

NORTHERN TERRITORY RACING COMMISSION

DECISION NOTICE AND REASONS FOR DECISION

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 G

LICENSEES: Neds.com.au Pty Ltd
Entain Group Pty Ltd

HEARD BEFORE: Ms Cindy Bravos (Presiding Member)
(on papers) Mr Kris Evans
Mr James Pratt

DATE OF DECISION: 30 June 2023

DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (**the Commission**) is satisfied that Neds.com.au Pty Ltd (**the Licensee**) has:
 - a. contravened condition 20 of its licence by failing to ensure that an email conversation on 12 September 2018 between the Complainant and the Licensee relating to the Complainant's request to close his betting account with the Licensee was recorded and retained by the Licensee;
 - b. contravened condition 16 of its licence by not complying with clause 2.3 of the Northern Territory Code of Practice for Responsible Online Gambling 2016 (**the 2016 Code**) through not having sufficient mechanisms in place to recognise and resolve issues relating to client problem gambling incidents involving the Complainant, being:
 - i. the deposit activity of the Complainant on 16 September 2018;
 - ii. the deposit activity of the Complainant throughout the full month of September 2018;
 - iii. the complaint lodged by the Complainant with the Licensee on 5 December 2018; and
 - c. contravened condition 16 of its licence by not complying with clause 2.2 of the 2016 Code by not recording all actions taken by the Licensee in its Gambling Incident Register, when dealing with the Complainant following the lodgement of the 5 December 2018 complaint.
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 20 of its licence, a fine of 17 penalty units being 10% of the maximum penalty available, equating to \$2,635 (for the 2018/2019 financial year a penalty unit's value was \$155);
 - b. for its contraventions of condition 16 of its licence:

- i. a fine of 51 penalty units being 30% of the maximum penalty available, equating to \$7,905 for the breach relating to the Complainant's deposit activity on 16 September 2018;
 - ii. a fine of 85 penalty units being 50% of the maximum penalty available, equating to \$13,175 for the breach relating to the Complainant's deposit activity throughout the full month of September 2018;
 - iii. a fine of 85 penalty units being 50% of the maximum penalty available, equating to \$13,175 for the breach relating to the complaint lodged with the Licensee by the Complainant on 5 December 2018; and
 - iv. a fine of 51 penalty units being 30% of the maximum penalty available, equating to \$7,905 for the breach relating to the Gambling Incident Register.
3. The Commission has determined that the bets placed by the Complainant are lawful despite the Licensee's breaches, noting that this determination does not in any way diminish the severity or significance of the breaches themselves.

REASONS

Background

4. The Commission granted a licence to Neds.com.au Pty Ltd in September 2017 to conduct the business of a sports bookmaker pursuant to section 90 of the Act.
5. In November 2018, Ladbrokes Digital Australia Pty Ltd (now Entain Group Pty Ltd) acquired Neds.com.au Pty Ltd however, the Neds wagering platform continued to be operated under the Neds.com.au Pty Ltd sports bookmaker licence until 11 January 2019, when the Commission granted permission for the Neds wagering platform to be operated under the Entain Group Pty Ltd sports bookmaker licence.
6. While the Neds.com.au Pty Ltd sports bookmaker licence remained valid up until 10 September 2022, its sports bookmaker licence has now expired and as has been the case for previous Commission approvals of mergers and acquisitions of sports bookmakers licenced by the Commission, the acquiring licensee (most recently in this matter being Entain Group Pty Ltd) remains liable for any misconduct that occurred before the closing of the merger and/or acquisition of Neds.com.au Pty Ltd.
7. For ease of reference and given that the events complained of occurred while the Complainant interacted with the sports bookmaker while using the Neds wagering platform, the Commission has determined to refer to the Licensee as **Neds** throughout this Decision Notice.

The Complaint

8. On 6 August 2020, the Complainant lodged a complaint with the Commission in relation to his dealings with Neds. During the course of the Commission's investigation into the complaint, the Complainant sought legal representation from Macquarie Legal.
9. The substance of the Complainant's allegations as submitted to the Commission are as follows:
 - a. in September 2018 and after having previously closed his Neds betting account on two occasions, Neds permitted the Complainant to reopen his betting account and deposit

- a total of \$106,000 within a 3-day period, including \$80,000 worth of deposits using a newly registered bank card;
- b. over the lifetime of the betting account, the Complainant was able to cancel numerous 'pending withdrawal' requests totalling \$735,595;
 - c. over the lifetime of the betting account, the Complainant requested a significant number of bonus bets;
 - d. Neds did not prompt the Complainant to utilise any gambling management tools aimed at reducing the potential for harm from online wagering;
 - e. Neds allowed the Complainant to cancel a significant number of pending bets but only when it was in Neds' financial interest to do so; and
 - f. in July 2020, Neds restricted the Complainant's betting account by no longer providing him access to promotional products.
10. The Complainant is seeking for the Commission to declare that each of the bets that he placed with Neds from 14 September 2018 onwards to be 'not lawful' and for Neds to return the monies to him that he had deposited into his Neds betting account from that same date until the account's closure in August 2020.

