

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 <i>Racing and Betting Act 1983</i>)
COMPLAINANT:	Mr S
LICENSEE:	Hillside (Australia New Media) Pty trading as bet365
HEARD BEFORE: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran
DATE OF DECISION:	16 October 2023

DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (**the Commission**) is satisfied that Hillside (Australia New Media) Pty trading as bet365 (**the Licensee**) has, in relation to its dealings with the Complainant, acted in compliance with the regulatory environment imposed on it by the *Racing and Betting Act 1983* (**the Act**), its licence conditions and the relevant Codes of Practice that were in effect at the time of the events subject of this gambling dispute.
2. The Commission has further determined that the bets placed by the Complainant with bet365 between January 2018 and December 2020 were lawful and as a result, has formed the view that bet365 should not be required to return any monies to the Complainant.

REASONS

Background

3. The Commission first granted a licence to Hillside (Australia New Media) Pty Ltd (**Hillside**) in August 2011 to conduct the business of a sports bookmaker pursuant to section 90 of the Act. Hillside's current sports bookmaker licence is due to expire on 30 June 2025.
4. Hillside operates its sports bookmaking business under the trading name of bet365. For ease of reference, the Commission will refer to the licensee as bet365 throughout this Decision Notice.

The Complaint

5. On 22 December 2021, the Complainant lodged a complaint with the Commission in relation to his dealings with bet365. In that complaint, the Complainant alleged that:
 - a) after having self-excluded himself from using the online wagering services of bet365 on 23 February 2018, he was able to re-open his bet365 betting account eight days later on 3 March 2018;

- b) bet365 failed to identify (and act upon) a number of behaviours that should have indicated to it that the Complainant was at risk of experiencing harm from his online wagering activity; and
 - c) between 10 September 2017 and 23 February 2018, he received 47 inducements to continue gambling with bet365; yet only received two generic responsible gambling emails from bet365 which were sent on 16 October 2017 and 19 October 2017 respectively.
6. The Complainant attempted to resolve his concerns directly with bet365 however, remained dissatisfied with bet365's response to his complaint.
 7. The Complainant is seeking for the Commission to investigate the complaint and declare that all bets placed by the Complainant through his bet365 betting account between 18 January 2018 and 28 December 2020, to be 'not lawful' and for bet365 to return the monies to him that he had deposited into his bet365 account during this time, being in the amount of \$739,794.93.

Consideration of the Issues

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

Closure of the Betting Account on 23 February 2018

9. 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. 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. It is also the responsibility and a regulatory obligation of the online wagering operator to have effective systems and procedures in place to prevent self-excluded customers from opening new betting accounts.
10. The Complainant has submitted to the Commission that on 23 February 2018, he permanently self-excluded from bet365 by way of the bet365 website's self-exclusion functionality, yet he was able to re-open his betting account with bet365 some eight days later.
11. In contrast to the Complainant's submissions, bet365 has submitted to the Commission that the Complainant did not self-exclude from bet365 on 23 February 2018, rather the Complainant closed his bet365 account on that day and selected the time-period for the closure to be 'indefinitely'. Bet365 has further submitted that on 3 March 2018, the Complainant then re-activated his betting account online.
12. In support of bet365's submissions, the Commission has been provided with the results of an audit undertaken by bet365 of the Complainant's account history which evidences the closures applied to the Complainant's account; and notes that it shows that the activation status for the Complainant's account was changed from 'active' to 'closed' on 23 February 2018 at 8:12 a.m., with the closure period being set to 'indefinitely'. On 3 March 2018 at 11:20 a.m., the account's

activation status then shows that the activation status was changed from 'closed' to 'active' with the comment section stating that the "[user] account has been re-opened".

