

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	GVC Australia Pty Ltd (trading as Ladbrokes)
Proceedings:	Consideration of Disciplinary Action Pursuant to section 80(1)(d) of the <i>Racing and Betting Act</i>
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran Mr Allan McGill
Date of Decision:	5 November 2019

Background

1. On 16 September 2019, the Northern Territory Racing Commission (the Commission) wrote to GVC Australia Pty Ltd trading as Ladbrokes (Ladbrokes) requesting that it provide written submissions to the Commission to show cause as to why the Commission should not, pursuant to section 80(1)(d) of *Racing and Betting Act* (the Act), discipline Ladbrokes for failing to comply with a condition of its sports bookmaker licence.
2. The genesis of that show cause letter was that the Commission had been advised that Ladbrokes had offered Ladbrokes Cash in Cards to persons at a number of events, including the:
 - Former Origin Greats Lunch held in Brisbane on 4 June 2019;
 - 2019 Rugby World Cup lunch held in Brisbane on or about 28 July 2019; and
 - Ladbrokes Talking Racing Luncheon held in Darwin on 1 August 2019.
3. The Commission advised Ladbrokes that it understood that the Cash in Cards were pre-loaded with amounts of \$10, \$20 or \$50 and could be redeemed by the holder for the purposes of betting, utilising a Ladbrokes' betting account.
4. The Commission had been advised that at the Ladbrokes Talking Racing Luncheon event held in Darwin on 1 August 2019, Ladbrokes' staff provided assistance at the event to recipients of the Cash in Cards who did not hold a Ladbrokes' betting account to create a betting account with Ladbrokes and to deposit the amount of the Cash in Card that they had received into their newly created Ladbrokes' betting account.
5. In response to inquiries undertaken by a Licensing NT officer appointed as a betting inspector by the Commission, Ladbrokes advised the Commission via email on 8 August 2019 that at the Ladbrokes Talking Racing Luncheon, 400 Cash in Cards valued at \$20 each were distributed at the event. Of these 400 Cash in Cards, 207 cards were redeemed into a Ladbrokes' betting account and that 64 of these Ladbrokes' betting accounts were created on or after 1 August 2019 (the day of the event).

6. All Northern Territory licensed sports bookmakers' licence conditions (licence condition 15 of the Ladbroke's licence) and the Act require licensees to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which provides guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling. Amongst other things, the Code states that:

5.5 Inducements

- (a) Online gambling providers must not offer any credit, voucher or reward to a person to open a betting account or to an account holder as an inducement to refer another person to open a betting account.
7. As the Cash in Cards were offered to persons attending the above mentioned events included some who were not Ladbrokes' customers at the time, the Commission advised Ladbrokes in its 16 September 2019 show cause notice, that it was difficult for the Commission to form any other view than that Ladbrokes offered a *"voucher or reward to a person to open a betting account"* in breach of clause 5.5(a) of the 2019 Code.
 8. The Commission advised Ladbrokes that its view was supported by the statements made by Ladbrokes in its email of 8 August 2019 in which Ladbrokes advised that 64 of the persons who redeemed the Cash in Cards from the Ladbrokes event held in Darwin on 1 August 2019, opened a Ladbrokes betting account on or after the date that they received the Cash in Card.

