

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr P
Licensee:	Sportsbet Pty Ltd
Proceedings:	Gambling Dispute for determination by Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i>)
Heard Before: (on papers)	Ms Alastair Shields (Presiding Member) Ms Cindy Bravos Mr Allan McGill
Date of Decision:	25 May 2021

Background

1. On 16 July 2019, pursuant to section 85(2) of the *Racing and Betting Act 1983* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the Northern Territory licensed sports bookmaker, Sportsbet Pty Ltd (Sportsbet).
2. The substance of the gambling dispute lodged by the complainant is that Sportsbet failed to identify that the complainant's betting account activity (primarily during two consecutive days of 10 June 2019 and 11 June 2019) was activity of sufficient nature to raise concerns that the complainant may be experiencing harms as a result of his gambling.
3. The complainant has submitted to the Commission that given that he had previously self-excluded from Sportsbet in January 2018 for 12 months due to problem gambling and that at the recommendation of Sportsbet, he put in place a deposit limit on his account when he re-opened his account in February 2019, Sportsbet should have identified that during June 2019 he had cancelled numerous withdrawal requests; his deposit and bet stake amounts were substantially higher than normal; and that he no longer had a deposit limit set on his account. The complainant has submitted that Sportsbet should have then intervened and recommended that he re-instate a deposit limit on his account or take a break from gambling with Sportsbet.
4. In support of his submission that Sportsbet should have intervened, the complainant has advised the Commission that he received an email from Sportsbet on 22 April 2019 in which Sportsbet stated that his frequent requests for bonus bets was a sign of problem gambling and as such given his previous period of self-exclusion, this clearly showed that Sportsbet were aware of the potential for his gambling activities to cause him harm.

5. The complainant has further submitted that Sportsbet did not abide by its own terms and conditions relating to promotional materials, specifically that while the Sportsbet terms and conditions state that, *“Sportsbet does not market to individuals for whom gambling has become a problem,”* the complainant received numerous promotional emails and text messages after his period of self-exclusion.
6. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission. Subsequently, the Commission determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

7. The Commission affords all sports bookmakers licensed in the Northern Territory an opportunity to provide a response to the Commission should a gambling dispute be made against it. In response to this gambling dispute, Sportsbet advised the Commission that in its view, it acted appropriately by providing information to the complainant regarding the various responsible gambling tools available to him as well as making contact with the complainant at various times when his betting activity was of a nature that raised concerns.
8. In support of its submission, Sportsbet advised that the complainant took a 12-month break from betting with Sportsbet which ended on 3 January 2019. On 7 January 2019, the complainant contacted Sportsbet and requested that his betting account be re-activated which occurred the following day following a 24 hour cooling off period. At this time, the complainant was provided with information regarding various responsible gambling measures available to him including the ability to set deposit limits. Sportsbet advised that the complainant availed himself of the option to set deposit limits on his betting account between 14 January 2019 through to 9 April 2019.
9. In its submission to the Commission, Sportsbet confirmed that it contacted the complainant on 22 April 2019 via email *“...as he was displaying a ‘red flag’ behaviour of requesting multiple bonus bets.”*
10. Sportsbet further advised that as a result of Sportsbet identifying that the complainant’s betting patterns and behaviour had increased significantly, on 10 June 2019 it made contact with the complainant via telephone to discuss the increases. Sportsbet advised the Commission that during this telephone call, the complainant advised Sportsbet that he was betting within his means.
11. With respect to the complainant’s submission that he received promotional material in breach of Sportsbet’s own terms and conditions, Sportsbet advised that at the end of the complainant’s period of self-exclusion *“...he began to again receive marketing as per normal process.”* Sportsbet advised that at no time did it receive a request from the complainant to be removed from its marketing lists nor did it send any marketing material to the complainant while he was self-excluded or since he has been permanently excluded from Sportsbet.

Code of Practice

12. Pursuant to the Act and licence conditions, all Northern Territory licensed sports bookmakers are required to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code).
13. 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). Both Codes provide guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling. Online gambling providers are also currently encouraged by the Commission to implement additional strategies to further minimise harm.
14. As the complainant has submitted that Sportsbet should have identified that he had cancelled numerous withdrawal requests, his deposit and bet stake amounts were substantially higher and that he no longer had a deposit limit set on his account during June 2019, the 2019 Code applied to these activities. However, in relation to the complainant's submission regarding receipt of promotional material, as this occurred both before and after the 2019 Code commenced, both the 2016 Code and the 2019 Code applied to this aspect of the complainant's gambling dispute.