13. Further supporting bet365's submissions is that when a customer has selected to self-exclude themselves from their bet365 betting account online, the account activation status on an audit history of a customer account will show that the account status changes to 'Self-Excluded Online' and the comments section will detail the period for which the self-exclusion applies, such as 'Self-Exclusion Period 6 Months – End Date 03/02/2024'.
14. The Commission notes that bet365 customers have three options available to them to proactively take a break from gambling with the sports bookmaker being 'Self-Exclusion', 'Account Closure', or 'Time Out'.
 - a) Self-Exclusion - The bet365 website explains that the self-exclusion option is a responsible gambling tool that should be considered by any of its customers that feel that they are at risk of developing a gambling problem or who currently have a gambling problem. The information provided also advises the customer that they can self-exclude themselves from their account for a set period of time and once a period has been selected it will not be possible for the account to be re-activated for any reason until the set period has expired. Additional information contained on the bet365 self-exclusion page informs bet365 customers that if they want to stop playing for any other reason other than problem gambling, they should visit the bet365 account closure pages.
 - b) Account Closure - The bet365 account closure options allow a bet365 customer to close their betting account if they wish to stop gambling with bet365 for any reason. The account closure information details that once an account is closed, the customer will be able to withdraw their remaining balance however, will not be able to make deposits or place any bets. The information provided also clearly states that a person is able to re-open their account during the period they have selected for it to be closed.
 - c) Time-Out - The bet365 time-out function allows a bet365 customer to take a short break from gambling. This responsible gambling tool allows for the customer to restrict their access to gambling for a specific period of time such as 24 hours, 48 hours, seven or 30 days. This functionality also allows the customer to customise the time-out for specific days of the week or specific times of the day. During the period that the time-out is selected for, the bet365 customer will not be able to access any of its products excepting for being able to withdraw from the betting account. The bet365 time-out feature is not able to be changed until the selected time-out period has expired.
15. In the Commission's view, the three options to take a break from gambling with bet365 are clearly explained to its customers on the bet365 website. The options of self-excluding and taking a time-out allow a bet365 customer to restrict their gambling behaviours with bet365 whereas the account closure option allows a bet365 customer to close their account for other reasons such as being uninterested or unhappy with the bet365 betting website or simply because the customer fancies a change to who they bet with.
16. While the self-exclusion and time-out options are understandably not reversible once selected given that each of these options is a responsible gambling tool designed to assist those bet365 customers who may be at risk of harm from their gambling activity, the account closure option differs in that it is reversible. In the Commission's view, the ability to re-open a closed account is an option that bet365 is entitled to make available to its former customers. Bet365 operates as a commercial entity with its end goal, like other commercial entities being to make a profit and as such, allowing its former customers (unless self-excluded) to re-open their betting accounts is not an unreasonable business decision to take.

17. Based on the evidence before it, the Commission is of the view that the Complainant did not opt to self-exclude from bet365 on 23 February 2018, rather he selected to close his bet365 account for an indefinite period of time. As was detailed on the bet365 website when the Complainant selected this option, the ability to re-open the account during the period selected was an available action for the Complainant to take at a later time, should he wish to do so. The Complainant availed himself of this when he re-opened his account online a short time later on 3 March 2018.
18. Given this, the Commission has determined that bet365 was not in breach of the Act, its licence conditions or the relevant Codes of Practice when the Complainant was allowed to re-open his bet365 betting account on 3 March 2018.

Account Activity

19. The Complainant has asserted to the Commission that bet365 failed to identify (and act upon) a number of behaviours that should have indicated to it that the Complainant was at risk of experiencing harm from his online wagering activity, with these behaviours including:
- a) the placement of over 20 bets on 18 January 2018 resulting in losses of \$418,873; and
 - b) the loss of \$110,591 between 19 January 2018 and 22 February 2018.
20. The Complainant has also asserted that during the seven years that he held an account with bet365, at no stage did bet365 inquire of him how he was able to fund his online gambling activity with it despite having:
- a) deposited nearly \$5 million into the betting account;
 - b) placed over \$14 million worth of bets;
 - c) placed seven bets with stakes over \$100,000 per bet (with seven of these bets occurring in 2017);
 - d) on ten separate occasions, gambled between \$100,000 and \$488,873 on a single day; and
 - e) deposited \$100,000 or more per day on seven occasions.
21. Bet365 has submitted to the Commission that:
- a) the Complainant opened a betting account with it on 19 March 2013, with the last activity on that account occurring on 28 December 2020;
 - b) over the lifetime of the betting account, the Complainant made **an overall profit of \$245,352.66** (after having deposited \$4,925,208.59 and withdrawing \$5,170,561.25 between 2013 and 2020);
 - c) during the period that the Complainant has asserted that bet365 failed to provide sufficient responsible gambling interventions, being 18 January 2018 through to 28 December 2020, the Complainant made an overall loss of \$786,782.25;
 - d) bet365 regularly interacted with the Complainant and informed him of the responsible gambling management tools available for his use;
 - e) bet365 mandated that the Complainant complete a 'Responsible Gambling Self-Assessment' a number of times throughout the lifetime of the account;