Consideration of the Issues

11. 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.

Re-opening of Account after Closure

12. Evidence before the Commission includes Neds' 'client notes' for the Complainant which record that on 12 September 2018, the Complainant's betting account status was changed from 'open' to 'closed' with the reasoning recorded as, "*Customer requested account closure by email. Believes our cash out is a roft.*" There is no other record in the Complainant's 'client notes' that the Complainant's betting account was closed, or a request made for it to be closed prior to this date nor is there any other evidence before the Commission that any such request/s was made.
13. In response to the Commission's request (pursuant to section 85(3)(c) of the Act) for Neds to produce the email referred to by it in its 'client notes' for the Complainant in order to assist the Commission to determine this dispute, the Commission was advised by Neds that the email was unable to be located as the closure request by the Complainant occurred before the acquisition of Neds by Ladbrokes Digital Australia Pty Ltd and occurred before the system migration of the Neds business records to Ladbrokes Digital Australia Pty Ltd.
14. As detailed earlier in this Decision Notice, the Neds sports bookmaker licence remained valid up until its expiry on 10 September 2022. The conditions of the sports bookmaker licence issued by the Commission to Neds as it applied in 2018 included at clause 20 that:
- The Sports Bookmaker will ensure that all conversations with customers involving discussions relating to wagers, complaints or disputes, regardless of medium, are recorded on approved recording equipment.

15. Given that Neds is unable to produce the email requested by the Commission and that if its 'client notes' for the Complainant can be relied on by the Commission to be an accurate and contemporaneous record of events, the Complainant's email related to a 'wager, complaint or dispute' as the Complainant allegedly expressed dissatisfaction with the Neds' 'cash out' feature relating to wagers placed with it (and notwithstanding the system migration of its business records to Ladbrokes Digital Australia Pty Ltd), the Commission can come to no other conclusion than that Neds has breached condition 20 of the sports bookmaker licence that it held at that time.
16. The inability of Neds to produce the email referred to above prompted the Commission to request the Complainant to produce the email to it however, the Complainant advised the Commission that despite searching his records, he was unable to locate the email given the time that has now since passed since the email was sent.
17. As there is no evidence before the Commission that the closure of the Complainant's betting account on 12 September 2018 was for any other reason than a service-related issue as detailed in the contemporaneous client note created by Neds on 12 September 2018 nor any evidence of any other previous request by the Complainant to have his betting account closed, the Commission is of the view that when the Complainant requested Neds to re-open his betting account on 14 September 2018, there was nothing prohibiting Neds from doing so.

Account Activity between 14 September 2018 and 17 September 2018

18. The Complainant has submitted to the Commission that between Friday 14 September 2018 and Sunday 16 September 2018, he deposited \$26,572 into his betting account and "...lost all of it." The Complainant has further submitted that he then registered a new bank card and between 4:31 pm on Sunday 16 September 2018 and 10:05 am Monday 17 September 2018, he deposited \$80,000 into the betting account, which he also went on to lose. The Complainant has submitted to the Commission, that at no time during this period was he contacted by Neds.
19. Having reviewed the Complainant's betting account records with Neds, the Commission notes the following deposit activity for the period between 14 September 2018 and 17 September 2018:
- 14 September 2018 - five deposits totalling \$16,000 (\$5,000, \$1,000, \$1,000, \$5,000, \$4,000);
 - 15 September 2018 - seven deposits totalling \$8,572 (\$2,000, \$1,000, \$372, \$2,000, \$2,000, \$1,000, \$200);
 - 16 September 2018 - seven deposits totalling \$62,000 (\$2,000, \$10,000, \$10,000, \$10,000, \$10,000, \$10,000, \$10,000);
 - 17 September 2018 - two deposits totalling \$20,000 (\$10,000, \$10,000).
20. Prior to the Complainant's deposit activity referred to above, the evidence before the Commission as recorded in the Complainant's betting account statements with Neds is that the Complainant was a regular customer of Neds who often deposited (and withdrew) significant sums of money into his betting account for the purposes of wagering. By way of example, during the six months prior to the deposit activity referred to at paragraph 19 above, the Complainant deposited daily amounts totalling \$10,000 or more on nine occasions (2 March 2018-\$28,500; 6 March 2018-\$20,000; 27 June 2018-\$15,000; 27 June 2018- \$14,000; 23 June 2018- \$10,000; 27 June 2018- \$15,000; 4 July 2018-\$20,400; 3 September 2018-\$12,000 and 10 September 2018- \$10,100).

