

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Ms D
Licensee:	Lottoland
Proceedings:	Pursuant to section 85(2) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr Allan McGill
Date of Decision:	11 February 2019

Background

1. On 17 August 2018, 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, Lottoland.
2. The Complainant is seeking a refund of \$3,930 for deposits she made into her wagering account from 16 July 2018 onwards as the Complainant states that this is the time that Lottoland provided her with advice on how to gamble responsibly and a number of links to organisations that would be able to provide her with advice and support on managing her gambling whilst at the same time encouraged her to make further deposits to her account in order to receive bonus bets.
3. The Complainant when lodging her dispute with the Commission stated that: *"I am complaining about lottolands (sic) lack of responsibility for problem gamblers and the way they have unscrupulously encourage[d] problem gamblers."*
4. In response to the dispute, Lottoland advised the Commission that they had: *"...taken appropriate measures to provide information on responsible gambling and we believe we have upheld our responsibilities and duty of care in respect of problem gambling"*.
5. Information 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.

Chronology

6. The Complainant opened her account with Lottoland on 25 July 2017 with a deposit of \$10. The Complainant made a number of \$1 winning and losing wagers on that day which eventually resulted in a nil balance.

7. The Complainant's account laid dormant until 21 February 2018 at which time the Complainant deposited a further \$15. Lottoland advised the Commission that on 7 May 2018, the Complainant was *"...moved into Lottoland's VIP program which offered discounts, offers and preferential customer service"*. Lottoland further advised the Commission that the Complainant *"...received 8 bonuses as part of the VIP program and through Customer Service..."* totalling \$234 worth of bonuses.
8. Between the date of opening the wagering account and the Complainant's account closure on 2 August 2018, the Complainant made deposits to the wagering account to a total of \$19,145. The Complainant made no withdrawals from the wagering account during the period that the account was open.
9. Between 23 May 2018 and 16 July 2018, the Complainant made contact with the sports bookmaker on numerous occasions during which she requested bonus bets or questioned the sports bookmaker on how their promotions are distributed between different games. During these live chat conversations, the Complainant made comments such as *"I put quite a lot of money through keno on this site and would like to get a bonus of (sic) possible"*, that she had *"...played through a bit today..."* , *"..I have played through quite bit in the last couple of days..."* and *"...I deposit quite a lot on a weekly basis..."*
10. On 12 July 2018, the Complainant contacted Lottoland via email and stated:

I am emailing regarding bonuses...I play tgrough (sic) a lot on keno and i (sic) do not believe the bonuses match the play and deposits. I rarely get bonus offers for keno and that is all i (sic) play on lottoland. And i (sic) do play ALOT.
11. In response to this email, on 13 July 2018 Lottoland offered the Complainant a 'deposit match bonus' of \$100. The Complainant responded to this offer by stating that, *"I've already deposited in the thousands in the past week."*
12. On 16 July 2018, Lottoland apologised for the delay in responding and advised the Complainant that:

I realise you had made significant deposits throughout the week and appreciate you feel bonuses should be offered for these, however, without another successful deposit I'm unable to credit further bonuses at this stage.
13. In the same email response, Lottoland stated that *"I would like to take this occasion to remind our (sic) yourself that as a responsible gambling provider, Lottoland is committed to create (sic) not only a responsible but also a safe gambling environment for all our members."* The Complainant was provided with *"...some tips..."* on how to gamble responsibly and provided with a number of links to responsible gambling websites for *"...further advice and support on managing your gambling."*
14. Following this email exchange, Lottoland created the following incident in its 'Gambling Incident Register':

Date	Incident	Notes
16/07/2018	Player wanted more bonus funds sating (sic)'I've already deposited in the thousands in the pas week'	VIP player. Via email. Sent the RG template in regards to tips to gamble

15. On 27 July 2108, Lottoland advised the Complainant that the wagering account had been credited with a \$100 bonus. In addition, Lottoland stated:

As part of our corporate commitment to Responsible Gambling, we would like to inform you that our services should be used exclusively as an entertainment platform and we will do everything we can to ensure that gambling does not become an issue for our players

Could you please confirm your gambling is completely under control?

It is essential that every customer understands the importance of responsible gambling and is able to recognise problem gambling when the situation arises.

16. Lottoland further stated that it is aware that some customers do develop some gambling issues and provided the Complainant with advice regarding a number of risk minimisation tools available to its customers such as deposit limits and self-exclusion periods. The Complainant was again provided with a number of links to responsible gambling websites for *"...further advice and support on managing your gambling."*
17. On 6 August 2018, Lottoland again emailed the Complainant seeking confirmation that the Complainant felt that *"...your gambling is completely under control?"* Lottoland also sought information from the Complainant *"...evidence to confirm their source(s) of wealth due to our Responsible Gambling, Anti-Money Laundering legislation and licensing requirements"*.
18. On the same day, the Complainant responded:

The fact you have raised a gambling issue numerous times with me makes me assume that you in fact have realised that i (sic) have an issue. I'm quite certain that this wouldve (sic) been apparent to you for a while yet my account has remained opened and i (sic) have been able to deposit thousands of dollars in a short period of time. You as a vip manager would have released this om (sic) sure. Lottoland doesnt (sic) really stick to their won corporate responsibility to problem gambling which is quite unscrupulous behaviour I have had numerous chat conversations with your customer service reps and yourself and it should have taised (sic) red flags for you yet i (sic) have been able to play through over 6 thousand dollars i the past few weeks.