- f) bet365's due diligence team conducted four reviews of the Complainant's account during its lifetime and ascertained that the Complainant's employment income was sufficient to cover the activity on the account;
 - g) bet365 suspended the Complainant's account on 1 January 2021 after having become concerned by an email from the Complainant in which the Complainant requested any statements that included any self-exclusions or time-outs; and
 - h) bet365 self-excluded the Complainant on 11 January 2021 after having reviewed subsequent comments made by the Complainant on the same email thread referred to above.
22. Bet365 has further submitted to the Commission that it is "...satisfied with the way in which the account has been handled from a Responsible Gambling perspective..." and that "...it is not our policy to refund any activity for deposits made or bets placed and accepted in good faith."

bet365's Responsible Gambling Contact with Complainant

23. The Complainant has submitted to the Commission that between 10 September 2017 and 23 February 2018, he received 47 inducements to continue gambling with bet365; yet only received two generic responsible gambling emails from bet365 which were sent on 16 October 2017 and 19 October 2017 respectively. The Complainant has further asserted that he received no responsible gambling interactions from bet365 between 1 January 2018 and 23 February 2019.
24. Of interest to the Commission after having undertaken a review of bet365's responsible gambling interactions with the Complainant is that the Commission has sighted evidence that:
- *Generic Responsible Gambling Messages*
 - the Complainant received at least 11 generic responsible gambling messages during the lifetime of the account. As sighted by the Commission, two messages were sent to the Complainant in 2016 (20 January and 16 July), two in 2017 (15 October and 18 October), one in 2018 (14 November) and six in 2020 (via email and web message on 21 January, 30 March and 26 November).
 - *Tailored Messages*
 - bet365 reached out to the Complainant a further five times with tailored web messages to him that related to bet365 identifying that the Complainant had changed his deposit limits in quick succession (21 November 2016), cancelled a number of withdrawals (14 April 2018) and used a number of different deposit methods (12 November 2018, 11 June 2019 and 29 April 2020) and had requested the Complainant to review the gambling management tools available to him.
 - *Self-Assessments*
 - the Complainant was required by bet365 to complete a number of 'responsible gambling self-assessments' throughout the lifetime of the account. These self-assessments are/were designed to help bet365 customers to identify whether they may be experiencing harm from their online wagering behaviours.
 - five of these self-assessments were completed by the Complainant (17 November 2015, 18 November 2017, 9 December 2017, 18 November 2018 and 28 December

2020) and on each occasion the Complainant undertook the self-assessment, he provided responses to bet365 advising that he was in control of his gambling.

25. Clearly the evidence sighted by the Commission as detailed above, does not correspond with the Complainant's submissions that bet365 only reached out to him on two occasions in relation to responsible gambling with generic responsible gambling messages.
26. Having said that however, the Commission does not view the number of interactions with a Complainant as an accurate measure for assessing whether a licensee has met its regulatory responsibilities in relation to a customer's online wagering welfare. While these interactions as detailed above do indeed demonstrate a reasonable level of engagement with the Complainant by bet365 (either through generic messaging or through identifying specific behaviours), it is the Commission's view that it is important to emphasise that these interactions alone, do not allow the Commission to undertake a comprehensive evaluation of bet365's commitment to responsible gambling.
27. It is the Commission's view that the frequency of responsible gambling interactions is just part of the bigger picture. The quality of those interactions, the promptness of the interventions, the easy accessibility to responsible gambling management tools and the overall commitment by bet365 to safeguard the well-being of its customers contribute to bet365's compliance with its regulatory responsibilities.