21. As can be seen, the daily deposits made by the Complainant into his betting account on three of the four days that the Complainant has highlighted in his complaint, were not significantly out of character from his deposit activity with Neds over the previous six months.
22. The deposits totalling \$62,000 on 16 September 2018, however, were of an amount significantly larger than any of the deposits that the Complainant had made with Neds on any one day prior to this time.
23. In this respect, the Commission requires that the sports bookmakers it licenses will actively monitor their customers' wagering behaviours for any indicators that a customer may be at risk of experiencing harm from their wagering activity. A significant escalation in deposit amounts (including large or uncharacteristic deposits) is one such indicator that the Commission expects a licensee will identify and after having done so, will interact with the customer in a way to satisfy itself that the customer is not at risk of harm.
24. The Commission sought information from Neds as to whether the Complainant's deposit activity triggered any automated reports to be generated for Neds to review. While the Commission was provided with a number of reports, none of these reports related to the Complainant's deposit activity between 14 and 17 September 2018.
25. The Complainant has further submitted to the Commission that Neds should have identified that he used a new bank card to make the deposits on 16 September 2018. In this respect, the Commission notes the advice from Neds that the complainant added this card on 16 September 2018 and sent through a photograph less than one-week later, successfully satisfying verification. Having sighted relevant records held by Neds, the Commission is satisfied that the Complainant did use a new bank card to make deposits on 16 September 2018 and that this bank card was verified by Neds six days later.
26. While the use of multiple deposit methods may be an indicator that a customer may be experiencing harm from their wagering activity, the adding of a new bank card in itself is not usually sufficient to warrant further inquiries. Having said that however, the Commission notes that Neds was aware (as it should have been) that the Complainant had added a new bank card given Neds applied a withdrawal freeze on the bank card until it could be verified. Had Neds connected this information with the deposit activity of the Complainant at that time, it should have in the Commission's view, given Neds additional reason to interact with the Complainant in a way to satisfy itself that the Complainant was not at risk of harm from his wagering activity.
27. Having reviewed the Complainant's deposit history with Neds, the Commission notes that during the months of June, July and August 2018, the Complainant deposited \$34,150, \$50,500 and \$48,090 into the betting account respectively; while in the month of September 2018, the Complainant deposited a total of \$158,352 into his betting account.
28. During the months of June and August 2018 the Complainant profited from his wagering activity in that in June 2018 he withdrew \$19,700 in profits from his betting account and in August 2018, he withdrew \$12,410 of profits from his account whereas in September 2018, the Complainant made a loss of \$81,752. Despite this significant increase in the amount of money the Complainant deposited into his betting account for the month of September 2018 (and lost) compared to the previous three months, there has again been no evidence provided to the Commission by Neds that the Complainant's overall deposit activity in September 2018 triggered any form of alert (automated or otherwise) to cause Neds to interact with the Complainant in a way to satisfy itself that the Complainant was not at risk of harm.

