NORTHERN TERRITORY RACING COMMISSION
Reasons for Decision

Complainant:	Mr A
Licensee:	Sportsbet Pty Ltd
Proceedings:	Pursuant to section 85(2) of the *Racing and Betting Act* – Referral of dispute to Racing Commission for determination Breach under Sections 80(1)(d) and 148A of the *Racing and Betting Act*
Heard Before: **(on papers)**	Mr Alastair Shields (Presiding Member) Ms Amy Corcoran Mr James Pratt
Date of Decision:	2 November 2018

Background

1. On 5 December 2017, the Complainant lodged a dispute against Sportsbet with the Northern Territory Racing Commission (**the Commission**) which involves Sportsbet re-opening the Complainant's original betting account in September 2016 after he advised Sportsbet via live chat that he wanted his account deleted and to ban him from using the site again on 1 January 2016.

2. The Complainant is seeking a refund of $3,652.50 for his betting losses for wagers placed after the re-opening of his account in September 2016 up to the suspension of his account in October 2017 claiming Sportsbet did not comply with the *Northern Territory Code of Practice for Responsible Online Gambling 2016* (**the Code***)* and should not have allowed him to re-open his account.

3. Information was gathered from both parties through Licensing NT and provided to the Commission to consider the matter on the papers, this information included:

    a. recorded telephone discussions between the parties;

    b. live chat transcripts and email correspondence between the parties; and

    c. complete transaction history of the Complainant;

4. In summary, the Complainant's case is:

    a. on 1 January 2016 he asked for his account to be permanently deleted and blocked and Sportsbet did not do as requested;

    b. Sportsbet didn't ask why he wanted the permanent closure of his account;

    c. the reason he requested that his account be deleted was because he was a problem gambler (however, he did not advise Sportsbet of this at the time); and

d. on 12 September 2016 Sportsbet re-opened his account and he subsequently lost $3,652.50 and is seeking Sportsbet repay those monies as they shouldn't have allowed him to re-open his account.

5. In response to the complaint, Sportsbet have advised:

a. the Complainant opened his account on 24 March 2010. During this time, the client operated the account in good faith and contacted Sportsbet to request bonus bets;

b. on 1 January 2016, the Complainant contacted the bookmaker to request a deposit match via live chat and was dissatisfied with the offer provided by Sportsbet and requested that his account to be closed based on the lack of generosity through bonus bets;

c. although it is usual practice to ask a client why they are closing their account, in this instance the Complainant had already advised that he was closing the account because of a lack of generosity (in the form of bonus bets) and accordingly, his account was not permanently closed in their system due to responsible gambling;

d. at no point during the live chat on the 1 January 2016 did the Complainant suggest that he was experiencing harm from gambling;

e. on the 12 September 2016, the Complainant attempted to open a new account and as this new account was considered a duplicate, Sportsbet re-opened the original account that he had created in 2010;

f. the Complainant first utilised his re-opened account on the 25 October 2016 and continued to utilise the account until November 2016 depositing a total of $300.00 over this time. The next time the client uses his account is on 20 October 2017, almost 12 months later, depositing a total of $3,600 over a four day period;

g. the Complainant's account is suspended by Sportsbet on 27 October 2017 after a phone call between the parties where he eludes to a gambling issue.

Consideration of the Issues

6. The Racing Commission considers problem gambling to be the most serious of issues and holds all gambling operators to a high standard with regards to any breaches.

7. All licensed bookmakers and betting exchange operators' licence conditions and the *Racing and Betting Act* (the Act), require compliance with the *Northern Territory Code of Practice for Responsible Online Gambling* (**the Code**). The Code places requirements on the bookmaker / betting exchange operator.

8. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. This Code sets out certain practices to be adopted by Northern Territory gambling providers in the provision of their services, so as to minimise the harm to consumers that may be adversely affected by gambling.

9. "Responsible gambling" is a broad concept and involves the conduct of gambling in a manner whereby the potential for harm associated with gambling is minimised. It respects the responsibility of individuals for their own actions, but also acknowledges a responsibility on the part of the service providers.

10. Responsible gambling has regard to the context in which gambling occurs, the inducements made to gamble, the way the gambling service operates and the integrity of the gambling operator. The aim is to enable persons to make informed decisions about their participation in gambling and, if harm has occurred, to provide access to gambling help services.

11. It is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions. It is suggested that only in the most extreme cases of deliberate and gross conduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.

12. Clause 16 of Sportsbet's licence states:

    "The Sports Bookmaker must comply with any Codes or Guidelines issued by the Commission pursuant to the Racing and Betting Act, and as amended from time to time."

13. Condition 4 of Northern Territory Code of Practice for Responsible Online Gambling 2016 (**the Code**) states:

    "Online gambling operators are to make available to their clients, the option of excluding themselves from the gambling service where the client feels they are developing a gambling problem…"

14. Although there was no direct admission by the Complainant of a problem with gambling until 27 October 2016, the question is whether Sportsbet should have identified red flag behaviours under the Code indicating the Complainant was potentially a problem gambler. Red flag behaviours include but are not limited to:

    - gambling for extended periods
    - changing gambling patterns
    - increase in deposit frequency
    - escalating sums of money deposited
    - remarks that may indicate serious overspending
    - shows concern about losses and payouts
    - indicating they need a break from gambling
    - discloses problem gambling.

