

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr L
Licensee:	Hillside (Australia New Media) Pty Ltd (trading as bet365)
Proceedings:	Gambling Dispute for determination by the Northern Territory Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i>)
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr James Pratt
Date of Decision:	20 April 2022

Background

1. On 31 August 2020, 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, Hillside (Australia New Media) Pty Ltd which operates the betting platform bet365. For ease of reference, the licensee will be referred to as bet365 throughout this decision notice.
2. In lodging the gambling dispute, the complainant has suggested to the Commission that bet365 failed to implement sufficient responsible gambling practices to minimise the harm that he has experienced from his gambling behaviour. Specifically, the complainant alleges that bet365 failed to identify that his betting behaviour increased significantly following the receipt of an inheritance from a family member.
3. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

4. 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). The 2019 Code came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016. The 2019 Code provides guidance to online gambling providers licensed in the Northern Territory on responsible gambling practices so as to minimise the harm that may be caused by online gambling.
5. The 2019 Code among other things, requires at clause 3.1 that all staff of an online gambling provider that are engaged in customer interaction must receive training that will enable them to identify problem gambling red flag behaviours. While not exhaustive, the 2019 Code details that red flag behaviours may include activities such as gambling for an extended period of time, changing gambling patterns, increases in deposit frequency and escalating sums of money deposited.

6. The 2019 Code further requires at clause 3.2 that online gambling providers are to have in place responsible gambling policies and procedures to allow staff to detect and assist customers who may be experiencing problems with their gambling. Where an online gambling operator's customer displays some, or a number, or a repetition of red flag behaviours, the 2019 Code requires that they should be monitored and that appropriate customer interaction should take place to assist or protect that customer.
7. Bet365 has advised the Commission that the complainant opened a betting account with it on 16 September 2016 and that subsequently this betting account was suspended by bet365 due to responsible gambling concerns on 16 October 2019 and then permanently closed by the complainant on 18 November 2019. During the life of the betting account, the complainant also temporarily closed the betting account on two occasions, firstly between 21 December 2018 and 3 January 2019 and secondly, for the period between 27 June 2019 and 7 October 2019.
8. Bet365 has advised the Commission that following the complainant re-opening the betting account on 7 October 2019, the complainant used the betting account until 16 October 2019 during which time, bet365 contacted the complainant twice via Web Message in relation to the number of cancelled withdrawals the complainant had made and advised him of a number of the responsible gambling tools that were available to him.
9. On 16 October 2019, bet365 sent the complainant a 'Responsible Gambling Self-Assessment' which is a questionnaire designed to identify whether a bet365 customer may be experiencing problems with their gambling. Bet365 has advised the Commission that when a customer is sent this questionnaire, they are unable to continue using their bet365 betting account until they have answered each of the questions. The complainant completed the questionnaire on 16 October 2019 but as bet365 were not satisfied with the responses provided by the complainant, it determined to suspend the complainant's betting account and requested that the complainant make contact with it to discuss the responses. As the complainant did not make contact with bet365, the betting account remained suspended.
10. On 17 November 2019, the complainant emailed bet365 and advised it that he had a gambling problem and requested bet365 to reimburse him for some of his betting activity. In email activity the following day, the complainant advised bet365 that he had also had an account with another sports bookmaker that was closed due to problem gambling the previous year and given this, queried why bet365 had not taken any action to exclude him from its betting platform. The complainant also queried why bet365 did not identify any red flag behaviours when he went from gambling "*...a thousand a month to 10s of thousands a month.*"
11. The Commission notes that the bet365 is not affiliated in any way with the sports bookmaker that the complainant stated was already aware of the issues that he has with gambling and as such, bet365 would not have had any knowledge of this information nor could be expected to take any action on it.
12. The Commission has reviewed the complainant's betting activity with bet365 and notes that over the lifetime of the betting account, the complainant deposited \$34,655 into the betting account and withdrew \$22,980 from it, which resulted in an overall profit for bet365 of \$11,674 (or a \$11,674 loss to the complainant). Of note is that the majority of these profits (or losses) occurred during an eight day period between 8 October 2019 and 16 October 2019 - during which \$30,332 in deposits were made and \$22,750 of withdrawals were actioned with an overall result of \$7,582 in profits being made by bet365 and clearly the same amount in losses being absorbed by the complainant. This eight day period of betting activity when looked at from a monetary perspective, equates to 87.5% of the total amount of deposits being made into the betting account during its three year lifetime.