29. The Commission notes however, that the Neds 'client notes' do indicate that Neds did on occasion identify when the Complainant deposited large sums of money into his betting account as can be evidenced by the following:
- 3 August 2018 – *“Over \$7k deposits yesterday (Bonus cash adjusted...)”*
 - 10 August 2018 – *“Deposits of \$6500 yesterday. Good VIP (Bonus cash adjusted...)”*
 - 4 September 2018 – *“...Deposited over \$20k last 24 hrs... Low margin client (Bonus cash adjusted...)”*
 - 10 October 2018 – *“VIP down \$120k last 30 days. Low percentage client (Bonus cash adjusted...)”*
30. Each of the above records was created by the Complainant's VIP account manager and given the comments contained within, indicate to the Commission that on each of the occasions that Neds did identify that the Complainant had deposited large sums of money into his betting account, it appears that consideration was only given as to whether or not to provide inducements to the Complainant rather than reviewing the Complainant's activity from a harm minimisation perspective.
31. 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 2016 Code. Given the Complainant's deposit activity discussed above occurred in September 2018, the 2016 Code applied to the activities of Neds during this period.
32. It is implicit through both the 2016 Code and the current 2019 Code, that all sports bookmakers should interact with their customers in a way which minimises the risk to their customers of experiencing harms associated with gambling. While there is no guarantee that this interaction will identify all customers who are experiencing or are at risk of harm, attempts should be made by all sports bookmakers to reduce harm at the earliest opportunity.
33. Specifically, clause 2.3 of the 2016 Code required that all licensees must establish and promote mechanisms to recognise and resolve issues relating to client problem gambling incidents while clause 3.1 of the 2016 Code required that all sports bookmaker staff engaged in client interaction must have completed responsible gambling training so as to be able to identify problem gambling red flag behaviours.
34. Neds lack of interaction with the Complainant, specifically following the deposit activity on 16 September 2018 and again after the overall deposit activity for the whole month of September 2018 indicates to the Commission that it did not have sufficient processes and procedures in place at that time to identify those of its customers who were displaying indicators that they may be experiencing harm from their wagering behaviour and given this, the Commission has formed the view that Neds has not complied with clause 2.3 of the 2016 Code following the Complainant's deposit activity on 16 September 2018 and again following the Complainant's deposit activity for the full month of September 2018.

Lodgement of a Complaint with Neds

35. The Complainant continued to actively use his betting account with Neds making deposits of \$21,764 (with a loss of \$9,445) and \$98,550 (with a profit of \$19,339) during October 2018 and November 2018 respectively.

36. On 5 December 2018, the Complainant raised a complaint directly with Neds about his activity in September 2018 via an email to Neds requesting an in person 'off the record' conversation with Neds including someone from Neds' in-house legal area to discuss his account usage in September 2018 and over \$730,000 in cancelled withdrawals since the betting account's inception. The Commission has sighted this email which concurs with the Complainant's version of events in this respect.
37. Following the receipt of this email, Neds made contact with the Complainant by telephone on the same day. The Commission has listened to a recording of this telephone call and notes that the Complainant's VIP account manager asked the Complainant to discuss with it, the issues raised in the email however, the Complainant advised that he did not want to discuss the issues over the telephone and would prefer to meet with representatives from Neds in person as the issues have "*...some pretty severe implications that should be discussed.*"
38. In that conversation, the Neds representative queried the Complainant as to what exactly he wanted to discuss and said to the Complainant, "*... you've cancelled some withdrawals on your account over time, uhmm you've got the option on the account mate to, to not be able to do that which I can see that you set up on your account anyway.*"
39. In response, the Complainant advised his VIP account manager that the issues related to the, "*... significant amount of money that was deposited through, over a couple of days period in September*" and again requested an in-person meeting with Neds.
40. The Neds representative then asked the Complainant whether he made the deposits to which the Complainant responded that he did. The Neds representative then continued to ask the Complainant to detail what the issue was and what is the "*...problem with the deposits*" and whether the Complainant was "*...disputing that you've made the deposits or someone else has made the deposits,*" to which the Complainant responded that this was not what he was saying and that there were matters that need to be addressed and it would be in everyone's best interest to meet to discuss the issue. The Complainant's VIP account manager continued to state that he did not understand the issue that the Complainant was raising however, he would raise it with his management and get back to the Complainant.
41. In its submission to the Commission regarding this telephone call, Neds advised the Commission that the Complainant was "*...extremely vague and refused to discuss anything over the phone.*" The Commission however, has come to a different view and considers that the Complainant, while not articulating his specific concerns about the deposits made by him into his betting account over the four-day period in September 2018, clearly wished to raise his concerns about the amount of money that he had deposited into his Neds' betting account over a relatively short period of time.
42. The following day, a senior representative from Neds' customer service area contacted the Complainant by telephone and offered to discuss the Complainant's concerns. The Commission has also listened to a recording of this telephone call and notes that the Complainant continued to not want to articulate his specific concerns over the telephone and again requested to have an 'off the record' meeting in person with representatives from Neds. The Neds representative advised the Complainant that while he did not understand what could not be discussed over the telephone, he would "*...respond and come back to [the Complainant].*"
43. Later that day, the same Neds' senior representative emailed the Complainant and advised that Neds was unable "*...meet with [the Complainant] face to face or have an off the record conversation with [the Complainant].*" In that email, the Neds representative noted that the Complainant had referred to "*...significant issues...*" but that it was unclear what this referred to. The Neds representative provided the Complainant with information about Neds' responsible gambling

tools including pre-commitment limits and self-exclusion. The Neds' representative requested the Complainant to advise him by way of return email whether he may be experiencing any issues with his gambling (or be at risk of this) and if so, the Neds representative advised the Complainant that he would organise for a 'self-exclusion' to be placed on the Complainant's betting account. There is no evidence before the Commission that the Complainant responded to this email.