Complainant's Betting Activity

28. The Commission considers that at the heart of the matter lies how a licensee manages the overall account activity of a customer. Providing a responsible gambling environment is not merely a numbers game, rather it is a holistic approach that the licensee takes and one that encompasses various strategies and measures aimed at preventing and mitigating harms that may be caused by a customer's online wagering activities.
29. Of interest to the Commission is that the Complainant's submissions to it primarily focus on bet365's actions (or alleged lack thereof) with respect to his betting account from 18 January 2018 onwards – a period of time in which the Complainant's losses amounted to \$786,782.25, and for which the Complainant is seeking for the Commission to come to the conclusion should be returned by bet365 to the Complainant.
30. The Complainant did not raise in his submissions to the Commission that he has in fact made just under a quarter of a million dollars in profit from his online wagering activity with bet365 between 2013 and 2020. Given this, it would appear to the Commission that it is only when the Complainant began to have less success in his online wagering activity that he came to the conclusion that bet365 were not providing a responsible gambling environment for him.
31. It is clearly apparent to the Commission that the Complainant engaged in a significant level of online wagering activity with bet365. In the month of September 2017 alone, the Complainant made a profit over just over \$1 million through his online wagering activity, having withdrawn \$1,035,205 from his betting account that month. These September 2017 winnings followed nine previously successful months of betting during which the Complainant had won and withdrawn from his betting account a total of \$618,404 – thus between December 2016 and September 2017, the Complainant profited from his online wagering activity in the amount of \$1,653,609.
32. It is evident to the Commission that the Complainant used some (if not most) of these winnings to deposit monies back into his betting account so as to engage in further online wagering activities with bet365 over the next three years. While the use of gambling winnings for subsequent bets might indicate a degree of financial success for the Complainant, it does not

necessarily imply that bet365 is absolved from its responsibilities in ensuring the provision of a responsible gambling environment.

33. Provision of a responsible gambling environment involves comprehensive measures such as providing adequate information about the risks associated with gambling, offering information about support services for customers struggling with gambling addiction, promoting awareness campaigns, implementing self-exclusion programs, and training staff to identify and assist customers displaying signs that they may be at risk of harm from their gambling activities.
34. The evidence before the Commission shows that between 18 January 2018 and 28 December 2020, bet365:
 - a) regularly interacted with the Complainant and informed him of the responsible gambling management tools available for his use, being:
 - i. via generic responsible gambling messages on 14 November 2018, 21 January 2020, 30 March 2020 and 26 November 2020; and
 - ii. tailored web messages that related to bet365 identifying that he had cancelled a number of withdrawals (14 April 2018) and used a number of different deposit methods (12 November 2018, 11 June 2019 and 29 April 2020) and had requested the Complainant to review the gambling management tools available to him;
 - b) required the Complainant to complete a 'Responsible Gambling Self-Assessment' on 18 November 2018 and 28 December 2020 resulting in the Complainant providing responses to bet365 advising it that he was in control of his gambling; and
 - c) conducted four reviews of the Complainant's account during its lifetime and ascertained that the Complainant's employment income was sufficient to cover the activity on the account.
35. The Commission has often declared that an inherent risk in engaging in gambling activity is the loss of money. In this case however, the Complainant has not lost money through his online wagering activity with bet365 between 2013 and 2020, rather he has made an overall profit of \$245,352.66.
36. While it is likely that the Complainant now regrets that he continued to engage in gambling activity with bet365 from 2018 onwards despite having made even more significant profits from his online wagering activity with bet365 in 2017 (and thus reducing his overall profits from his wagering activity with bet365), it is not for the Commission to find against bet365 simply for allowing the Complainant to use his winnings to place further bets with it.
37. The Commission's regulatory role when determining gambling disputes is to impartially assess whether the sports bookmaker has acted in compliance with the relevant legal framework, being the Act, its licence conditions and the applicable Codes of Practice that were in effect at the time of the events in question. The Commission's objective is to ensure fairness, transparency and adherence to the established regulations within the Northern Territory online wagering industry.
38. With this in mind, it is also important to note that the Commission's role is not to focus on putting the Complainant back into the same financial position that they were in prior to the dispute under investigation. While the Commission understands the Complainant's desire for financial restitution, the Commission's primary goal is to assess the actions of the bet365 and determine if it has followed the rules and regulations governing its operations.

39. Following the Commission's investigation into this gambling dispute, the Commission is satisfied on the weight of evidence before it that bet365 has complied with the responsible gambling practices mandated by the regulatory environment imposed on it by the Act, its licence conditions and the relevant Codes of Practice that were in place at the relevant times.
40. Given this, the Commission has no cause to consider that the bets placed by the Complainant from January 2018 through to December 2020 were anything but lawful and as such, is not of the view that any monies should be returned by bet365 to the Complainant.

NOTICE OF RIGHTS

41. 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.



Alastair Shields
Chairperson
Northern Territory Racing Commission

16 October 2023

On behalf of Commissioners Shields, Bravos and Corcoran