

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr H
Licensee:	SportChamps Australia Pty Ltd
Proceedings:	Gambling Dispute for determination by Racing Commission Pursuant to section 85(2) of the <i>Racing and Betting Act</i>
Heard Before: (on papers)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr Allan McGill
Date of Decision:	26 November 2019

Background

1. On 4 April 2019 pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) relating to the actions of SportChamps Australia Pty Ltd (SportChamps).
2. The complainant has advised the Commission that he was able to open a betting account with SportChamps after having previously self-excluded from the sports bookmaker. As a result, the complainant is seeking a refund of his losses which he believes to be approximately \$2,500.
3. In response to the gambling dispute, SportChamps advised the Commission that the identifying features used by the complainant to open the second betting account did not match the identifying details of the complainant's original account and therefore the complainant was able to open the second betting account.
4. The Commission also notes that when the complainant raised his dispute directly with SportChamps, he was advised by SportChamps that it would not refund the deposits made into the second betting account as he had:

...breached our terms and conditions by opening a second fraudulent account. The second account was able to be created as you changed key details such as your email and home address. There are now measures in place preventing users from opening duplicate accounts even when they have tried to cheat the system by changing key personal details.
5. Information relevant to this dispute was gathered from both parties by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission to consider the dispute on the papers.

Chronology

6. The Commission has reviewed the sports bookmaker's response to this gambling dispute as well as the complainant's betting records including email and live chat correspondence and notes that the complainant first opened a betting account with SportChamps on 31 May 2018. This betting account was subsequently closed on 27 September 2018 after the complainant requested that his betting account be closed permanently due to "...*gambling problems.*"
7. On 19 December 2018, the complainant's second betting account was opened and the complainant made numerous winning and losing bets until the betting account's closure on 16 February 2019. This betting account was closed following a SportChamps' employee recognising the complainant's name.
8. During the life of the second betting account, the complainant deposited \$7,340.23 and withdrew \$5,328.71.
9. At the time of opening the second betting account, the complainant used the same surname, date of birth and mobile phone number that he used to open the first betting account.
10. The complainant also used the same first name however, when opening the first betting account the complainant had also included a middle name which he did not include when opening the second betting account. The complainant's address details also differed slightly between the two betting accounts as the first account had a unit number included whereas the second betting account did not. The email address used for each betting account were not the same although both emails were quite similar in format.

Consideration of the Issues

Code of Practice

11. All Northern Territory licensed sports bookmakers' licence conditions (condition 15 of the SportChamps licence) and the Act currently require licensees to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code).
12. The 2019 Code came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016 (the 2016 Code), with both Codes providing guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling. Online gambling providers are also encouraged by the Commission to implement additional strategies to further minimise harm.
13. As the betting activity subject of this gambling dispute occurred between 19 December 2018 and 16 February 2019, the 2016 Code was in force at that time. The 2016 Code amongst other things, required that licensed sports bookmakers have a system in place that allows customers of the sports bookmaker to self-exclude themselves from the sports bookmaker's services should they wish to do so. Specifically, clause 4.2 of the 2016 Code states that:

4.2 Self-exclusion features

Online gambling operators must provide self-exclusion features on their website to enable their clients the opportunity to exclude themselves from accessing the operator's gambling products. The operator must offer this option 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 exclusion from all Northern Territory online gambling operators must be included.

In addition to having its own process for a client to activate an exclusion, the online gambling operator must also have in place procedures that will allow it to process a request on a self-exclusion form developed by the regulator and available from the Departmental website, when lodged by a client.

All self-exclusion actions must be recorded in the Gambling Incident Register.

14. As can be seen from the above, the Commission expects that sports bookmakers will have an appropriate system in place to match account details in order to prevent self-excluded customers from returning to use their services.
15. The issue for consideration therefore is whether the system utilised by SportChamps at the time the complainant opened his second betting account was sufficient to prevent a self-excluded customer from using its services.
16. SportChamps has advised the Commission (email of 22 May 2019) that when the complainant opened the second betting account, *"...not all the details matched his initial account including [his name, address and email account]. Hence he was able to get around the system by opening a second account."*
17. In a later email to the Commission (email of 17 July 2019), SportChamps advised when queried about whether the similarities between the two betting accounts were cross-referenced that, *"...on this occasion it looks to have slipped through our hands unfortunately."* SportChamps further advised that in relation to the second account, *"[i]t should have flagged as a duplicate, but at the time the programs were not in place to flag a duplicate."*
18. Given that the complainant used the same first name (albeit without the addition of a middle name), surname, date of birth and mobile phone number, to open both betting accounts, it is clear to the Commission that the system that SportChamps had in place to prevent a self-excluded customer from re-opening an account was grossly inadequate. This view was eventually supported by SportChamps itself as detailed in paragraphs 16 and 17 above. It was not until a SportChamps' employee recognised the complainant's name that the second betting account was closed and had this not occurred, it is more than likely that the complainant would still have an active betting account today with a sports bookmaker that he had self-excluded from.