44. It is clear to the Commission from the action of Neds that occurred in response to the Complainant's email of 5 December 2018 (particularly the email from the Neds' senior representative referred to at paragraph 43 above), that Neds recognised that the Complainant may be experiencing harm from his wagering activity.
45. The Commission is somewhat surprised however, that it appears that no further action was taken by Neds after having raised its concerns directly with the Complainant. In the Commission's view, the lack of response from the Complainant to the Ned's senior representative's email in which the possibility of a 'self-exclusion' being placed on the betting account was raised, should have prompted Neds to take some form of follow-up action.
46. In this respect, the Commission notes Neds' submission to the Commission in response to the complaint in which it stated:

It is clear Neds reached out directly to [the Complainant] by telephone call (twice) and also by email outlining his options should he have a gambling problem. Neds argues it acted appropriately in the circumstances, particularly given [the Complainant] still has not disclosed a gambling problem in any of his correspondences with Neds nor has he outlined one in his letters to the Commission.

47. While noting Neds' view on this issue, the Commission cannot agree with it. Simply relying on a lack of response or lack of admission to a gambling problem from the Complainant, to satisfy itself that the Complainant was not at risk of experiencing harm from his wagering activity is not sufficient to fully meet its obligations as was required by the 2016 Code, specifically clause 2.3 that required all licensees to establish and promote mechanisms to recognise and resolve issues relating to client problem gambling incidents.
48. Had Neds taken a more proactive response to fully resolve the Complainant's complaint as required by the 2016 Code, it may have resulted in the Complainant's betting account being closed (be it voluntarily by the Complainant or by Neds itself) and would have likely resulted in the Commission not receiving a complaint from the Complainant about the activity, nearly two years later.

Gambling Incident Register

49. The 2016 Code at clause 2.2, required that all licensees were to 'record all actions taken by staff assisting clients in accordance with this Code through a Gambling Incident Register.' Upon sighting this register, the Commission notes that there are no records pertaining to the Complainant.
50. Neds has advised the Commission that in this respect that "...the communication from 2018 were inadvertently not recorded in the Neds Gambling Incident Register as that register is maintained by the responsible gambling team." Neds submitted that this was due to the issues raised by the Complainant having occurred three or more months earlier however, it had now updated its procedures so that any responsible gambling concerns that originate outside of the responsible gambling team are now noted in the Gambling Incident Register.

51. While this improvement in processes with respect to the Gambling Incident Register may be the case, it is clear to the Commission that at the time of Neds' interactions with the Complainant in December 2018 (each of which were not recorded in the Gambling Incident Register), there has clearly been a contravention by Neds of clause 2.2 of the 2016 Code.

Lifetime Account Activity

52. The Complainant opened his betting account with Neds in November 2017 and utilised the betting account for just under three years prior to the account being closed in August 2020. During the lifetime of the account, the Complainant deposited just under \$1.5 million and withdrew a little under \$1.2 million – with the end result being that the Complainant lost \$314,548 during the lifetime of the account.

53. While ultimately the Complainant lost money from his wagering activity with Neds (the Commission has often stated that an inherent risk in gambling that cannot be avoided is the loss of money given that online sports bookmakers and other wagering operators are businesses set up to make money from their customers' wagering activity), the Commission also notes that the Complainant was quite a successful gambler at various stages during the overall lifetime of the betting account including two of the three months prior to the closure of the account where he took profits of \$26,114 in May 2020 and \$46,317 in July 2020.

54. The Commission also notes that despite having lodged a complaint with Neds in December 2018 regarding his wagering activities in September 2018 and not having that complaint resolved to his satisfaction, the Complainant continued to actively wager with Neds for a further year and a half prior to lodging a complaint with the Commission.

55. The Commission further notes that the lodging of the complaint with the Commission occurred shortly after the Complainant stated that his betting account with Neds was restricted on 22 July 2020 due to in his view, "*...having a few very rare wins.*"

56. In relation to the lifetime activity of the betting account, the Complainant has asserted that:

- a. he was able to cancel numerous 'pending withdrawal' requests totalling \$735,595;
- b. he requested a significant number of bonus bets;
- c. Neds did not prompt him to utilise any gambling management tools aimed at reducing the potential for harm from online wagering;
- d. Neds allowed him to cancel a significant number of pending bets but only when it was in Neds' financial interest to do so; and
- e. Neds restricted his betting account by no longer providing him access to promotional products.