19. After advising Lottoland that the Complainant would be lodging a complaint with the relevant licensing authority, the Complainant also wrote that:

Lottoland may have a responsible gaming guideline but i (sic) don't think you follow it. The red flags were raised in previous emails, you mentioned responsible gambling, you should have maybe closed my account at that point and not allowed thousands more dollars in deposits.

20. On 6 August 2018, Lottoland advised the Complainant that following the Complainant's comments that it had decided to close the Complainant's account on a permanent basis.
21. On 7 August 2018, Lottoland recorded a further incident in its 'Gambling Incident Register' noting that the permanent self exclusion of the Complainant from its wagering platform.
22. Between 16 July 2018, the date on which Lottoland first raised the issue of problem gambling with the Complainant and the time that Lottoland closed the Complainant's account, the Complainant deposited \$3,930 into the wagering account.
23. During this same period, Lottoland advised the Commission that it had sent seven promotions to the Complainant via email and a further three promotional push notifications to the Complainant's mobile number.

Consideration of the Issues

24. The Commission considers problem gambling to be the most serious of issues and holds all sports bookmaker operators licensed in the Northern Territory to a high standard with regards to any breaches.
25. All Northern Territory licensed sports bookmakers' licence conditions and the Act require compliance with the *Northern Territory Code of Practice for Responsible Online Gambling (the Code)*.
26. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. The Code sets out certain practices to be adopted by licensed sports bookmakers in the provision of their services, so as to minimise the harm to consumers that may be adversely affected by gambling.
27. The Code amongst other things, requires that licensed sports bookmakers must provide responsible gambling training including regular refresher training, to all employees engaged in client interaction and that this training should include tools to identify gambling Red Flag behaviours. This Red Flag behaviour training is mandated so that licensed sports bookmakers can identify and assist clients with gambling related problems.
28. Red flag behaviours include but are not limited to gambling for extended periods; changing gambling patterns; increase in deposit frequency; escalating sums of money deposited and accusing the gambling operator of remarks that may indicate serious overspending.
29. 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.
30. It is evident from the chronology set out above that at least from 16 July 2018, Lottoland had become concerned with the gambling behaviour of the Complainant when Lottoland advised the Complainant that it had realised that the Complainant

had made significant deposits throughout the week prior. It is at this time that Lottoland advised the Complainant that it was a responsible gambling provider and provided advice on how to gamble responsibly as well as a number of links to responsible gambling websites. It is at this time that Lottoland also entered an incident relating to the Complainant on its 'Gambling Incident Register'.

31. Also of note is that following this exchange, no further action was taken by Lottoland relating to the Complainant's wagering account until some 11 days later following contact from the Complainant in which a request was made to be provided with further bonus bets. In response, Lottoland awarded a bonus bet of \$100 to the Complainant and at the same time, again queried whether the Complainant's gambling was under control. Also throughout this period, Lottoland continued to send promotional material to the Complainant encouraging further wagering activity.
32. The Complainant continued to wager including making deposits into the wagering account and it was not until 6 August 2018, a further 10 days later that Lottoland sought further confirmation that the Complainant's gambling was under control.
33. Lottoland took no further action until the Complainant advised that she had wagered over \$6000 in the past few weeks and that she intended to make a complaint to the Commission. It is at this time, following the Complainant's own suggestion that her wagering account should have been closed once her Red Flag behaviours had first been identified that Lottoland took decisive action and closed the Complainant's wagering account.
34. It is evident that at least from 16 July 2018 onwards that Lottoland had identified a number of Red Flag behaviours associated with the Complainant's wagering activity and contact, yet took no action (apart from accepting wagers, providing bonus bets and sending additional promotional material) until the Complainant herself suggested that her wagering account should have been closed.

Decision

35. On the weight of evidence provided, the Commission is satisfied that Lottoland failed to adhere to the Code by not implementing sufficient harm minimisation measures following the identification by it on 16 July 2018 onwards of the Red Flag behaviours of the Complainant. Apart from logging an incident in the 'Gambling Incident Register', Lottoland took no further proactive action until the Complainant herself suggested that her wagering account should have been closed.
36. As such, the Commission is of the view that Lottoland pursuant to section 80(1)(d) of the Act has failed to comply with a condition of its licence, in that it failed to comply with the Code.
37. It follows that had Lottoland complied with the Code and taken action on the Red Flag behaviours identified, it would have most likely suspended the Complainant's account and not accepted further wagers (or deposits) from her.
38. On the basis of the information provided and for the reasons set out above, the Commission finds that Lottoland did breach its obligations under section 80(1)(d) of the Act by failing to comply with the Code and its licence condition which requires it to do so. The Commission find that all bets placed by the Complainant from 16 July 2018 onwards were in contravention of the Act and Lottoland's licence condition

requiring it to comply with the Code and are therefore unlawful bets pursuant to section 85(1A) of the Act requiring Lottoland to refund a total of \$3,930 to the Complainant.

39. In addition, the Commission has determined to issue a fine pursuant to section 80(1) of the Act equivalent to 20% of the maximum penalty 170 penalty units being \$5270.
40. In determining the amount of the fine, the Commission took into account that Lottoland fully co-operated with the Commission and its betting inspectors during the investigation of this complaint.

Review of Decision

41. 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.



Cindy Bravos
Presiding Member
Northern Territory Racing Commission

11 February 2019