

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Ms L
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. This dispute involves the client, an alleged problem gambler being able to gamble after her account was re-opened at her request.
2. The client is seeking a refund of \$7,500.00 for her betting losses for wagers placed between the 23 February 2018 and 27 February 2018. These dates being the date of account re-opening until final closure.
3. The bookmaker for their part claim they are under no obligation to refund any monies to the client.
4. To support their claim the bookmaker had presented to the Commission copies of all email correspondence between the parties to this dispute.
5. It is important to note that during the course of this correspondence at no time did the client indicate to the bookmaker that she was in financial difficulty or suffering from any form of gambling problems.

Facts of the Matter

6. A chronological sequence of events is outlined below to provide some context as to how this dispute arose and how it led to the lodgement of a complaint to the Commission.
7. 6 December 2017 Account is created in the name of Ms S
6 December 2017 Credit card in the same name was successfully verified
3 February 2018 Account closed as per client's request. No specific reason provided for closure.

5 February 2018	Account re-opened following an email request from the client to do so
16 February 2018	Account closed for a second time following an email request from the client

Once again the client gave no indication of any financial or problem gambling issues simply stating in her email, 'Please permanently close my account, Ms L'.

23 February 2018	Account re-opened (after due process) by the bookmaker following an email request from the client
27 February 2018	Account closed by the bookmaker as a result of the lodgement of a complaint by the client claiming that the account should not have been re-opened following her request on 16 February 2018 to have the account permanently closed.

8. The Commission requested the bookmaker to explain its claim of re-opening of the account under due process as at the date of 23 February 2018.
9. This request sought to unearth any further information or documentation around the re-opening of the account.
10. In response, the bookmaker provided the following information. This response confirmed that all correspondence between the parties was via email with no phone calls undertaken by either party.
11. Regarding the re-opening of the account after due process:
 - 23/02/2018: 10:48: Request via email to re-open account
 - 23/02/2018: 11:14: Mike replies to email "I have forwarded your request to re-open the account onto management for review"
 - 23/02/2018: 12.26: Account re-opened (after due process) request via email
 - 23/02/2018: 12.35: Deposit made

Almost two hours passed between Ms L's email to re-open her account and making her next deposit. During this time Ned's customer service officer, flagged the account to management who took the time to review Ms L's account and though it was closed once before, she never self-excluded and still hasn't chosen to fill out the forms to self-exclude and close her account.

Under the guidance of our responsible service gambling procedures (as our responsible service gambling officer was absent on this day), Ned's due process included but not limited to:

- Identifying the number of previous closures (1)
- Confirmed no Self-Exclusion documentation had been previously received
- A review was conducted of all correspondence with the customer (phone, email, chat) to determine if any RSG concerns had been raised

- The above review revealed that no correspondence indicated any RSG concerns
- Betting pattern and stakes had not changed prior to closing account (ie chasing bets)
- Above findings discussed with management.

Ms L at no time mentioned financial hardship when closing the account the first time. Ms L does mention it was a 'weak moment' in an email which led her to re-open the account, during the time we took to investigate and re-open the account, Ms L did have two hours to cool off and re-think her account with Neds. Further Ms L needs to take some responsibility and what's concerning is throughout this entire process, Ms L has refused to fill out the Self-Exclusion form - which means she is always keeping this window open to gamble with Neds, whilst lodging this dispute.

Consideration of the Issues

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 (the Code).
14. The primary issue to be considered in this matter is did the bookmaker observe its terms and conditions in opening and closing of the clients account and did they offer and settle the disputed wagers in an appropriate manner?
15. A secondary but nonetheless very important issue is the question as to whether the bookmaker observed the requirements of the NT Code of Conduct for Responsible Online Gambling 2016, which seeks to guide Northern Territory registered bookmakers as to their obligations to clients around issues including but not limited to problem gambling and harm minimisation.

Decision

16. The Commission has examined in detail all aspects of the bookmaker's procedures involving the opening and closing of the client's account during the period 23 February to 27 February 2018 (for which the client is claiming reimbursement).
17. The Commission is satisfied that account openings and closures were carried out in accordance with the agreed terms and conditions between the bookmaker and the client.

18. Similarly we are satisfied that all wagers and deposits including those made during the dispute period were made in accordance with accepted terms and conditions and are deemed by the Commission to be lawful and binding.
19. We now turn our attention to the observance by both parties to this dispute of the requirements of the NT Code of Conduct for Responsible Online Gambling 2016.
20. Firstly, it is important to highlight Clause 4.1 of the Code relating to client responsibility, this Clause is reproduced below:

'The operators client will be encouraged to take responsibility for their gambling activity through the online gambling operators provision of clearly defined terms and conditions, rules, odds and player returns'.

21. Given that we have ruled that the bookmaker observed its requirements around terms and conditions, rules, odds etc, it is incumbent upon the client to bear their share of responsibility for the outcome in this matter.
22. The bookmaker for their part must also be scrutinised as to their actions in respect of the Code.
23. The Commission is concerned that in this instance the bookmaker failed to recognise what we consider significant red flag behaviour by the punter in their frequent opening and closing of her account in the space of a little over two months.
24. A number of red flag behaviours are outlined in the Code at Clause 3.1 and we quote what we consider to be one that is relevant in this matter:

'Red flag behaviours may include but are not limited to – changing gambling patterns'

25. We acknowledge the bookmakers assertion that they observed what they considered to be due process in the opening of the clients account for the third time in two months, however, we consider that given the unusual frequency of account opening and closures, an email or even a phone call should have been initiated to gather more information around the clients situation and welfare.
26. The Commission is concerned at the bookmaker's advice that they do not automatically close a client's account upon notification (albeit verbal) of a client's issues around problem gambling.
27. It is widely accepted and observed by industry participants that as soon as a client indicates that they have a problem gambling issue their account is closed, irrespective of whether they sign and return any exemption documentation.

28. Whilst this does not impact the lawfulness of the wagers in question, the Commission directs that Neds.com.au Pty Ltd fall into line with industry accepted standards with regards immediate closure of problem gamblers accounts, irrespective of whatever means that notification is made.
29. We now return to the lawfulness or otherwise of the wagers made between 23 February 2018 and 27 February 2018.
30. As such and in accordance with Section 85(4) of the Act, on the basis of the information provided and 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