Cancelled 'Pending Withdrawals'

57. The Complainant submitted that from the time that he opened the betting account with Neds, he was able to cancel numerous withdrawal requests – with the total of these withdrawal requests amounting to \$735,595. The Complainant submitted that he continued to be able to cancel withdrawal requests up until he recognised his "*...inability to not cancel withdrawals [and] requested for this feature to be removed from [his] account...*". The Commission notes that the Neds 'client notes' for the Complainant show that the Complainant disabled "*...the ability to see Pending Withdrawals*" on 26 November 2018.

58. The ability to cancel withdrawal requests is currently a general feature of most online sports bookmakers wagering platforms and allows for customers to change their mind about withdrawing funds from their betting account before the transfer to their bank account is processed. At the time of issuance of this Decision Notice, the Commission is exploring the option to prohibit the reverse withdrawal function due to research and evidence from the Commission's past investigations that the reverse withdrawal function presents a risk to those people who may be at risk of experiencing harm from their wagering activities however, this has not yet been implemented.
59. While there appears to be some discrepancy between the Complainant and Neds as to the value of the withdrawals cancelled by the Complainant (Neds has advised the Commission that the value of cancelled withdrawals totalled \$612,396 compared to the Complainant's claim of \$735,595), it is the Commission's view that nothing significant turns on this discrepancy and as such is not minded to explore it further.
60. What does cause the Commission some concern however, is that in the month of September 2018, the Complainant according to Neds' records, cancelled pending withdrawals to the value of \$240,616. Despite Neds having received a complaint from the Complainant in December 2018 and Neds engaging with the Complainant as a result (including suggesting that a self-exclusion may be warranted), there is no evidence before the Commission that Neds took the Complainant's high levels of cancelled withdrawal requests into its consideration as to whether the Complainant may have been experiencing harm from his wagering activities.
61. While there is currently no prohibition for online sports bookmakers licensed by the Commission against allowing for a customer to cancel pending withdrawals and there is no evidence before the Commission that the Complainant was encouraged by Neds to do so (Neds did offer the ability for its customers to remove this feature from their betting accounts – which the Complainant did eventually do), the Commission is of the view that Neds should have taken this activity into account, particularly when it did engage with the Complainant following the lodgement of his complaint with it in December 2018.

Bonus Bets

62. The Complainant has submitted to the Commission that over the lifetime of the betting account, he requested a significant number of bonus bets. Having reviewed the Neds 'client notes' for the Complainant, it is clear to the Commission that the Complainant did regularly request bonus bets and on many occasions, those requests were met.
63. Neds has submitted to the Commission that:
- ...a large percentage of our customers request and expect bonus bets for loyalty. Requests for bonus bets which are not accompanied with 'red flag' behaviours (as an example, comments such as "I gambled all my rent money", "I need a bonus to feed my family") should not be considered a sign of someone with a problem.*
64. Bonus bets and other forms of inducements are a marketing tool commonly used by online sports bookmakers to boost sales and generate loyalty. While frequent request for bonus bets can potentially be an indicator that a person may be at risk of harm from their wagering activities, it is important to exercise caution in interpreting this behaviour alone as a definitive indicator given that many sports bookmaker customers who are not at risk of harm may be attracted to these forms of inducements as a way to enhance their overall experience of wagering online.

65. The Commission has sighted a collection of emails provided to it by the Complainant in which he sought bonus bets from Neds. Alongside the request for a bonus bets, these emails contained comments including:

- *Terrible run of outs, didn't get a collect*
- *I've made a couple of deposits last few days with no deposit bonus credited. No rush but take a look when you get a chance.*
- *Any chance of some freebets? been an ordinary week.*
- *Some bonus bets for the weekend would be great - bit of customer satisfaction never goes astray.*
- *I'm going to have a play today, can you top me with some bonus cash to get going?*
- *Given horrendous results of late some bonus cash applied would be a good start. Been plenty of deposits and haven't made anywhere near most of deposit bonuses as I'm sure you'd agree.*
- *Thanks mate - being cheeky I know but any chance of another reload. Can't find a winner to save my life at the moment. I'll make a considerable deposit next week when I'm liquid.*
- *Been a shocking few days since Friday - any chance of some bonus cash to kick start the week?*

66. With the benefit of hindsight, the request in which the Complainant mentioned his 'liquidity' and others in which he indicated that he had a run of losing bets may have been sufficient to warrant some concern. However, it must be noted that the emails that the Commission has reviewed and were provided by the Complainant, are a very small sample of the numerous requests that were made by the Complainant for bonus bets throughout the lifetime of the account and it must also be recognised that the Commission has had the opportunity to view the emails in light of the complaint that has been lodged.

