

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr G
Licensee:	Sportsbetting.com.au Pty Ltd
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) Mr Allan McGill Ms Amy Corcoran
Date of Decision:	27 August 2020

Background

1. On 31 January 2020, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the Complainant lodged a gambling dispute with the Northern Territory Racing Commission (**the Commission**) against the licensed sports bookmaker, Sportsbetting.com.au Pty Ltd who operates the betting platform sportsbetting.com.au (**the Bookmaker**).
2. The Complainant submitted that he had permanently self-excluded from all Northern Territory bookmakers including the Bookmaker on 28 March 2019 utilising Licensing NT's self-exclusion form (**the Form**), however, he was able to wager with the Bookmaker after that date, specifically, from 24 to 26 April 2019.
3. The Complainant is seeking a refund of all deposits made into his account between 24 and 26 April 2019 totalling \$3,736.
4. The Complainant also submits that he was only ever able to take "short breaks" from gambling using the Bookmaker's website and was not able to permanently self-exclude and that is why he had to utilise the Form with the assistance of Licensing NT to permanently self-exclude from the Bookmaker.
5. The Bookmaker submits:
 - a. the Complainant requested two temporary exclusions prior to the permanent self-exclusion via the Form being from 14 to 21 February 2019 and from 19 March to 18 April 2019;
 - b. it only became aware of the Complainant's permanent self-exclusion from all NT licensed bookmakers on 26 April 2019 following receipt that day of the Form from Licensing NT; [sEP]
 - c. its customers have the ability to self-exclude permanently on its sites and mobile apps and:
 - i. at the time of the Complainant's activity, customers needed to download a form, complete it and send it to the Bookmaker for any period of exclusion in excess of 30 days; and

- ii. this form was on the Responsible Gambling section of the My Account area of the site, immediately below the 'Take a Break' function utilised twice by the Complainant; and
 - iii. more recently, its customers can now permanently self-exclude online without the need to print off and send them a form. [SEP]
- d. the Complainant did not feature on the Bookmaker's incident register before 26 April 2019;
 - e. the Bookmaker was unaware of the Complainant's issues with gambling until 26 April 2019 when the Form was received. [SEP]
6. Information was gathered from both parties by the Commission's betting inspector and provided to the Commission that determined there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

7. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. 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. 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)*, with both Codes providing guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling.
9. It is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions and that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is suggested that only in the most extreme cases of deliberate and gross misconduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.
10. During the Complainant's relevant betting activity, the 2016 Code was in force at the time. The 2016 Code amongst other things, requires a licensed sports bookmaker to provide self-exclusion features on its betting platforms to enable its customers the opportunity to exclude themselves from accessing the licensee's gambling products. Under condition 4.2 of the 2016 Code it states that the bookmaker must offer this option to self-exclude "via an online process or a form based process".
11. Given a form was available on the Bookmaker's website and apps to download, complete and return to the Bookmaker, it is the Commission's view that it did have appropriate mechanisms in place to enable persons to be permanently excluded from their wagering products in accordance with the 2016 Code. The Complainant in this instance did have the opportunity to do more than just "take a break".

12. The Complainant completed and lodged the Form with Licensing NT on 28 March 2019 in order to self exclude from all NT sports bookmakers, however, the Form was not sent to all sports bookmakers (including the Bookmaker) until 26 April 2019. This was due to an inadvertent administrative error within Licensing NT.
13. Licensing NT seeks to provide assistance to persons wishing to self-exclude from NT sports bookmakers through the provision of a self-exclusion form that can be completed by a person and distributed by it to all or any of NT sports bookmakers by Licensing NT. It is unfortunate that delays occurred in the distribution of the Form however, in signing the Form, the Complainant made the following declaration:

“I am not to seek to wager or attempt to wager with the abovementioned Sports Bookmaker/Betting Exchange Operator, or on the identified gambling products for the Exclusion Period. This includes access via websites, mobile apps and telephone wagering.”
14. The above declaration is in line with the Courts’ view that first and foremost a gambler must take responsibility for his or her own gambling activity. Notwithstanding the delay, the Complainant was ultimately responsible for his own actions in continuing to gamble.
15. As the Form was not received by the Bookmaker until 26 April 2019, the Complainant was not self-excluded at the time of the betting activity in question. It is noted that the Bookmaker acted upon the self-exclusion request as soon as the Form was received from Licensing NT and accordingly, the Commission considers the Bookmaker has acted in accordance with its legal obligations in that regard.
16. Finally, the Complainant submitted that the Bookmaker should have been aware that he had difficulties with his gambling due to the fact that he had twice requested to be self-excluded from their services by using the via ‘Take a Break’ tool, and therefore had a duty to contact him to potentially limit further losses.
17. The Bookmaker argues that the ‘Take a Break’ is an initiative that empowers customers to better regulate their gambling activity by excluding themselves for a period in line with their needs.
18. The Complainant utilised this tool twice – once for a week and then for a month. Tools such as ‘Take a Break’ are valuable tools for wagering clients to assist them manage their gambling. It is reasonable to expect their use in many different circumstances and by utilising the ‘Take a Break’ tool does not automatically infer that someone has an issue with gambling.
19. The Commission does acknowledge that it is reasonable that bookmakers should monitor customers’ use of tools such as ‘Take a Break’ along with their general behaviours surrounding their gambling activity so as to detect any “red flag behaviours” which would require a bookmaker to take reasonable steps to ensure the customer is not experiencing problems with gambling. In this instance, the ‘Take a Break’ tool was utilised just twice, and when considered with the Complainant’s betting history and also his wagering activity on 24 to 26 April 2019, it does not appear to raise any obvious red flags. Based on all the evidence before the Commission, it is reasonable to accept that the Bookmaker was not

aware that the Complainant was experiencing issues with gambling at the time of the wagering activity between 24 to 26 April 2019 nor reasonably should have.

Decision

20. The Commission determines that:

- a. the Complainant was not self-excluded at the time of the wagering activity between 26 to 26 April 2019 as the Form was not received from Licensing NT until 26 April 2019; and
- b. there is no evidence that the Bookmaker did not comply with its obligations under the 2016 Code in respect to the provision of self-exclusion features as well as the detection of red flag behaviours.

21. As a result, the Commission has determined that all of the Complainant's bets that were struck from 24 to 26 April 2019 were lawful bets pursuant to section 85(1A) of the Act given that they were struck in accordance with the Act and the 2016 Code and therefore no monies are payable to the Complainant.

Review of Decision

22. 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

27 August 2020