

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr M
Licensee:	Betfair Pty Ltd
Proceedings:	Pursuant to section 109Y(2) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Mr James Pratt Ms Amy Corcoran
Date of Decision:	2 November 2018

Background

1. On 23 February 2018, pursuant to section 109Y(2) of the *Racing and Betting Act* (the Act), the Complainant lodged a gambling dispute against the registered betting exchange operator, Betfair.
2. The Complainant is seeking a refund of \$145,000.00 for his betting losses for wagers placed on the 21 February 2018 after Betfair reversed his withdrawal request of \$150,000 claiming Betfair did not comply with the *Northern Territory Code of Practice for Responsible Online Gambling 2016 (the Code)*.
3. Betfair claim they are under no obligation to refund any monies to the Complainant. To support their claim Betfair had presented to the Commission copies of telephone call recordings between the parties, full transaction history of the Complainant, a PDF document showing the review process used in October 2014 when the operator allowed the Complainant to end his self-exclusion and other relevant information requested. Information was gathered from both parties through Licensing NT and provided to the Commission to consider the matter on the papers.
4. It is noted that Betfair is a licensed betting exchange operator in the Territory and its licence came into effect on 12 September 2016. Matters that occurred prior to this date may serve as background knowledge to this dispute.
5. In summary, the Complainant's case is:
 - a. his Betfair account was at "*approximately \$320,000*" on the 20 February 2018 when he requested a withdrawal of \$150,000 to be deposited into his bank account;
 - b. in a "*desperate mindset*" he requested the withdrawal be reversed back into his Betfair account after losing "*\$170,000*" that same day;
 - c. Betfair reversed \$145,007 of the initial withdrawal request in which he subsequently lost on bets placed that same day with Betfair;
 - d. he claims Betfair has:

- i. breached their own policy and were negligent by allowing the reversal of \$145,007 without taking into consideration the Complainant's recent wagering activities and previous self-exclusion; and
 - ii. breached the *Northern Territory Code of Practice for Responsible Online Gambling 2016 (the Code)* as Betfair should have identified the Complainant was a problem gambler or offered the services of a Responsible Service Gambling (RSG) officer.
6. Betfair submits:
- a. Betfair was aware the Complainant had been previously self-excluded for 6 months in 2014 and initiated a one month time out on his account in 2016 but the actual reason for the self-exclusion or time-out was never stated by the Complainant;
 - b. When reviewing the betting activity of the Complainant prior to approving the reversal; the operator could not have reasonably known the Complainant had a gambling problem as he had not stated there was a problem, nor were there any "...discernible indicators of problem gambling found in Mr M's activity..."; and
 - c. The Complainant's request to reverse the withdrawal is not considered to be a sign of a person with a gambling problem. Betfair asserts it is not a service it generally offers, nor a breach of their licence, but in this case, after reviewing the account, made an exception due to the Complainant's longstanding loyalty to the operator.

Consideration of the Issues

- 7. The Northern Territory Racing Commission (the Commission) considers problem gambling to be the most serious of issues and holds all gambling operators to a high standard with regards to any breaches.
- 8. All licensed bookmakers and betting exchange operators' licence conditions and the *Racing and Betting Act* (the Act), require compliance with the *Northern Territory Code of Practice for Responsible Online Gambling (the Code)*. The Code places requirements on the bookmaker / betting exchange operator.
- 9. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. This Code sets out certain practices to be adopted by Northern Territory gambling providers in the provision of their services, so as to minimise the harm to consumers that may be adversely affected by gambling.
- 10. "Responsible gambling" is a broad concept and involves the conduct of gambling in a manner whereby the potential for harm associated with gambling is minimised. It respects the responsibility of individuals for their own actions, but also acknowledges a responsibility on the part of the service providers.
- 11. Responsible gambling has regard to the context in which gambling occurs, the inducements made to gamble, the way the gambling service operates and the integrity of the gambling operator. The aim is to enable persons to make informed decisions about their participation in gambling and, if harm has occurred, to provide access to gambling help services.