Gambling Management Tools

67. Gambling management tools are features provided by online wagering operators to assist their customers to monitor and control their wagering activity and can include such things as setting limits on the amount of money that can be deposited into a betting account over a specified period, taking a break from wagering for a set period of time or permanently and self-assessment tools.

68. The Complainant has asserted that at no time did Neds prompt him to use any of its gambling management tools.

69. Neds on the other hand has submitted to the Commission that a range of account management tools were available to the Complainant at all times via the Neds website or app. Neds submitted that the Complainant was aware of these tools as is evidenced by the Complainant:

- a. expressly being made aware of the option to self-exclude on 6 December 2018;
- b. cancelling the ability to see pending withdrawals on 26 November 2018; and
- c. setting a deposit limit of \$10,000 a day on his account on 17 July 2019.

70. Given the above, the Commission is satisfied that the Complainant was aware of and in fact used a number of gambling management tools provided by Neds.

Canceling of Pending Bets

71. The Complainant has submitted that while Neds allowed him to cancel a significant number of pending bets, Neds only agreed to cancel the pending bets when it was financially advantageous for it to do so and it did not agree to cancel the pending bets if to do so would favour the Complainant.

72. The Commission notes that most online sports bookmakers have terms and conditions that detail that once a bet has been placed and confirmed by the customer, it is generally not possible for the customer to cancel the pending bet.

73. Neds has submitted to the Commission that:

Purely as a good will gesture, Neds approved certain requests made by [the Complainant] with his stake being returned (not "lost" as implied in his complaint). In each case Neds had no way of knowing what the outcome of the bet would be.

74. The Complainant has drawn the Commission's attention to a bet that he placed and later requested to be cancelled for which, if he had not requested for the bet to be cancelled, would have resulted as a winning bet with a return of \$11,000. The Complainant has submitted that there were many more bets like this.

75. Neds has also provided the Commission with a list of bets that the Complainant requested to be cancelled that, if Neds had not agreed to the requests, would have gone on to lose.

76. While on occasion some sports bookmakers may decide to cancel a pending bet upon a customer's request, this is at the discretion of the sports bookmaker and there is no regulatory requirement that they must or must not do so. Given this and that there is no evidence before the Commission of Neds engaging in any nefarious activity in this respect, the Commission has determined not to explore this issue of complaint any further,

Betting Account Restrictions

77. The Complainant has submitted to the Commission that after having a few wins over a few weeks, he received an email from Neds on 22 July 2020 advising that his betting account was no longer eligible for promotions.

78. The Commission considers that the decision to restrict access to promotional offers on certain betting accounts is a business decision for the sports bookmaker and as such, does not intend to explore this issue further.

Lodgement of Complaint with the Commission

79. The Commission notes that the complaint subject of this decision notice was lodged shortly after Neds restricted the Complainant's access to promotional offers.

80. The Commission also notes that the Complainant was clearly aware that he could lodge a complaint with the Commission given that the Complainant lodged:

- a. a complaint against another sports bookmaker in July 2019 in relation to his use of its deposit limit gambling management tool; and

- b. a separate complaint against Neds on 17 May 2020 in which concerns were raised about Neds not refunding a specific bet that he had placed. In no part of that complaint, did the Complainant raise any of the concerns that he has raised in the complaint lodged that is subject of this Decision Notice.

81. Given that the Complainant continued to use the wagering services of Neds for some two years after the main substance of this complaint occurred (being the account activity in September 2018), it could be argued that the action of Neds to restrict the Complainant's betting account is what triggered this complaint as opposed to the Complainant having genuine concerns that Neds failed to identify that he may have been experiencing harm from his wagering activity.
82. It could also be argued that the Complainant raised the additional matters relating to the lifetime usage of the betting account (cancelled withdrawals, pending bets etc) in addition to the September 2018 activity so as to avoid the Commission's consideration whether or not to investigate the matter due to its historical nature.
83. The Commission also notes that despite the Complainant being offered assistance (through a Commission Betting Inspector) to put a self-exclusion in place across all sports bookmakers and betting exchange operators licensed in the Northern Territory, the Complainant did not avail himself of this opportunity nor did he take action to close his betting account with Neds.

