

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Complainant:</b>	Mr A
<b>Licensee:</b>	Sportsbet Pty Ltd
<b>Proceedings:</b>	Pursuant to section 85(2) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
<b>Heard Before: (on papers)</b>	Mr Alastair Shields (Chairperson) Ms Amy Corcoran Mr James Pratt
<b>Date of Decision:</b>	10 June 2020

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### Background

1. On 5 December 2017, pursuant to section 85(2) of the *Racing and Betting Act (the Act)*, a financial counselor on behalf of the Complainant lodged a gambling dispute with the Northern Territory Racing Commission (**the Commission**) against the licensed sports bookmaker, Sportsbet.
2. The dispute stating in part “... *Sportsbet breach of self-exclusion, failure to provide financial data, and failure to have proper recording keeping for self-exclusion, and failure to identify gambling red flags ...*”
3. In support of his position the Complainant provided a Financial Counselor Authorisation Form, a Sportsbet Self Exclusion Notice dated 18 November 2014 (fully completed by the Complainant) and email correspondence between the Complainant and Sportsbet.
4. The submission of the Complainant and his counselor provides an explanation of events and a number of documents in support of his position. The Complainant’s dispute can be summed up as follows:
  - a. the Complainant was able to open an account on 19 January 2015 after requesting to be self-excluded on 24 November 2014;
  - b. the bookmaker knew the Complainant’s name and mobile phone number from the self-exclusion form and these identification features should have been a red flag to the bookmaker when he opened his account on 19 January 2015 and each time he placed a wager;
  - c. the Complainant was able to self-exclude himself from other bookmakers using self-exclusion forms similar to that of the bookmaker;
  - d. the bookmaker has failed to provide an account statement which can be easily read, clearly showing the net win / loss figure;
  - e. the bookmaker failed to ensure staff are adequately trained in identifying at-risk clients;
  - f. the Complainant is seeking a refund of all of his deposits on and from being able to open his account from 19 January 2015 in the amount of \$146,171.17.

5. Sportsbet in response to the complaint also provided an explanation of events and a number of documents in support of their position. Sportsbet's submission can be summarised as follows:
  - a. Sportsbet did not add the Complainant to their self-exclusion register in 2014 as the form supplied by the Complainant did not disclose sufficient information;
  - b. the Complainant did not reply to requests from the bookmaker to provide this information in order to process his self-exclusion request;
  - c. as the Complainant was not a previous client of the bookmaker he could not be included in the self-exclusion register;
  - d. Sportsbet did notice warning signs exhibited by the Complainant and spoke to him on two occasions ensuring the Complainant was comfortable with his gambling activities;
  - e. Sportsbet asserts their staff are adequately trained as they have been proactive in contacting the Complainant after he exhibited potential warning signs of a gambling problem; and
  - f. the Complainant did deposit \$146,171.17 over the course of the account, however, he also withdrew \$53,089.13 leaving the total account loss of \$93,082.04.
6. Information relevant to this dispute was gathered from both parties by Licensing NT betting inspectors appointed by the Commission and provided to the Commission to consider the dispute on the papers.

### **Consideration of the Issues**

7. 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**).
8. As the self-exclusion and re-opening of the account subject of this gambling dispute occurred on 24 November 2014 and 19 January 2015 respectively, it was the Northern Territory Code of Practice for Responsible Gambling 2006 (**the 2006 Code**) in force at the time.
9. Further the Northern Territory Code of Practice for Responsible Online Gambling 2016 (**the 2016 Code**) came into effect on 1 March 2016 and would have applied to all betting activity from that date until the Complainant's account was ultimately closed on 23 January 2017.
10. The 2006 Code applied to all gambling providers and amongst other things, required that licensed sports bookmakers have a system in place that allows patrons of the sports bookmaker to self-exclude themselves from the sports bookmaker's services should they wish to do so. Specifically, clause 4 of the 2006 Code states that:

#### **"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.

- 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.**
- 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.**

- 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.**

- Counselling Contact Information. Gambling providers are to offer customers who seek self-exclusion and/or express a concern that they have a gambling problem, contact information for appropriate counselling agencies.