Red Flag Behaviours

15. The complainant has submitted to the Commission that Sportsbet failed to identify that he was experiencing harm as a result of his gambling activity despite the fact that there was an increase in the size of bets he placed; an increase in the amounts of monies he deposited into his betting account; repeated withdrawal request reversals; repeated requests for bonus bets; and that he no longer had a deposit limit set on his account.
16. With respect to the obligation that is imposed on all licensees regarding identifying red flag behaviours, 2019 Code states among other things:

3.2 Recognising potential problem gamblers

Where appropriate, a customer who displays some, or a number, or a repetition of red flag behaviours should be monitored by an online gambling provider and appropriate customer interaction should take place to assist or protect that customer which reasonably corresponds to the circumstances. Online gambling providers should ensure responsible gambling policies and procedures are in place to allow staff to detect and assist customers who may be experiencing problems with gambling.

17. The Commission has detailed in the 2019 Code that problem gambling red flag behaviours may include, but are not limited to gambling for an extended period; changing gambling patterns; increase in deposit frequency; escalating sums of money deposited; accusing an online gambling provider of changing payouts or rigging systems; admissions of being drunk or under the influence of other drugs; exhibiting signs of distress such as crying or swearing; expressing guilt or remorse for gambling; verbally abusing staff; threats to property or staff; remarks that may indicate serious overspending; repeatedly commenting about family problems; showing concern about losses and payouts; indicating they need a break from gambling; repeatedly self-excluding from gambling and/or disclosing problems with gambling.

18. The indicia of problem gambling tend to be heterogeneous and so are the harms a person can suffer if they are experiencing issues associated with their gambling behaviour. Given this, the Commission has mandated that all licensees should provide appropriate training so as to ensure that all staff have a reasonable understanding of problem gambling and be aware of what signs might indicate which of their customers are experiencing difficulties.

Increase in Deposits and Bet Size

19. The complainant has submitted to the Commission that the average amount that he deposited into his Sportsbet betting account since he re-opened it in February 2019 averaged no more than \$2,000 per month however, during June 2019 he deposited over \$43,000 with the vast majority of this amount being deposited on one day, being 10 June 2019.
20. As detailed earlier at paragraph 10, the complainant was contacted on 10 June 2019 after Sportsbet identified that his deposits into his Sportsbet betting account and his betting activity had increased significantly. Sportsbet has advised the Commission that contact was made with the complainant as an alert had been triggered due to the complainant's betting behaviour over a 24-hour period having increased beyond the complainant's normal behaviour.
21. Sportsbet made contact with the complainant by telephone in the early afternoon of 10 June 2019. The Commission has listened to that conversation and notes that the Sportsbet representative identified that he was making contact with the complainant as part of Sportsbet's service of responsible gambling and that Sportsbet had noticed an increased level of activity occurring on the complainant's betting account. The Sportsbet representative asked the complainant whether everything was okay and whether he was betting within his means to which the complainant responded that it was "Yep, all good". The Sportsbet representative asked the complainant if there would be any issue of his bets were to lose to which the complainant replied that there were "No issues".
22. The Commission notes that this conversation lasted a total of 32 seconds and that no other inquiries were made by Sportsbet as to what had led to the significant increase in deposit and/or betting activity nor was the availability of responsible gambling tools such as deposit limits or take a break options discussed with the complainant. In this respect, Sportsbet has advised the Commission that while it "*strive[s]*" for all contacts from the Responsible Gambling team "*...to include reference to our RG tools where possible...*" the "*...phone contact made with the customer did not include reference to RG tools as Sportsbet feel that as the customer had used several RG tools up to that point and had confirmed that he was fine therefore a reminder was not required.*"
23. Given the brevity of the phone call and the lack of breadth of the inquiries made or responsible gambling advice provided during it, it is arguable as to whether 'appropriate customer interaction to assist or protect that customer which reasonably corresponds to the circumstances' took place as required by the 2019 Code or whether the phone call was simply initiated so that it appeared that Sportsbet was acting in compliance with the 2019 Code.

