

# NORTHERN TERRITORY RACING COMMISSION

## Reasons for Decision

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<b>Complainant:</b>	Mr R
<b>Licensees:</b>	TopBetta Pty Ltd
<b>Proceedings:</b>	Gambling Dispute for determination by Racing Commission pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i>
<b>Heard Before: (on papers)</b>	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr Allan McGill
<b>Date of Decision:</b>	11 March 2021

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### Background

1. PlayUp Interactive Pty Ltd (PlayUp Interactive) is licensed as a sports bookmaker by the Commission and previously had approval to operate a number of individual betting platforms under its licence being BestBet, ClassicBet, Mad Bookie, Betting Club, PlayUp and Draftstars. In December 2019, PlayUp Interactive decommissioned a number of the betting platforms with the result that it is now authorised to operate the Draftstars and PlayUp betting platforms under its licence only.
2. PlayUp Interactive's parent company is PlayUp Australia Ltd (PlayUp Australia) which is also the parent company of a further sports bookmaker licence granted by the Commission, being TopBetta Pty Ltd which previously operated the TopBetta betting platform. The TopBetta betting platform was also decommissioned in December 2019 when all TopBetta betting accounts were migrated to the PlayUp betting platform, however the TopBetta Pty Ltd sports bookmaker licence remains current.
3. While the TopBetta betting platform has now been decommissioned, this was not the case at the time of the events that are subject of this gambling dispute and given that the TopBetta Pty Ltd sports bookmaker licence remains current, it remains appropriate that this matter be heard by the Commission.
4. On 5 August 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 licensed sports bookmaker, Topbetta Pty Ltd. For ease of reference, the licensee will be referred to as TopBetta throughout this decision notice.
5. The substance of the gambling dispute is that following the complainant having banned himself from all sports bookmakers licensed by the Commission through a process known as facilitated self-exclusion, he was able to open a betting account with TopBetta. The complainant also submits that he also received promotional material from TopBetta on several occasions encouraging him to bet, despite having been self-excluded from using TopBetta's gambling services.

6. Information was gathered from both parties by a Licensing NT officer appointed as a betting inspector by the Commission and provided to the Commission which determined there was sufficient information before it, to consider the gambling dispute on the papers.

## **Consideration of the Issues**

7. For many people, gambling is a harmless entertainment. The Commission however, recognises that this is not the case for all people who engage in gambling activity and that in some circumstances, some people are unable to control the urge to gamble despite knowing that it is having a negative impact on their lives. With this in mind and in order to minimise the harm that may be caused by online gambling, the Commission introduced the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016. All Northern Territory sports bookmakers and betting exchanges licensed by the Commission are required to comply with the 2019 Code.

### 2019 Code - Self-Exclusion

8. The 2019 Code requires that all sports bookmakers and betting exchange operators licensed by the Commission must provide both its customers and non-customers with the option to self-exclude from using their gambling services.
9. The 2019 Code requires that:

#### **4.2 Self-exclusion features**

- (a) Online gambling providers must provide self-exclusion features on their website to enable their customers the opportunity to exclude themselves from accessing the provider's gambling products either temporarily (for a specified period of time) or permanently.
- (b) The provider must offer self-exclusion via an online process or a form based process, and must ensure suitable internal procedures are in place to have any self-exclusion request dealt with immediately. The option for self-exclusion from all Northern Territory online gambling providers must be included.
- (c) In addition to having its own process for a customer to activate a self-exclusion, the online gambling provider must also have in place:
  - (i) procedures or a form that is available to allow non-customers who wish to self-exclude to exclude themselves; and
  - (ii) procedures that will allow it to process a self-exclusion request on a form developed by the regulator and available from the Departmental website, when lodged at the Department by a person who wishes to self exclude.
- (d) All self-exclusion actions must be recorded in the Gambling Incident Register.

- (e) Where a person requests that they be permanently self-excluded for any reason or is permanently excluded by the online gambling provider due to problem-gambling concerns, the online gambling provider must not knowingly permit that person to re-open or open a new account.
  - (f) Where a person requests they be temporarily self-excluded, the online gambling provider must not knowingly permit that person to wager with the provider prior to the expiry of the specified self-exclusion period (whether by opening another account or reactivating or re-opening their original account).
10. As detailed at 4.2 (c)(ii) of the 2019 Code, to further assist those persons who may be at risk of harm as a result of their betting behaviours, the Commission (through the administrative support provided to it by officers from Licensing NT) provides a service by way of which a person wishing to self-exclude from one or more of its licensees may submit a self-exclusion form directly with Licensing NT rather than making direct contact with one or more sports bookmakers or betting exchange operators. Officers from Licensing NT will then facilitate the self-exclusion request by distributing the form directly to the nominated licensees.
  11. On Saturday 8 June 2019, the complainant signed a self-exclusion form and submitted it to Licensing NT. On 11 June 2019, Licensing NT sent a copy of the form to all sports bookmakers licensed by the Commission including TopBetta.
  12. A short time later on that same day, TopBetta sent an email to Licensing NT advising that it had self-excluded the complainant from all of the PlayUp brands.
  13. The Commission affords all sports bookmakers licensed in the Northern Territory an opportunity to respond to each gambling dispute made against it. In response to this gambling dispute, TopBetta advised the Commission that the complainant had opened a new betting account with TopBetta on 14 June 2019, being three days after the self-exclusion form was received by it.
  14. TopBetta initially submitted to the Commission that, *"[t]he details provided in the self exclusion notice were used to exclude [the complainant] from the TopBetta website, however due to an alteration of those details he has been able to circumnavigate the security systems."*
  15. TopBetta later submitted to the Commission that the name used to open the betting account was different to the details provided in the self-exclusion form. In this respect, the Commission notes after having reviewed the identification details used to open the betting account, that the only discernible difference between the identification details on the self-exclusion form and the details used by the complainant to open the betting account was that the complainant did not use his second given name when opening the betting account. The first name, surname, date of birth, email address, physical address and mobile phone number all match exactly to the details provided on the self-exclusion form.
  16. Given this, it is incongruous to the Commission that TopBetta can make any such claim that the complainant 'circumnavigated its security system' by altering his identification details when opening the betting account with it.

