was sent to the Bookmaker for a response in relation to the dispute which was received on 13 December 2013.
- 3) The Complainant stated that he “*wants to ensure people like me are duly looked after and compensated for lack of care on behalf of gambling organisations like these*”.
- 4) The provision of compensation is not within the remit of the Racing Commission however the matter involves allegations of problem gambling and a failure of the bookmaker to exercise due care. It therefore must be referred to the Racing Commission in the first instance for consideration and determination.

FACTS OF THE MATTER

Closure of account

- 5) On 13 June 2013 Mr I contacted the Bookmaker by email and stated:

“...I have a possible gambling problem as a result of on-line gambling and have lost more money than I can afford to lose”.

The request also asked:

“Can you please assist me by setting up a loss limit of \$120 per week and make this permanent on my account for the remainder of 2013. I understand you have the option on the site to do so but it only lasts 7 days and I find myself over-riding this in such a short time frame... I need a longer period of time to hopefully overcome this addiction.

Can you confirm that you are able to set up this loss limit of \$120 per week to last for the entire year (not just 7 days)."

- 6) The Bookmaker advised "...unfortunately your request below is an action we do not have the system capability to offer". The Bookmaker then went on to list the options available to Mr I and also included a copy of a self-exclusion form.
- 7) Mr I was asked if he lodged a self-exclusion form or the like and he replied that he had not, he emailed asking for exclusion for the remainder of 2013.
- 8) The Bookmaker has provided copies of correspondence between Mr I and Centrebet on 13 June 2013 separate to the emails to Sportingbet.
- 9) At 09:52hrs some 40 minutes after his original contact email requesting \$120 loss limit, Mr I asked for assistance in "...setting up a loss limit of \$1000 per month and make this permanent on my account for the remainder of 2013."
- 10) At 12:12 he contacted Centrebet asking why his account had been closed completely.
- 11) A response was provided by the Bookmaker at 12:25hrs in which they stated:

"We note you have mentioned that you have a possible gambling problem and as a duty of care we have closed your account until you are able to explore your options before you make your decision."
- 12) Mr I responded that the information was of assistance and asked for the account to be opened so that he could "...immediately set the limits myself and continue to do so every 7 days myself."
- 13) Mr I confirmed whether the email had been received and asked if he was required to do anything else.
- 14) At 15:25hrs the Bookmaker contacted Mr I to advise the account had been re-opened as per his request and reminded him that he had informed them of his situation "...and as a duty of care have taking (sic) it seriously by informing you of our processes when dealing with the issue."
- 15) The Bookmaker again confirmed their system was not able to do as requested by Mr I however suggested how a similar outcome could be achieved.
- 16) Mr I contacted the Bookmaker and asked to "...please suspend by Centrebet (sic) account for the remainder of 2013... Effective immediately" with a similar email being sent to Sportingbet at 17:40hrs.

"Temporary or Permanent Self Exclusion

Self-Exclusion (banning yourself from gambling websites) can be very helpful in reducing your opportunities to gamble.

If you need a break from gambling, Sportingbet offers a self-exclusion program. You can exclude yourself on either a temporary or permanent basis and can include options to prevent access to telephone and internet betting services.

Any person requesting self-exclusion will be supplied with appropriate self-exclusion information and guidance as to how to apply for these self-exclusion arrangements.

Where customers elect to exclude themselves from telephone and internet betting services, Sportingbet will take reasonable steps to prevent the use of existing accounts or opening new accounts by that customer. (Emphasis added)

Any exclusion arrangement entered into with us only affects betting with Sportingbet, and not your ability to bet with other betting providers. Persons who exclude themselves are encouraged to also seek exclusion from other betting providers. Our staff can provide you with some assistance in this area.

To learn more about self-exclusion, please contact our support desk on 1800 007 238."