24. The uncertainty as to the true purpose of the Sportsbet's contact with the complainant is further exacerbated given that following the phone call, the complainant deposited a further 28 separate deposits totalling \$21,781 into his betting account yet no further contact was made with the complainant.
25. It was not until the complainant sent an email to Sportsbet on 11 June 2019 in which the complainant referred to the high level of deposits that he had made into his Sportsbet betting account and issues with problem gambling, that led to Sportsbet again reviewing the complainant's betting account which ultimately resulted in the complainant's account being permanently closed on 12 June 2019.

Repeated Withdrawal Request Reversals

26. The complainant has submitted that he reversed withdrawal requests repeatedly and that this behaviour should have prompted Sportsbet to review his betting activity to ascertain whether he was experiencing harm from his gambling activity.
27. Having reviewed the complainant's betting account, the Commission notes that from the time the complainant's account was re-opened in 2019 until 10 June 2019, the complainant reversed 81 withdrawal requests.
28. Sportsbet has advised the Commission that it does monitor cancelled withdrawal requests however, it did not make contact with the complainant as the complainant would regularly follow a cancelled withdrawal with a successful withdrawal. Sportsbet advised that it is of the view that the complainant's reversed withdrawal request behaviour "...can be interpreted that the customer has opted to cancel a withdrawal instead of depositing further funds to bet with."
29. Sportsbet also advised the Commission, that when deciding to intervene with a customer, its Responsible Gambling team will review a number of factors including that customer's betting history, depositing and withdrawal history and previous interactions with the customer. Sportsbet submitted to the Commission that, "...the volume and value of the withdrawals were reviewed, and influenced our decision to intervene with the Customer when Sportsbet called the customer on 10/06."
30. The Commission notes that from the time of complainant's account being re-opened in 2019 through to the time on 10 June 2019 when Sportsbet did make contact with the complainant, the complainant's betting account was in profit in the amount of \$11,647.21.

Repeat Requests for Bonus Bets

31. The complainant has submitted that a further indicator that should have caused Sportsbet to recognise that he was experiencing harm from his gambling activities was his repeated requests for bonus bets.
32. In this respect, the Commission notes that in April 2019, Sportsbet sent an email to the complainant in which it stated that repeated requests for bonus bets may be an indicator that gambling has gone beyond being a leisure activity. It then provided advice to the complainant about a variety of responsible gambling tools that were available to him such as deposit limits and taking a break from gambling.

Self-Exclusion and Deposit Limits

33. The complainant has submitted to the Commission that he self-excluded from Sportsbet in January 2018 for a period of 12 months due to problem gambling and that at the recommendation of Sportsbet, he put in place a deposit limit on his account when he re-opened his account in February 2019.
34. With respect to the period of self-exclusion, while the complainant has stated that he implemented this action due to problem gambling, Sportsbet does not have a record as to the reason the complainant sought to take a break from gambling with Sportsbet.
35. As detailed at paragraph 8 above, the complainant took a 12 month break from betting with Sportsbet which ended on 3 January 2019. On 7 January 2019, the complainant contacted Sportsbet and requested that his betting account be re-activated which occurred the following day following a 24 hour cooling off period. At this time, Sportsbet provided the complainant with information regarding various responsible gambling measures available to him including the ability to set deposits limits. Sportsbet advised that the complainant availed himself of the option to set deposit limits on his betting account between 14 January 2019 through to 9 April 2019.
36. The Commission notes that the complainant implemented the following deposit limits to his Sportsbet betting account:
- 14 January 2019 - 12 February 2019: \$100 per month
 - 12 February 2019 - 20 March 2019: \$500 per week
 - 20 March 2019 - 01 April 2019: \$500 per day
 - 01 April 2019 - 09 April 2019: \$750 per day
37. Sportsbet has submitted to the Commission that it sees the setting of a deposit limit as an important measure to reduce harms from gambling activity however, it does not monitor the deposit limits set by its customers as it is not of the view that changes to deposit limits is a red flag behaviour indicating potential gambling harms.

