

# NORTHERN TERRITORY RACING COMMISSION

## DECISION NOTICE AND REASONS FOR DECISION

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**MATTER:** Gambling Dispute for determination by the Northern Territory Racing Commission (pursuant to section 85(2) of the *Racing and Betting Act 1983*)

**COMPLAINANT:** Mr P

**LICENSEE:** PlayUp Interactive Pty Ltd

**HEARD BEFORE:  
(on papers)** Mr Alastair Shields  
Ms Cindy Bravos  
Ms Amy Corcoran

**DATE OF DECISION:** 20 July 2023

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### DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (the **Commission**) is satisfied that PlayUp Interactive Pty Ltd (the **Licensee**) has:
  - a. contravened condition 15 of its sports bookmaker licence by not complying with clause 4.2(e) of the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the **2019 Code**) through not having a system in place that was of sufficient robustness in its data matching capabilities to prevent a previously self-excluded customer from opening a new betting account with it.
2. The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the *Racing and Betting Act 1983* (**the Act**) as follows:
  - a. for its contravention of condition 15 of its licence, a fine of 100% of the maximum monetary penalty available, equating to \$26,860 (for the 2020/2021 financial year a penalty unit's value was \$158).
3. The Commission has determined that pursuant to section 85(1A) of the Act, the bets placed by the Complainant with the Licensee between 23 September 2020 and 24 September 2020 are not lawful.
4. Given the Commission's declaration that the bets are not lawful, the Commission has formed the view that PlayUp should return \$9,381.49 to the Complainant, being the total of monies deposited by the Complainant into the betting account.

### REASONS

#### **Background**

5. The Commission has granted a licence to PlayUp Interactive Pty Ltd (**PlayUp**) to conduct the business of an online sports bookmaker pursuant to section 90 of the Act.
6. In accordance with the Act and its sports bookmaker licence conditions, PlayUp is required to comply with the 2019 Code which came into effect on 26 May 2019. Through the 2019 Code, the Commission has mandated that all sports bookmakers licensed by it must:

- i. provide self-exclusion features on their wagering platforms that enable customers and non-customers with the ability to exclude themselves from accessing the licensee's wagering products either temporarily or permanently (clause 4.2(a)); and
- ii. where a person requests they be permanently self-excluded for any reason or is permanently excluded by the licensee due to problem gambling concerns, the licensee must not knowingly permit that person to re-open or open a new account (clause 4.2(e)).

## **The Complaint**

7. On 24 September 2020, the Complainant lodged a complaint with the Commission in relation to his dealings with PlayUp. The Complainant has submitted to the Commission that he is a self-excluded customer of PlayUp however despite this, on 23 September 2020 he was able to:
  - a. open a new betting account; and
  - b. deposit monies into the betting account.
8. During the period that the Complainant's newly opened betting account was active (being two days), the Complainant deposited over \$9,000 into the betting account and subsequently lost this full amount due to his wagering activity.
9. The Complainant is seeking for the Commission to declare that each of the bets that he placed with PlayUp using the newly created betting account to be 'not lawful' and for PlayUp to return the monies to him that he had deposited into this newly created PlayUp betting account.

## **Consideration of the Issues**

10. Pursuant to section 85(4) of the Act, the Commission determined to hear the dispute and make its determinations in absence of the parties, based on the written material before it.

## **Self-Exclusion**

11. Self-exclusion, in the context of online wagering, refers to a voluntary program or mechanism that allows an individual to restrict their ability to access online wagering services either temporarily or permanently. It is a proactive step taken by individuals who recognise that they want to take a break from online wagering to regain control over their wagering behaviour.
12. Having taken the steps to self-exclude from an online wagering operator, the person who has self-excluded has made a commitment to refrain from wagering with that operator. It is their responsibility to adhere to the self-exclusion agreement and avoid opening a new account or attempt to bypass the self-exclusion restrictions that have been put in place.
13. However, it is also the responsibility of the online wagering operator to have effective systems and procedures in place to prevent self-excluded customers from opening new betting accounts. In accordance with the 2019 Code, the online wagering operator must ensure that it has implemented measures to verify the identity of the customer and cross-reference against its self-exclusion database to ensure compliance with the self-exclusion agreement.
14. It is the Commission's view that ultimately, both the individual who has self-excluded and the online wagering operator share a responsibility for upholding the self-exclusion agreement and preventing the person from accessing online wagering services during the period of any self-exclusion period.