17. During the course of the investigation into this gambling dispute, TopBetta later admitted that at the time the complainant opened the betting account:

...there appears to be a bug that was introduced into the existing working code checks which allowed this client to get through the above checks. This code is managed by a 3rd party vendor which we do not control. Once the issue was identified, we implemented a hot fix to rectify the bug and tested it in production to confirm the rules are working as expected.

18. TopBetta advised the Commission that it was alerted to the existence of the betting account when the complainant himself contacted TopBetta on 5 August 2019 and requested that he be self-excluded from the betting platform. TopBetta further stated to the Commission that it stressed that no funds were deposited into the account nor were any bets struck. In this respect, the Commission notes that the lack of betting activity on the account occurred only as a result of good fortune and was certainly not as a result of good management on TopBetta's behalf.

#### 2019 Code - Promotional Material

19. Clause 4.6 of the 2019 Code requires that licensees are to ensure that they have in place, suitable procedures to ensure that correspondence or promotional material is not sent to any persons who are excluded from using their services.
20. The Commission has sighted evidence provided by the complainant that he was sent promotional material encouraging him to bet with TopBetta on 31 July 2019 and 2 August 2019. Given that TopBetta advised Licensing NT on 11 June 2019 that it had self-excluded the complainant from using its services following the receipt of the self-exclusion form, it is clear to the Commission that TopBetta has not abided by this clause of the 2019 Code.
21. In response to this aspect of the gambling dispute, TopBetta advised that the promotional material was sent to the complainant as the betting account was active at that time.
22. The Commission notes however, that the betting account was only an active betting account at that time due to the lack of due diligence on the part of TopBetta in ensuring that self-excluded persons do not open betting accounts with it.
23. While some responsibility must rest with the complainant given that he opened the betting account with TopBetta some six days after having signed the self-exclusion form, the Commission also notes that the complainant has candidly admitted that he suffers from a gambling addiction or problem.
24. The very reason that the Commission has proscribed that all of its licensees must have adequate systems in place to prevent a self-excluded person from opening a betting account or receiving promotional material is to support those people who are unable to control the urge to gamble despite knowing that it is having a negative impact on them.
25. In this respect, the Commission is of the view that TopBetta has failed significantly in its obligation to protect and support those people who no longer find gambling activities to be entertaining.

## Decision

### Permitting a Self-Excluded Person to Open a Betting Account

26. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the *Racing and Betting Act*, TopBetta Pty Ltd has failed to comply with a condition of its licence through the failure of it to identify that the complainant was a self-excluded person which in turn, allowed the complainant to open a betting account, which was in breach of clause 4.2(e) of the Northern Territory Code of Practice for Responsible Gambling 2019.
27. Disciplinary action available to be taken by the Commission in these circumstances ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.
28. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. With that in mind, the Commission considers the allowing of a self-excluded person to open a betting account to be a serious breach of the Northern Territory Code of Practice for Responsible Gambling 2019 which was approved by the Commission in part, so as to minimise the harm that may be caused by online gambling.
29. The Commission notes that TopBetta Pty Ltd has admitted to a failure in its system to match customer data and at the time of responding to the gambling dispute had undertaken to revisit its systems in regard to the recording of data with a commitment to increase the matching of client data to prevent such instances occurring in the future. The Commission welcomes TopBetta's then intended approach in this regard however, notes that a similar commitment was made as detailed in the earlier Commission decision of *B v PlayUp Interactive & TopBetta* dated 17 January 2020 in which the Commission found that TopBetta had sent promotional material to a person who was self-excluded from using its services.
30. The Commission also notes that on 14 May 2018, the Commission imposed a fine on TopBetta Pty Ltd of 51 penalty units for a breach of its licence conditions which involved a breach of the Northern Territory Code of Practice for Responsible Gambling 2016 in relation to its self-exclusion provisions.
31. Given the serious nature of this matter and TopBetta's compliance history to date balanced with the fortuitous outcome that no betting activity occurred on the betting account, the Commission has determined to impose a fine equivalent to 70% of the maximum penalty of 170 penalty units, being 119 penalty units or a total of \$18,802.

### Sending of Promotional Material to a Person who is Self-Excluded

32. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the *Racing and Betting Act*, TopBetta Pty Ltd has failed to comply with a condition of its licence through its sending of promotional material to a self-excluded person, which was in breach of clause 4.6 of the Northern Territory Code of Practice for Responsible Gambling 2019.
33. Disciplinary action available to be taken by the Commission in these circumstances again ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.

34. As detailed above, the Commission notes that in the matter of decision of B v PlayUp Interactive & TopBetta dated 17 January 2020 in which the Commission found that TopBetta had sent promotional material to a person who was self-excluded from using its services, the Commission imposed a fine equivalent to 70% of the maximum penalty of 170 penalty units.
35. Given the serious nature of this matter and TopBetta's compliance history to date, the Commission has determined to impose a fine equivalent to 100% of the maximum penalty of 170 penalty units, being 170 penalty units or a total of \$26,860.
36. The Commission anticipates that due to the significance of the fines imposed in this matter which equate to a total of \$45,662, that should TopBetta decide to operate another betting platform under its current licence it will ensure that it has an effective system in place to prevent persons who are self-excluded from accessing its gambling services or receiving promotional materials.

### **Review of Decision**

37. 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 March 2021