DISCIPLINARY ACTION

84. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the Act, Neds has failed to comply with a number of the conditions of its licence that was in place at the time of the events subject to this Decision Notice occurring, specifically that it:
 - a. contravened condition 20 of its licence by failing to ensure that an email conversation on 12 September 2018 between the Complainant and the Licensee relating to the Complainant's request to close his betting account with the Licensee was recorded and retained by the Licensee;
 - b. contravened condition 16 of its licence by not complying with clause 2.3 of the 2016 Code through not having sufficient mechanisms in place to recognise and resolve issues relating to client problem gambling incidents involving the Complainant, being:
 - iv. the deposit activity of the Complainant on 16 September 2018;
 - v. the deposit activity of the Complainant throughout the full month of September 2018;
 - vi. the complaint lodged by the Complainant with the Licensee on 5 December 2018; and
 - c. contravened condition 16 of its licence by not complying with clause 2.2 of the 2016 Code by not recording all actions taken by the Licensee in its Gambling Incident Register, when dealing with the Complainant following the lodgement of the 5 December 2018 complaint.
85. 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.

86. 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 20 of its licence, a fine of 17 penalty units being 10% of the maximum penalty available, equating to \$2,635 (for the 2018/2019 financial year a penalty unit's value was \$155);
 - b. for its contraventions of condition 16 of its licence:
 - i. a fine of 51 penalty units being 30% of the maximum penalty available, equating to \$7,905 for the breach relating to the Complainant's deposit activity on 16 September 2018;
 - ii. a fine of 85 penalty units being 50% of the maximum penalty available, equating to \$13,175 for the breach relating to the Complainant's deposit activity throughout the full month of September 2018;
 - iii. a fine of 85 penalty units being 50% of the maximum penalty available, equating to \$13,175 for the breach relating to the complaint lodged with the Licensee by the Complainant on 5 December 2018; and
 - iv. a fine of 51 penalty units being 30% of the maximum penalty available, equating to \$7,905 for the breach relating to the Gambling Incident Register.

LAWFULNESS OF BETS

87. The Complainant is seeking for the Commission to declare that each of the bets that he placed with Neds from 14 September 2018 onwards to be 'not lawful' and for Neds to return the monies to him that he has deposited into his Neds account from that same date onwards until the betting account's closure in August 2020.
88. As detailed in this Decision Notice, the Commission has found that Neds has breached its regulatory obligations on a number of occasions between September 2018 and December 2018. Given these findings, the Commission has turned its mind as to whether the betting transactions that occurred through the Complainant's Neds betting account were lawful.
89. The Commission has long taken the view that it is a matter of the Commission's judgement as to whether a contravention of the Act, a Code of Practice, a condition of licence or other circumstance may be regarded as being so serious as to undermine the integrity of the betting transaction itself and in such circumstances, conclude that the betting transaction to be not lawful. By way of example, the Commission has often determined that the betting transactions involving a self-excluded person are not lawful given the importance the Commission places 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 harm.
90. The Commission is however, of the view that it was also the intention of the legislature to provide the Commission with jurisdiction to also enable bets to be enforced when it furthers the objects of the integrity and probity of betting and racing to do so, and to accept a bet as being lawful even if there is a breach of the Act, a Code of Practice or a licence condition by a licensee.

91. The views of the Commission regarding the lack of inquiry initiated by Neds regarding the Complainant's level of affordability to deposit to the level that he did in September 2018 and Neds' sub-standard level of inquiry following the lodgement of a complaint with it by the Complainant in December 2018 must be tempered with the fact that the Complainant:
- a. continued to wager with Neds after lodging a complaint with it in December 2018 (the outcome of which included a suggestion from Neds that the Complainant may wish to self-exclude himself from wagering with Neds);
 - b. continued to wager with Neds for just under two years prior to lodging a complaint with the Commission;
 - c. made no mention of his concerns regarding the activity in September 2018 when lodging a separate complaint with the Commission against Neds in May 2020; and
 - d. may have been prompted to lodge the complaint subject of this Decision Notice with the Commission in response to Neds restricting his access to promotional offers.
92. The Commission's objectives include ensuring the fairness and integrity of the online wagering industry while promoting responsible gambling practices. After careful deliberation and consideration of the information before it, the Commission has determined that the integrity of each bet placed by the Complainant with Neds has not been undermined to the extent where each bet should not be enforced, despite the licensee's breaches and that the Complainant's activity resulted in a financial loss to him.
93. This determination has not been made lightly and has been made so as to ensure a fair and proportionate response to the breaches involved in this matter. It must also be noted that this determination does not in any way diminish the severity or significance of the breaches themselves.

NOTICE OF RIGHTS

94. 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

30 June 2023

On behalf of Commissioners Bravos, Evans and Pratt