For Internet/Telephone Sports Bookmakers and Online Gaming Licensees: As appropriate, gambling providers are to offer customers who seek self-exclusion contact information for appropriate counselling agencies.

- Self-Exclusion from Other Gambling Providers. Self-exclusion gambling customers are to be given support and encouragement in seeking self-exclusions from other gambling providers.

For Internet/Telephone Sports Bookmakers and Online Gaming Licensees: Self exclusion gambling customers are to be given support and encouragement in seeking self-exclusions from other Australian gambling providers.

- Correspondence or Promotional Material. All gambling providers are not to send correspondence or promotional material to gambling customers who are excluded from their services or who request that this information not be sent to them.”

11. A gambling incident register was also required to be implemented under clause 3 of the 2006 Code which in part states:

“Responsible Gambling Records. Gambling providers will maintain a Responsible Gambling Incident Register and ensure recording of action taken by staff to assist people in accordance with the Code. The register will include the following particulars:

- Date, time, location and nature of any event where a patron reports a gambling-related problem.
- Name and address (if known) or description of the person in relation to whom action was taken.
- Action taken and by whom.
- Details of Self-Excluded persons under Section 4 of the Code

In the case of casinos, the Log filed monthly with the Director replaces the Register.

For Internet/Telephone Sports Bookmakers and Online Gaming Licensees: **gambling providers are to maintain full records of incidents, complaints and action taken by staff to assist people in accordance with the Code.**"

12. It is the Commission's view that the use of the word "patron" in the 2006 Code in this context must infer a potential customer or patron. In this case, although the Complainant was not a previous customer of Sportsbet, he was a gambler and therefore someone who would be likely to use their services. Just as a person walks into a bar and not yet purchased a drink, that person would be considered a patron or customer of the bar even prior to purchasing that drink. It is nonsensical to attempt to narrow the reading of the word patron under the 2006 Code given the objectives of the code itself to amongst other things, minimise the "extent of gambling-related harm to individuals and the broader community."
13. Therefore, the issue for consideration in this matter is whether Sportsbet had appropriate self-exclusion facilities and procedures to allow the Complainant to self-exclude so that he could not open a betting account in the future.
14. The Complainant completed a self-exclusion form on 18 November 2014 utilising the Sportsbet proforma "Self Exclusion Notice". This completed form was emailed to Sportsbet by the Complainant on 24 November 2014. The Self Exclusion Notice required the Complainant's full name and phone number to be completed and a witness's signature, full name, address and telephone number – all of which was completed by the Complainant and his witness (except for the witness's telephone number). It is noted that the Complainant copied the witness into the email to Sportsbet and the witness could reasonably be assumed to be a relative of the Complainant given they had the same surname.
15. Sportsbet accepts that it did receive this self-exclusion form, however submits the form was incomplete and attempts by Sportsbet to obtain further information from the Complainant were left unanswered. Accordingly, Sportsbet submit that due to the lack of information, the Complainant's details were not recorded in their "OpenBet system" which would otherwise identified him as being self-excluded and prevented him from opening an account. In an email to the Complainant, Sportsbet states:

"When you contacted Sportsbet in November 2014 with a request for self-exclusion, as you had not provided adequate personal information or account information, we were unable to action your request at that time. As such, we requested more details from you in order to action your request for exclusion. As we did not receive a response to this email this was unable to be actioned.

When you subsequently opened your account with Sportsbet on 19/01/2015, you did so from a different email address from the one that you had previously used to communicate with Sportsbet."
16. In opening his account on 19 January 2015, the Complainant used his full name and phone number as he provided in the Sportsbet self-exclusion form. The Complainant's email address used was different to that in which he emailed the self-exclusion form to Sportsbet.
17. On receipt of the self-exclusion form, Sportsbet replied to the Complainant requesting him to "reply with either a Username, Account Number, or the Email

Address you have listed on your account”. As the Complainant was not a previous customer of Sportsbet, he would not have been able to provide the information requested.