Analysis

38. The complainant has submitted to the Commission that had a deposit limit been in place on his Sportsbet betting account in June 2019, he would have been unable to deposit over \$40,000 into his betting account during that month.
39. It is clear that the complainant's statement in this regard is clearly correct however, it must be noted that the setting of deposit limits is a voluntary action available to sports bookmaker customers. It is the gambler who makes their own choice as to whether to take advantage of the deposit limit tools on offer. In this case, the complainant voluntarily chose to increase the deposit limits on his betting account and then ultimately chose to cease using deposit limits as a responsible gambling tool. To argue that Sportsbet should have put in place mandatory deposit limits or in some way, ensured that the complainant continued to avail himself of the deposit limit tool lends itself to supporting what could be considered as patronising and overly restrictive behaviour and would likely have led to criticism.

40. 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.
41. With this in mind, the Commission notes that betting activity is rarely linear or metronomic. As a result, there can be significant deviations in the amount deposited and wagered by the same customer from one day to the next. It is for this reason that the Commission through the 2019 Code, requires licensees to identify red flag behaviour and having done so, in accordance with Clause 3.2 of the 2019 Code to then initiate appropriate customer interaction to assist or protect that customer which reasonably responds to the circumstances.
42. It is clearly evident from the telephone contact made with the complainant on 10 June 2019 that Sportsbet had become concerned that the complainant was displaying red flag behaviours that indicated that he may be a problem gambler. While it may be argued that it is difficult to ascertain a person's financial means and/or their capacity to absorb financial losses as a result of their gambling activity, it is also difficult for the Commission to correlate a 32 second phone call during which little probative inquiry was undertaken, to be of sufficient nature to determine whether the complainant was betting within his means.
43. Given the contact made with the complainant by Sportsbet on 10 June 2019 was as a result of a concern that the complainant was displaying red flag behaviours that may be indicative of problem gambling, it is also incongruous in the Commission's view, that Sportsbet did not discuss the responsible gambling tools that were available to the complainant simply because the complainant had used several previously and that the complainant had confirmed that he was fine.
44. It is for these reasons, that the Commission has determined that Sportsbet did not comply with Clause 3.2 of the 2019 Code as the customer interaction was not of a nature that was appropriate to the circumstances.

Promotional Material

45. The complainant has submitted that Sportsbet did not abide by its own terms and conditions relating to promotional materials, specifically that while the Sportsbet terms and conditions state that, "*Sportsbet does not market to individuals for whom gambling has become a problem,*" the complainant received numerous promotional emails and text messages after his period of self-exclusion.
46. However, as detailed above at paragraph 34 above Sportsbet were not aware of the reasoning behind the complainant's decision to take a break from gambling. The complainant has not asserted that he received promotional material from Sportsbet during the period he was on a break but rather, after he re-opened his betting account. Sportsbet has further advised the Commission that it did not receive any requests from the complainant to be removed from its marketing materials.
47. In this respect, the Commission finds it reasonable that the complainant as an active Sportsbet customer, began to again receive promotional material and as such finds this aspect of the complainant's submissions to be unsubstantiated.

Decision

48. 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.
49. On the weight of evidence before it, the Commission is satisfied that on 10 June 2019, Sportsbet failed to take appropriate customer interaction to assist or protect the complainant that reasonably corresponded to the circumstances which was in breach of clause 3.2 of the 2019 Code. As a result pursuant to 80(1)(d) of the Act, the Commission has determined that Sportsbet failed to comply with condition 16 of its licence.
50. 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.
51. While the Commission has on a number of occasions previously found Sportsbet to be in breach of the 2016 Code, given that this is the first matter determined by the Commission in relation to Sportsbet's non-compliance with the 2019 Code, the Commission has determined to impose a fine of 51 penalty units, being 30% of the maximum penalty units. As at 1 July 2020, the value of a penalty unit in the Northern Territory is \$158, therefore the fine imposed is in the amount of \$8,058.
52. The Commission also finds that all bets placed by the complainant following the telephone contact made by Sportsbet with him on 10 June 2019 were in contravention of the Act and Sportsbet's licence condition that required it to comply with the 2019 Code and as such, are therefore not lawful bets pursuant to section 85(1A) of the Act. As a result, the Commission has formed the view that \$21,781 should be refunded to the complainant, being the total of monies deposited into the account after the telephone contact was concluded until the account was closed.

Review of Decision

53. 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
Northern Territory Racing Commission

25 May 2021