### **Facts not in Dispute**

15. Having reviewed the various submissions to the Commission in relation to this matter from both the Complainant and PlayUp, the Commission notes that the following facts are not in dispute:
- a. on 29 October 2019, the Complainant permanently self-excluded himself from PlayUp's online wagering services;
  - b. on 23 September 2020, the Complainant opened a new betting account with PlayUp; and
  - c. the Complainant deposited over \$9,000 into the newly opened betting account and subsequently lost this money through his predominantly unsuccessful wagering activity.

### **Issues in Dispute**

#### **Betting account able to be opened while self-excluded**

16. PlayUp has submitted to the Commission that had the Complainant provided his correct details when creating the new betting account, it would have identified the Complainant as a previously self-excluded customer and not allowed the Complainant to open a new betting account with it. PlayUp has further submitted that where a person intentionally creates multiple accounts using unique details, it is difficult for PlayUp to identify the person as a previously self-excluded customer.
17. Evidence before the Commission shows that at the time the Complainant opened the new betting account with PlayUp on 23 September 2020, the Complainant registered his primary personal identifying details (given names, family name, date of birth and physical address) correctly. However, when registering for the 23 September 2020 betting account with PlayUp and dissimilar to when the Complainant registered for his initial PlayUp betting account that ultimately had a self-exclusion placed on it, on this occasion the Complainant included his middle names in the registration process.
18. Due to the Complainant registering his middle names in an incorrect data field, PlayUp have put a position to the Commission that as the Complainant included additional information in the 'given name' data field instead of the 'middle name' data field, it was unable to identify that the Complainant was in fact a self-excluded customer.
19. As mentioned earlier in this Decision Notice, the Commission expects that each of its licensees will have effective systems and processes in place that prevent a self-excluded customer from opening or re-opening a betting account with it. Given this, it is somewhat surprised that the PlayUp system was unable to identify that the Complainant was a self-excluded customer despite the fact that the Complainant provided his correct given name, surname, date of birth and physical address (all of which matched his previously recorded registration details), simply because the Complainant included the addition of his two middle names in the given name data field instead of in the middle name data fields.
20. It is clear to the Commission that on this occasion, PlayUp's data matching capabilities were not of sufficient effectiveness or comprehensive enough to identify and prevent the Complainant accessing its online wagering services despite the Complainant having a permanent self-exclusion status registered against him.

21. Given this and based on the weight of the evidence before it, the Commission is satisfied that PlayUp, in contravention of clause 4.2(e) of the 2019 Code, did not have an appropriate system in place that prevented a betting account from being opened by a previously self-excluded customer.

## **DISCIPLINARY ACTION**

22. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the Act, PlayUp has failed to comply with condition 15 of its sports bookmaker licence that was in place at the time of the events subject to this Decision Notice occurring, specifically that it contravened condition 15 of its licence by not complying with clause 4.2(e) of the 2019 Code through not having a system in place that was of sufficient robustness in its data matching capabilities to prevent a previously self-excluded customer from opening a new betting account with it.
23. Disciplinary action available to be taken by the Commission in these circumstances range from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmaker's licence.
24. The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the Act as follows:
  - a. for its contravention of condition 15 of its licence, a fine of 100% of the maximum penalty available, equating to \$26,860 (for the 2020/2021 financial year a penalty unit's value was \$158).
25. The Commission determined to impose the highest monetary penalty available to it in these circumstances having taken into account the severity of the deficiencies in the PlayUp self-exclusion data matching system, the impact of those deficiencies on vulnerable individuals, the need to deter similar infractions in the future and the need to maintain the integrity of the online gambling industry.

## **LAWFULNESS OF BETS**

26. The Complainant is seeking for the Commission to declare that each of the bets that he placed with PlayUp using the newly created betting account in September 2020 to be 'not lawful' and for PlayUp to return the monies to him that he had deposited into his PlayUp betting account from its creation.
27. The Commission places an extremely high level of importance on self-exclusion provisions being enforced by licensees so as not to allow persons to place bets after they have had the foresight to exclude themselves from using the services of a wagering provider due to recognising the risk to themselves of financial (and or other) harm.
28. Given this, and that the Commission has found that there has been a clear breach by PlayUp of the 2019 Code in relation to the self-exclusion provisions, the Commission has formed the view that the integrity of each of the betting transactions involving the Complainant and PlayUp on 23 September 2020 and 24 September 2020 have been undermined to such an extent, that each of the bets struck are not lawful pursuant to section 85(1A) of the Act.
29. As a result, the Commission has formed the view that PlayUp should return \$9,381.49 to the Complainant, being the total of monies deposited into the betting account.

**NOTICE OF RIGHTS**

30. 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 cursive script that reads "Alastair Shields".

Alastair Shields  
Chair  
Northern Territory Racing Commission

20 July 2023

On behalf of Commissioners Shields, Bravos and Corcoran