13. Given the requirements of the 2019 Code detailed above, at the forefront of the Commission's determinations is whether bet365 had any meaningful interaction with the complainant with respect to the increase in the complainant's deposit and betting behaviour (and any other potential red flag behaviour such as withdrawal cancellations) during the period between 8 October 2019 and 16 October 2019.
14. It is evident from the bet365 response to the Commission that bet365 did identify that the complainant may be at risk from experiencing harm related to his gambling activities, given that it proactively sent a Web Message to the complainant on 9 October 2018 at 12:42 am relating to its concerns about the number of cancelled withdrawal requests the complainant had made within the first 24 hours of the complainant again actively using the bet365 betting platform. During the period between the complainant reactivating his betting account and the first Web Message sent by bet365, the complainant had deposited \$1,797, cancelled eight withdrawal requests and made no withdrawals. It is clear to the Commission that bet365's actions at this point in time were clearly in compliance with the 2019 Code as it had identified a customer who may be experiencing harms associated with gambling and as a result, took action to contact the complainant to express its concerns and provide the complainant with information regarding the available responsible gambling tools that were available to him.
15. Of some concern to the Commission however, is the actions of both the complainant and bet365 over the next eight days following the bet365 Web Message of 9 October 2019, during which the complainant deposited \$28,535 into his betting account, cancelled 44 withdrawal requests and made \$22,750 in withdrawals, resulting in an overall loss to the complainant of \$5,785. During this period, the complainant's betting activity also altered, in that prior to this period of time the complainant placed bets up to the value of \$50 whereas now he was placing bets up to the value of \$500 and on numerous occasions, bets with stakes of \$1,000.
16. Throughout this same period during which bet365 having already identified that the complainant was a possible 'at risk' customer as evidenced by its email of 9 October 2019 (and as a result was required by the 2019 Code to monitor the activities of the complainant to ensure that appropriate customer interactions took place that assisted or protected its customer), sent a variety of promotional emails to the complainant which were designed to entice the complainant to continue to engage in gambling activities with bet365. These enticements consisted of four emails as detailed below:
 - 9 October 2019 - bet credit of \$50 relating to racing refund promotion;
 - 9 October 2019 - bet credit of \$20 due to being a valued customer;
 - 10 October 2019 - reminder that bet credits available for use (which the complainant accessed later that day);
 - 10 October 2019 - offer of bet credits if bets made.
17. The Commission is cognisant of the right of sports bookmakers to create effective marketing programs that promote their services to their customers however, it also considers that it is important for these marketing messages to get the right message to the right person at the right time. Given this, it could be argued that having identified that the complainant was a possible 'at risk customer' as evidenced by bet365's contact with the complainant on 9 October 2016 during which it emphasised its concerns and the responsible gambling tools that bet365 have made available to its customers, that the sending of promotional material to the complainant at this time was contradictory to bet365's responsible gambling messaging and may well have been ill-conceived.