15. On review of the information before the Commission, including the transcript of the live chat, the Complainant had not advised Sportsbet of any concerns with his

gambling when he asked to close his account on 1 January 2016. Sportsbet also did not expressly ask the Complainant the reasons why he wanted to close his account. However, the Commission accepts Sportsbet's position that the Complainant's closure request was in context of the live chat and the direct result of not being provided with sufficient bonus bets. It appears reasonable in these circumstances to accept this reason as the reason he wanted the account closed, particularly given the Complainant's betting transaction history up until that closure request was unremarkable with no evidence of any red flags.

16. As a result, when Sportsbet closed the Complainant's account, it was not permanently suspended in its system due to problem gambling and therefore allowed the Complainant the opportunity to re-open the account at a later date.

17. Although the Commission in this instance accepts Sportsbet's conclusion as reasonable on why the account was closed, this may not be the case in other circumstances and accordingly, best practice must be for a bookmaker to specifically ask the reason for an account closure.

18. Almost a year after the account was re-opened, the Complainant contacted Sportsbet a number of times to request bonus bets of which finally led to the Complainant's account being suspended on 27 October 2017. Details of the interactions between the parties in chronological order follows:

    a. at 04:28hrs (UTC) on the 23 October 2017, the Complainant requests via live chat a bonus bet based on a previous deposit of $1,000.00 to which he was advised that there was nothing available to him at that time;

    b. on the same day, at 08:15hrs (UTC), the client again requests via live chat a bonus bet for spending $1,900.00 on their site. This request was again declined by Sportsbet;

    c. on the 24 October 2017, the Complainant contacted Sportsbet and asked that if he placed another $1,800.00 online, would they give him a bonus bet and said he was happy to use their service if they look after him. Sportsbet again declined the request for a bonus bet;

    d. on the 26 October 2017 (04:14hrs UTC), the Complainant contacts Sportsbet via live chat advising that he put another $1,800.00 in his account, totalling over $4,000.00 in a week and requests a bonus bet. Sportsbet advises that they can only offer him a $10.00 bonus bet of which the Complainant is dissatisfied;

    e. later on the same day, the Complainant contacts the bookmaker via live chat and again asks for a bonus bet for depositing over $4,000.00 over the last week, which is again declined. In this same conversation, the Complainant raises the matter that he had previously asked for his account to be permanently closed and not to be opened again. Sportsbet advises the Complainant that if he had asked for a permanent closure on his account, then the system does not allow them to re-open permanently closed accounts;

f. later on the same day (20:17hrs UTC), the Complainant sends through an email to Sportsbet demanding his money back as he previously self-excluded by asking his account to be permanently closed;

g. on the 27 October 2017, Sportsbet contacted the client via email in relation to excessive requests for bonus bets and that this may be an indicator that gambling has gone beyond a leisurely activity and provides information on self-exclusion and deposit limits;

h. also on 27 October 2017, Sportsbet called the Complainant where the bookmaker Sportsbet asks him if he referenced problem gambling when he requested his account be closed to which he replied "No". Sportsbet also asks if he was asked the reason as to why he wanted to close the account to which the he replied "No they didn't ask me why."; and

i. Sportsbet closed the Complainant's account on 27 October 2017 as a result of his complaint and concerns that he may be a problem gambler.

19. The Complainant's transaction history indicates the following monies were deposited into his account over this period:

    a. total of $400 on 20 October 2017;

    b. total of $1400 on 23 October 2017;

    c. $1,800 on 24 October 2017 with his account having a zero balance at the end of the day and no further transaction were made after this date.

20. It appears based on the Complainant's transaction history, the deposits made by him on 23 and 24 October 2017 were larger than usual. Along with the frequency of requests for bonus bets, it would appear this is when red flags started to become apparent. 3 of the 5 requests for bonus bets were made prior to the Complainant losing all of the monies deposited into his account and lost. Sportsbet did then recognise some red flags through the number of requested bonus bets and the conversations with the Complainant over live chat and telephone which culminated in Sportsbet closing his account on 27 October 2017. The timeframe that Sportsbet recognised these red flags and then actioned the closure appeared reasonable in the circumstance.

21. It is the Commission's view that Sportsbet complied with the Code by identifying some red flags in the form of frequent bonus bet requests and quickly provided the information to the Complainant to assist him to make an informed decision on his betting. When the Complainant inferred he should have not been able to re-open his account due to problem gambling, Sportsbet suspended his account.

Decision

22. On the weight of evidence provided and the reasons provided above, the Commission is satisfied that Sportsbet has adhered to the Code (and its licence conditions) and accordingly, declares all of the bets placed after the Complainant's account was re-opened to be lawful bets.

Review of Decision

23. Section 85(6) of the Act provides that a determination by the Commission of a dispute referred to under subsection (1) shall be final and conclusive as to the matter in dispute.

Alastair Shields
Presiding Member
Northern Territory Racing Commission

2 November 2018