12. 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.
13. On review of the submissions there is no evidence that the Complainant advised Betfair of his problem gambling prior to the telephone call on 23 February 2018, however, on two separate occasions known to Betfair the Complainant self-excluded for short periods of time.
14. Although there was no direct admission by the Complainant, the question is whether Betfair should have identified red flag behaviours under the Code indicating a potential problem gambler. Red flag behaviours include but are not limited to: gambling for extended periods, changing gambling patterns, increase in deposit frequency and escalating sums of money deposited.
15. After the Complainant's request to withdraw \$150,000 (0620 GMT on 20 February 2018), the Complainant rang a Betfair customer service operator on 4 separate occasions to request a reversal of the withdrawal. The time and summary of those calls are set out below:
 - a. 20.2.18 (2307 GMT) Complainant was advised that they can't cancel the withdrawal stating that no staff on duty has the ability to complete the request and "generally they can't cancel it" in any event;
 - b. 21.2.18 (0102 GMT) Customer service operator confirmed the withdrawal cannot be cancelled once it was in the system;
 - c. 21.2.18 (1123 GMT) The Complainant confirmed previous advice provided by Betfair that he could not reverse his withdrawal request so he asked that his withdrawal be processed first and separately from other requests given he was a "pretty good customer" in a bid to speed up the process. He was advised by the customer service operator that they cannot do anything to speed the process up. The Complainant then requested to speak to a VIP customer service person by the name of Mr R. He was told Mr R would call him back.
 - d. 21.2.18 (1200 GMT) Betfair Manager, Mr R, agreed to process the reversal request as a "one-off" given he could not guarantee that the money would be in his bank account before 4.00pm that afternoon in time for a bet which the Complainant stated he wished to place at that time. Mr R asked the Complainant how much money he would like to leave in the account with the Complainant responding \$5,000. Mr R clarified that he wanted \$5,000 reversed back into his Betfair account but the Complainant advised he wanted \$145,007 to remain in his Betfair account and \$5,000 to be deposited into his bank account.
16. Also made available to the Commission were the following telephone recordings between the parties, two of which occurred in the month prior to this incident and one shortly after:
 - a. 20.1.18 – Complainant requested a reversal of a \$40,000 withdrawal. The customer service operator "Mr M" stated they "haven't done reversals in 18 months for 'responsible gambling'" reasons indicating that their "Responsible [Gambling Department]" would take a "very risk adverse approach to things".

- b. 22.1.18 – Complainant called enquiring about VIP status. Customer service manager, Mr R, acknowledges an increase in gambling activity in December 2017 and January 2018 but refuses the Complainant access to their VIP program due to the Complainant's previous self-exclusion.
 - c. 23.2.18 (1334 GMT) – The Complainant returned Mr R's call regarding suspension of his account. Mr R stated that as the Complainant had just admitted he has a gambling problem Betfair would permanently suspend his account.
17. It is noted, that in each of the above 7 phone calls no welfare checks or offers of a Responsible Gambling Officer was made to the Complainant.
 18. Betfair asserts that although they knew the Complainant previously self-excluded they could not have reasonably known that the Complainant had a current gambling problem. Betfair state that the betting and financial activity on his account at that time did not indicate a gambling problem, given past activity on the account and therefore did not warrant referring the Complainant to a RSG officer. Betfair submits that it was not until the final call with Betfair on 23 February 2018 that the Complainant disclosed a gambling problem after they had already suspended the Complainant's account.
 19. Betfair submitted that before the reversal of the withdrawal request was actioned, the Complainant's betting activity was reviewed by Mr R, a customer service manager, who has been trained to detect and appropriately handle customers with gambling problems. Betfair confirmed Mr R reviewed the Complainant's account from 5 December 2017 up to midnight (GMT time) of 19 February 2018. Betfair has stated, the Complainant was 'nett profitable' and 'no discernible indicators of problem gambling were found in Complainant's activity' for this period. However, Mr R did not review activity on 20 February 2018, the day that the request for reversal of the withdrawal was made by the Complainant.
 20. At the time of the request to withdraw \$150,007 on 20 February 2018 (0620 GMT), the Complainant had \$86,388.32 remaining in his account. Within 23 minutes, the Complainant had wagered the remaining funds, plus another \$2,950 which he had deposited into his account. Four and a half hours later the Complainant has deposited another \$35,000 into his account and again wagered through the majority of his balance in 47 minutes. It is after this betting activity that the Complainant calls Betfair to ask that the withdrawal be reversed.
 21. Approximately 13 hours later, the Complainant speaks to Mr R and soon after receives the \$145,007 in his wagering account from the reversal of his earlier withdrawal request.
 22. There is evidence that Betfair should have reasonably seen some red flag behaviours. It is reasonable in the circumstances and particularly given full knowledge of the Complainant's previous self-exclusions and time-outs from his account that a review of all his betting activity up to the time of the request to cancel the withdrawal be carried out. If this had been done, it would have been apparent that the Complainant lost over \$190,000 in one day prior to his request to cancel his withdrawal.
 23. The Complainant had also increased his deposits over the months just prior to this situation occurring (compared with the previous two years). In 2016, total deposits were roughly \$22,000, in 2017 they were \$47,000 and in just January and February