18. It was not until some 8 days later on 16 October 2019 at 1:52 pm that bet365 again made contact with the complainant from a responsible gambling perspective, again drawing to the complainant's attention its concerns about the number of cancelled withdrawals that the complainant had made, and again provided the complainant with information regarding the available responsible gambling tools that were available to the complainant. During this customer interaction, bet365 did not raise with the complainant, the significant change in deposit behaviour or betting behaviour that was occurring on the account.
19. Following the sending of this second Web Message, the complainant continued to deposit monies into his betting account and place bets until 8:20 pm on the evening of 16 October 2019 when bet365 proactively placed a suspension on the complainant's betting account due to the initiating of the 'Responsible Gambling Self-Assessment' questionnaire.
20. While it is apparent to the Commission that bet365 did take a proactive stance (as required by the 2019 Code) to address its concerns that the behaviours of the complainant may have been indicative of a person who may be experiencing harms from their gambling behaviours, it is also apparent to the Commission that at least on this occasion, the bet365 marketing arm of its operations had little to no effective communication procedures in place with its responsible gambling colleagues. Had there been procedures in place that restricted the sending of promotional material to a bet365 customer who was also subject of responsible gambling concerns, the complainant would not have received contradictory messages from bet365 that on the one hand, encouraged the complainant to limit his betting by utilising the bet365 responsible gambling tools available; but on the other hand, enticed the complainant to engage more with bet365 through the promotions on offer.
21. 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.
22. With this in mind, the Commission notes that following bet365 identifying that the complainant may be experiencing harm from his gambling as evidenced by its early morning email of 9 October 2019, the complainant went on to make the following deposits:

Date	Number of Deposits	Total of Deposits
9 October 2019	8 (\$5000, \$500, \$1000, \$500, \$250, \$500, \$480, \$500)	\$8,730
10 October 2019	8 (\$1000, \$1000, \$300, \$1500, \$1000, \$1000, \$100, \$1000)	\$6,900
11 October 2019	2 (\$500, \$1000)	\$1,500
12 October 2019	1 (\$250)	\$250
13 October 2019	Nil	Nil
14 October 2019	2 (\$200, \$200)	\$400

Date	Number of Deposits	Total of Deposits
15 October 2019	7 (\$250, \$250, \$250, \$250, \$500, \$1000, \$1000)	\$3,500
16 October 2019	9 (\$500, \$255, \$1000, \$500, \$1000, \$1000, \$1000, \$1000, \$1000)	\$7,255

23. It was also during this period that the complainant's betting activity altered, in that prior to this period of time the complainant placed bets up to the value of \$50 whereas now he was placing bets up to the value of \$500 and on numerous occasions, bets with stakes of \$1,000. The complainant also continued to make numerous withdrawal requests that were then later cancelled by him.
24. Taking this into consideration, it is arguable that the complainant's betting and deposit activity over this relatively short period of time, coupled with the concerns that bet365 had already identified and expressed to the complainant through its 9 October 2019 Web Message, may have warranted an earlier customer interaction than that which did occur on 16 October 2019.
25. However, betting activity is rarely linear or metronomic and there can be significant deviations in the amount deposited and wagered by the same sports bookmaker customer from one day to the next; as is also the case with the amounts won or lost by that same customer. This is evident in the complainant's deposit history on 9 October 2019 and 10 October 2019 where he deposited \$8,730 and \$6,900 into the betting account respectively yet over the following four days, the value and number of deposits were relatively small or did not occur at all and it was not until 15 October 2019 where the complainant began to again make a larger number and volume of deposits into the betting account. Given this and the fact that the complainant also made a number of withdrawals on 9 October 2019 totalling \$13,250 which predominantly funded his betting activities over that day and the next few days, it is also arguable that the actions of bet365 in making contact with the complainant on 9 October 2019 and again on 16 October 2019 (contact which eventuated in the complainant's betting account being suspended), met its responsibilities as required by the 2019 Code, albeit at the lower end of the scale.

Decision

26. The Commission has often stated when determining gambling disputes that an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. The Commission's role in dealing with this gambling dispute is not to simply rectify self-inflicted economic losses from gambling following the lodging of a gambling dispute with the Commission but rather, to make a finding as to whether the sports bookmaker has acted in compliance with the Act, its licence conditions and the relevant Code in place at the time.
27. On the weight of the evidence before it, the Commission is satisfied that there has been no breach of the Act, licence conditions or of the 2019 Code by bet365 in relation to the complainant. Given this, the Commission is not of the view that any monies deposited by the complainant into the betting account should be returned to him.

Review of Decision

28. 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

20 April 2022