18. There is no evidence that Sportsbet tried to call the Complainant to seek this information nor evidence that it attempted to contact the witness to the self-exclusion form to ascertain any further details of the Complainant. The witness was copied into the Complainant's email to Sportsbet attaching the self-exclusion form and therefore Sportsbet had that contact information.
19. Sportsbet also did not enter the details of the Complainant into its Gambling Incident Register despite having his full name and mobile number. The Complainant opened an account just a few months later with exactly the same name and phone number on the self-exclusion form.
20. Sportsbet during the investigation by Licensing NT inspector, acknowledged that their procedure for non-account holders to be self-excluded was not adequate at the time and therefore have since changed their forms and procedures stating in a response to the complaint to Licensing NT the following:

“Sportsbet nevertheless reviewed its procedures and has taken proactive steps to improve them so that non-customers can self-exclude from Sportsbet by implementing the following:

- Sportsbet's Self-Exclusion Form has been updated to request more personal information (Name, Date of Birth, Home Address, Mobile Number) and includes a question asking the individual if he or she is an existing customer (attached); and <sup>11</sup>SEP
- a process has been implemented which allows Responsible Gambling team members to open a 'dummy' account in an individual's name if that person seeks to self-exclude but is not an existing customer. This process ensures that the person will be prevented from opening an account if they subsequently attempted to do so.”

21. When a person makes an attempt to self-exclude from gambling services, their request should be taken seriously and all reasonable attempts should be made to ensure their request can be processed so that they can not access the gambling services they are seeking to exclude themselves from. In this case, Sportsbet made just one attempt to seek further information from the Complainant by email, however, they did not phone the Complainant nor attempt to contact the witness to the form.
22. Further, the Self Exclusion Notice utilised by the Complainant was that of Sportsbet itself and the Complainant did complete all of the details he was required to in that Notice. Notwithstanding having both the Complainant's full name and phone number, no attempt was made to place such personal details into their “Open Bet System”. Not only that, Sportsbet did not record the self-exclusion in their Gambling Incident Register. Accordingly, it is clear to the Commission that Sportsbet did not have appropriate self-exclusion facilities and procedures developed and implemented at that time to ensure the Complainant's Self-Exclusion Notice was recorded.
23. Sportsbet did not record any of the Complainant's personal details which he provided in a Sportsbet self-exclusion proforma document in either their electronic account system nor in its Gambling Incident Register.
24. Matching details such as a full name and mobile phone number should raise flags. Accordingly, the Commission is of the view that given the Complainant provided

exactly the same name and mobile number to open his account as he did to self-exclude, it is reasonable to expect that if Sportsbet had recorded this information, the potential that this betting account was being operated by the same person who self-excluded from Sportsbet would have been flagged and the account closed.

## Decision

25. 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.
26. On the evidence before it, the Commission is satisfied that Sportsbet did not have at the time an appropriate self-exclusion facilities and procedures in place to allow persons to self-exclude from their services as required under the 2006 Code. Further, the Commission finds that Sportsbet did not record the Complainant's self-exclusion in the Gambling Incident Register as also required under the 2006 Code.
27. As such, the Commission has determined that Sportsbet did not comply with clause 2 and 4 of the 2006 Code and as a result, pursuant to section 80(1)(d) of the Act, has failed to comply with condition 5 of its licence.
28. 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. Given these complaints relate primarily to incidents which occurred over 5 years ago and that Sportsbet has since updated its policies and procedures to ensure that non-account holders are able to self-exclude from its services, the Commission will issue a reprimand in this case.
29. 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 betting account were made and as such, the Commission has determined that the bets made were not lawful.
30. Given the bets were not lawful, the Commission has formed the view that it is appropriate for Sportsbet to refund the Complainants' losses of \$93,082.04 (being the difference between the deposits made and the withdrawals actioned throughout the life of the betting account).
31. The Complainant made a number of further allegations including, amongst other things, Sportsbet should have detected the Complainant's red flag behaviour during the course of his betting activity. At this stage, the Commission will not be considering these further allegations on the basis that the Commission has determined that the Complainant should not have been able to open an account with Sportsbet after self-excluding on 24 November 2014.

## Review of Decision

32. 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.

A handwritten signature in black ink that reads "Alastair Shields". The signature is written in a cursive, flowing style.

Alastair Shields  
Chairperson  
Northern Territory Racing Commission

10 June 2020