Gambling Incident Register

19. As detailed at paragraph 13 above, the 2016 Code also requires that all self-exclusion actions must be recorded in a Gambling Incident Register. The Commission notes that during the course of the investigation into this gambling dispute, some confusion appears to exist on the part of SportChamps as to whether it is acting in compliance with this requirement.
20. In its email to the Commission of 17 July 2019, SportChamps provided the Commission with a copy of its Gambling Incident Register. This register did not have the complainant's name listed on it.
21. When queried about this, SportChamps advised the Commission that with respect to the complainant not being listed on the gambling incident register, that, "...at the time we did not have a register in place..."
22. However, in a later response (email of 2 August 2019) SportChamps advised the Commission that the information previously provided was incorrect and that a Gambling Incident Register did exist and that the complainant was listed on this register. A copy of the register was provided that did indeed list the complainant on it along with a number of other gambling incidents.
23. Whilst the Commission does not intend to make any findings as to whether a Gambling Incident Register did or did not in fact exist at the time the complainant first self-excluded from the sports bookmaker, the Commission does find the responses provided to it as a result of this gambling dispute somewhat concerning.
24. Section 3 of the 2016 Code details the need for all employees engaged in client interaction and all senior staff and managers overseeing these employees to complete responsible gambling training within three months of commencing employment and refresher training at least every 12 months. Clause 3.1 specifically requires that this training is to include information on the sports bookmaker's self-exclusion policy and processes.
25. It appears to the Commission from the responses received to inquiries made by the Commission's betting inspector investigating this gambling dispute that there would seem to be some inadequacies in the training provided and in SportChamps' processes given the uncertainty as to whether or not there was a Gambling Incident Register in use and the provision of two different documents both of which were claimed to be the Gambling Incident Register being used.

Terms and Conditions

26. The objects of the Act are the promotion of probity and integrity in racing and betting in the Northern Territory; maintaining the probity and integrity of persons engaged in betting in the Northern Territory; promoting the fairness, integrity and efficiency in the operations of persons engaged in racing and betting in the Northern Territory; and reducing any adverse social impact of betting.
27. In order to further the objects of the Act, the Act provides for the Commission to make rules for the control and regulation of sports bookmakers and in doing so, the Commission approves the terms and conditions of sports bookmaker licences which include the terms and conditions of agreements entered into between sports bookmakers and their customers. Both the sports bookmaker and the customer are

bound by these terms and conditions when a betting account is opened and each time a bet is struck.

28. With respect to self-exclusion, SportChamps' term 26 of its terms and conditions states that upon a request made by a SportChamps' customer to be self-excluded from its betting platforms, SportChamps will immediately exclude the person from using the betting platform for the period of the requested exclusion.
29. Term 26(c) also details that once a person is excluded from the SportChamps platform, the person agrees not to circumvent the self-exclusion through accessing another customer's account, signing up for another account or in any other such way.
30. Whilst not detailed in any of the SportChamps' responses to the Commission regarding this gambling dispute, given its statement to the complainant when he lodged his dispute directly with SportChamps as detailed in paragraph 4 above, that SportChamps is relying on term 26(c) in order to not refund the complainants' losses of \$2,011.52 (being the difference between the deposits made and the withdrawals actioned throughout the life of the betting account).
31. This is somewhat surprising to the Commission given the admissions made by SportChamps to the Commission about the inadequacies of its self-exclusion system at the time such as "...on this occasion it looks to have slipped through our hands unfortunately" and "[i]t should have flagged as a duplicate, but at the time the programs were not in place to flag a duplicate" as detailed at paragraph 17 above.

Decision

32. Section 85 of the Act provides the Commission with the jurisdiction to determine all gambling disputes between a sports bookmaker and its customer regarding lawful betting. In this respect, section 85 sets out the decision making regime for the making of a determination by the Commission as to whether the disputed bet is lawful and provides that a person may take legal proceedings to recover monies payable on a winning lawful bet or for the recovery of monies owed by a bettor on account of a lawful bet made and accepted.
33. On the evidence before it, the Commission is not satisfied that SportChamps had an appropriate system in place to match account details in order to prevent self-excluded customers from returning to use its services at the time the complainant opened the second betting account as was required by the 2016 Code at the time.
34. As such, the Commission has determined that SportChamps has not complied with clause 4.2 of the 2016 Code and as a result, pursuant to section 80(1)(d) of the Act, has failed to comply with condition 15 of its licence.
35. Disciplinary action available to be taken by the Commission for non-compliance with a condition of licence ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.
36. Given the serious nature of this matter, the Commission has determined to impose a fine of 43 penalty units. As at 1 July 2019, the value of a penalty unit in the Northern Territory is \$157 therefore the fine imposed is in the amount of \$6,751.

37. The Commission is satisfied on the basis of the evidence available to it, that the complainant was a self-excluded person at the time the betting transactions on the second betting account were made and as such, the Commission has determined that the bets made during the life of the betting account were not lawful.
38. Given the bets were not lawful, it is the view of the Commission that SportChamps are not able to rely on term 26(c) of its terms and conditions in order to not refund the complainant's losses. As such, the Commission has formed the view that it is appropriate for SportChamps to refund the complainant's losses of \$2,011.52 (being the difference between the deposits made and the withdrawals actioned throughout the life of the betting account).
39. The Commission also takes this opportunity to remind SportChamps of its training obligations with respect to the provision of responsible gambling and suggests that given the findings made in relation to this gambling dispute, that it is an opportune time for SportChamps to review its responsible gambling training procedures so as to ensure compliance with the 2019 Code.

Review of Decision

40. 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

26 November 2019