CONSIDERATIONS:

- 17) The Bookmaker has submitted that when contacted by Mr I they provided him with the necessary information and clearly advised him that they their systems were not capable of doing what he asked and so he had to choose other options which were provided to him.
- 18) It was submitted that Mr I acknowledged that he needed to set the loss limits himself and asked for the account to be opened so he could do this. The Bookmaker also ensured in their correspondence that he was made "...aware of this (sic) options regarding loss limits and information about how and where to obtain problem gambling help".
- 19) The Northern Territory Code of Practice for Responsible Gambling ("the Code") details the steps which must be taken by sports bookmakers with regards to self-exclusion procedures. The Code requires the Bookmaker to put in place procedures "as appropriate".
- 20) The Bookmaker has submitted they have taken "...all reasonable measures so that the Client was not able to open an additional Betting Account...and...should not be required to refund any monies to the Client, as due process was followed".
- 21) The requirement with regards to Section 4.2 - Self-Exclusion Procedures is marked as "as appropriate". This is somewhat non-descriptive and open to interpretation however the generally accepted meaning is the Bookmaker must make appropriate provision for these procedures.
- 22) The Bookmaker has a substantial amount of information available to clients and the general public on their website about problem gambling.

<http://www.sportinabet.com.au/#ResponsibleGambling>

23) The relevant section of the Code referred to earlier is Section 4. The sections most relevant to this matter are:

“4. Exclusion of Problem Gamblers.

Gambling providers are to provide patrons who feel they are developing a problem with gambling, with the option of excluding themselves from the gambling venue or site.

4.1 Patron Responsibility.

Gambling patrons will be encouraged to take responsibility for their gambling activity. Gambling providers are to provide patrons who feel they are developing a problem with gambling with the option of excluding themselves from the gambling venue or site.

4.2 Self-Exclusion Procedures.

A generic form of self-exclusion has been developed for use by Northern Territory gambling providers, (Note: casinos have specific provisions in place). Procedures with clear, supporting documentation are to be implemented and application forms for self-exclusion must be available at Reception, within the gambling area, adjacent to the gambling products or/and on the website.

For Internet/Telephone Sports Bookmakers and Online Gaming Licensees: Appropriate self-exclusion facilities and procedures are to be developed and implemented.

4.3 Completed Self-Exclusion Forms.

Management and/or security staff of the gambling provider to be supplied with the completed self-exclusion forms together with, where appropriate, a photo of the relevant person. These forms will include the stated wish of the patron to be reminded of their desire to be excluded from the specified gambling provider. Details will also be entered in the Responsible Gambling Incident Register.

For Internet/Telephone Sports Bookmakers and Online Gaming Licensees: 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.”

24) The Code states at Section 4.1 that the patron must be encouraged to take responsibility for their gambling and that the Bookmaker must provide the option of excluding themselves.

25) Mr I has chosen not to exclude himself he stated he was going to set loss limits himself and it was only when he later contacted the Bookmaker in July that he asked for the accounts to be “suspended” which they were.

26) It is well known the position the Courts hold in relation to the autonomy of the individual and whether a duty of care exists to a client from the bookmaker to prevent pure economic loss.

- 27) It is also well established that the opening of a wagering account and the placing of bets is a contractual matter between the bookmaker and client. It necessarily follows that such a contract comes with its terms and conditions which parties are bound by.
- 28) Within the Responsible Gambling section of the website for the Bookmaker is the following condition which may be taken as having been agreed upon by Mr I when he opened and operated the accounts.

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- 29) It may be accepted that Mr I has on 6 July 2013 requested a “suspension” of his accounts which would equate to a temporary self-exclusion. Although he stated at the outset that he thought he had a problem it was clear at all times that what was requested was a loss limit which was to be placed by the client but was never enacted.

DECISION

- 30) As stated earlier the provision of compensation is not within the remit of the Racing Commission and as such the Complainant will need to direct that matter to the appropriate legal channel.
- 31) The Commission finds that Sportingbet had adopted the required procedures in relation to dealing with the “*problem gambler*” issue by providing all information and assistance to the Complainant to enter into self-exclusion and/or closure of an account.

32) The Commission does however consider that Sportingbet might prudently in all instances of identified problem gambler clients err on the side of caution in immediately closing their accounts. In such identified circumstances the Bookmaker by its proactive decision should then not fall foul of criticism in putting its commercial interests ahead of the welfare and future potential gambling addiction consequences to their problem gambler customer.



Andrew Maloney
MEMBER



John McBride
MEMBER

22 August 2014