of 2018 a total of \$380,000 was deposited. It is clear from the telephone recordings back on 22 January 2018 that Betfair had previously noted an increase in betting activity and deposits in December 2017 and January 2018 and also knew of previous self-exclusion by the Complainant.

24. Betfair's operators have made it clear that it is their policy not to allow reverse withdrawal requests and by admission state that Betfair do not ordinarily reverse withdrawal requests due to "responsible gambling". The Complainant had been denied reversing withdrawals in the past. Betfair's submission that a request to reverse a withdrawal is not considered to be a sign of a person with a gambling problem is questionable. It may not in fact be a deciding factor however, it is clear by Betfair's own admission a withdrawal reversal request would not necessarily be in line with their responsible gambling protocols.
25. It appears unreasonable in these circumstances to allow a one-off reversal request from the Complainant when:
 - a. Betfair knew the Complainant had previously self-excluded;
 - b. Betfair manager, Mr R, who is trained in responsible gambling had just the month prior noticed significant increases in deposits and changes in his gambling habits; and
 - c. the Complainant had lost \$190,000 in the one day leading up to the request to reverse the withdrawal.
26. It is clear from the evidence that had the Betfair manager, Mr R, who accepted the reversal request should have observed red flag behaviours, most notably the Complainant having lost over \$190,000 just prior to the request to reverse the withdrawal. Betfair only triggered a suspension of the Complainant's account after he lost the full \$145,007 reversed back into his Betfair account plus another \$5,013 the next day.

Decision

27. On the weight of evidence provided, the Commission is satisfied that Betfair failed to adhere to the Code by not having reasonably recognised the red flag behaviours of the Complainant.
28. The Commission must decide if Betfair pursuant to section 109V(1)(d) of the *Racing and Betting Act* failed to comply with a licence condition, specifically condition 16, which states:

The Betting Exchange Operator must comply with Mandatory Code of Practice for the Provision of Deferred Settlement Facilities for Northern Territory Licensed Sports Bookmakers 2015 and the Northern Territory Code of Practice for Responsible Online Gambling 2016, issued by the Commission pursuant to the Racing and Betting Act, and as amended from time to time.

29. On the basis of the information provided and for the reasons set out above, the Commission finds Betfair did breach its obligations under section 109V(1)(d) of the *Racing and Betting Act* by failing to comply with licence condition 16 of its Betting Exchange Operator's Licence.

30. It follows that had Betfair complied with the Code and observed the red flag behaviours, it would have necessarily suspended the Complainant's account and not accepted further bets from him (nor agreed to reverse the withdrawal request). The Commission finds that all bets placed after the Complainant's request to reverse his withdrawal request were in contravention of Betfair's licence condition 16 and the Code and therefore unlawful bets pursuant to section 109Y(9) requiring Betfair to refund a total of \$150,020 to the Complainant.
31. This is the third time in 18 months that Betfair has been found by the Commission to have failed to comply with a condition of its licence and accordingly, pursuant to section 109V(2)(a) of the Act, the Commission has determined to issue a fine equivalent to 50% of the maximum penalty of 170 penalty units being \$13,175.
32. In determining the amount of the fine, the Commission took into account that this was the first breach by Betfair of section 109V(1)(d) as a result of non-compliance to the Code and that Betfair fully co-operated with the Commission and Licensing NT during the investigations.

Review of Decision

33. Section 109Y(7) of the Act provides that a determination by the commission of a dispute referred to under subsection (1) shall be final and conclusive as to the matter in dispute.



Alastair Shields
Presiding Member
Northern Territory Racing Commission

2 November 2018