Ladbrokes response to show cause notice

9. On 30 September 2019, Ladbrokes submitted its written submissions to the Commission in response to the show cause notice. In those submissions, Ladbrokes advised the Commission that it did not consider that its actions in offering the Cash in Cards were in breach of clause 5.5(a) of the 2019 Code.
10. Ladbrokes advised the Commission that it offered Cash in Cards at various events in Darwin and Brisbane throughout June, July and August 2019. Ladbrokes advised that the Cash in Cards were loaded with \$20 and that the cards were very rarely loaded with \$50 and if they were *"...it is normally only for the purposes of a trade promotion or other special prize."*
11. Ladbrokes submitted to the Commission that the purpose of the Cash in Cards is to *"...reward existing customers who attend functions Ladbrokes are involved with, and encourage them to carry out activity on their account."*
12. Ladbrokes submitted that its *"...intention was not to persuade recipients to open a betting account."* In support of this statement, Ladbrokes advised the Commission that its tracking records show that *"...the majority of cards...are redeemed by existing customers."*
13. Ladbrokes further stated that any *"...benefit to be taken from the Cash in Card is not at all associated with or conditional upon a particular account type (such as new accounts)..."* and that there *"...is no "call to action" that someone should open a Ladbrokes account in order to use them."*

14. Ladbrokes further submitted that:

There is never any instruction or direction that the cards should be targeted at non-customers. Ladbrokes' representatives are present at functions to assist guests, including existing customers, with any enquiries. At the event in [the Commission's] letter, the representatives were not directed or instructed to seek out non-customers, or encourage non-customers to open a betting account and/or make use of the Cash in Cards.

15. Ladbrokes also submitted to the Commission that in its view the use of the word 'inducement' must be given its ordinary meaning given that it is not defined in the 2019 Code. In this respect, Ladbrokes submitted that an inducement is therefore *"...an act or thing that is intended to persuade someone to open a betting account."*
16. Ladbrokes further submitted that an example of this is when offers are *"...directly targeted at enticing customers without an account, and/or when it is a condition of receiving the credit, voucher or reward that the person does not have an account."* In support of this submission, Ladbrokes submitted that a phrase such as *"sign up and get \$50 in bonus bets"* can be considered an inducement.
17. Ladbrokes has also submitted that in its view, where an *"...offer is available to new and existing customers alike, without discrimination and without any intention to target new customers only, then it is not an inducement to open a betting account."* Ladbrokes had advised the Commission that this is a view supported by both the South Australian and Victorian gambling regulators and if the Commission were to determine that the Cash in Cards were an inducement to open a betting account, then *"...there is likely to be confusion over which should be the prevailing interpretation."*
18. Ladbrokes has also raised concerns as to the consequences should the Commission determine that the Cash in Cards are in contravention of clause 5.5(a) of the 2019 Code. In this respect, Ladbrokes has submitted that *"...other forms of rewards that are promoted and available to customers and non-customers alike will be susceptible of being deemed inducements."*
19. By way of example, Ladbrokes has submitted that:
- ...deposit match offers may be promoted primarily for the benefit of a bookmaker's existing customers, but also shared with non-customers and will be available to everyone with an account. If a non-customers wishes to take advantage of the offer, they will sign up, and (on a broad interpretation of 5.5(a)) will have been offered a credit, voucher or reward to open a betting account.

Consideration of the Issues

Inducement

20. The 2019 Code was issued by the Commission in May 2019 in an effort to update and improve the former code which had been issued by the Commission in 2016, as well as to implement a number of the harm minimisation measures arising from the National Consumer Protection Framework for Online Wagering (the NCPF). The NCPF was agreed to by the Commonwealth and state and territory governments in order to develop a set of standard minimum protections for online gamblers, which must be adhered to by all online gambling providers.
21. One such measure agreed upon to reduce harm and to protect consumers from incentive-based marketing and strengthen standards for direct marketing is a restriction on inducements whereby online gambling providers are to be prohibited from offering any credit, voucher, reward, or other benefit as an incentive to open an account or to refer another person to open an account. It also includes preventing turnover requirements to withdrawing winnings from complementary betting credits or tokens.
22. In order to implement the prohibition of inducements part of this measure, the Commission introduced clause 5.5(a) into the 2019 Code, which as detailed at paragraph 6 above states the following:

5.5 Inducements

- (a) Online gambling providers must not offer any credit, voucher or reward to a person to open a betting account or to an account holder as an inducement to refer another person to open a betting account.
23. Noting the above, it is clear that inducements may continue to be offered by online gambling providers to their existing customers. However, the offering of any credit, voucher or reward to a person to open a betting account is prohibited by the Code. The prohibition also extends to an inducement being offered to a current customer to refer another person to open a betting account.
24. Ladbrokes has submitted to the Commission that as the word 'inducement' is not defined in the 2019 Code, it should be given its ordinary meaning and as such in its view, an inducement is therefore "*...an act or thing that is intended to persuade someone to open a betting account.*" In this respect, the Commission agrees that the ordinary meaning of inducement can be considered to be 'an act or thing that is intended to persuade someone or something'.
25. Ladbrokes state that the purpose of the Cash in Cards is to reward existing customers and encourage those customers to carry out activity on their accounts. In doing so however, the Commission notes that the Cash in Cards is offered to both existing customers and non-customers alike, and as stated by Ladbrokes - without discrimination.
26. In this respect, it would appear to the Commission that Ladbrokes consider that should a non-existing customer open a betting account as a result of receiving a

Cash in Card, that this is merely a byproduct of the promotion as Ladbrokes submit that as the non-existing customer was not a target of the promotion, the now newly signed up customer was caught unintentionally whilst offering a reward to its existing customers.

27. As detailed at paragraph 5 above, of the 400 Cash in Cards offered at the Ladbrokes Talking Racing Luncheon held in Darwin on 1 August 2019, 207 cards were redeemed into a Ladbrokes' betting account. Ladbrokes has stated that that 64 of these Ladbrokes' betting accounts were created on or after the day of the event.
28. On the figures provided by Ladbrokes, it can be seen that at a minimum, some 16% of the recipients of a Ladbrokes Cash in Card at that event were not existing customers of Ladbrokes. Following receipt of the Cash in Card, these 64 people went on to open a new betting account on or after the day of the event and then deposited the monetary value of the Cash in Card into their betting account.
29. An alternate way to look at the statistics provided by Ladbrokes is that of the 400 Cash in Cards offered at the event, just over 50% of the Cash in Cards were redeemed. Of these 207 redemptions, just over 30% of the redemptions claimed were made by persons who were not Ladbrokes account holders at the time that they received the Cash in Card from the Ladbrokes representatives at the event.
30. It is interesting to note that whilst Ladbrokes submit that these 64 non-existing customers at the time of the event were not the target of the promotion and that the promotion was undertaken in order to reward existing customers only, Ladbrokes had no hesitation in having these non-existing customers open a betting account with it on that day or shortly after and then redeem the monetary value loaded on the Cash In Card into their newly opened betting account.
31. That being the case, the Commission finds it difficult to come to any other conclusion than that these 64 persons were incentivised to open a betting account with Ladbrokes in order to redeem the monetary value of the Cash in card that they were in possession of.
32. The Commission further notes that it appears on the evidence before it that Ladbrokes did not have any system in place to ensure that any Cash in Card distributed during a promotional event was able to be utilised by existing customers only. Had they done so, persons who were not existing customers at the time of receiving the Cash in Card would not have been able to redeem the Cash in Card at the time of opening their betting account.

Prevailing Interpretation

33. As noted earlier in this decision, Ladbrokes has advised the Commission that its view that where an *"...offer is available to new and existing customers alike, without discrimination and without any intention to target new customers only, then it is not an inducement to open a betting account"* is a view supported by both the South Australian and Victorian gambling regulators and if the Commission were to determine that the Cash in Cards were an inducement to open a betting account, then *"...there is likely to be confusion over which should be the prevailing interpretation."*

34. In this respect, the Commission notes that the licensing regime for sports bookmakers in the Northern Territory is an arrangement established under and pursuant to the law of the Northern Territory.
35. The Commission has granted a sports bookmaker licence to Ladbrokes under the aforementioned licensing regime and as such, Ladbrokes is subject to the regulatory jurisdiction of the Commission. This includes the necessity for Ladbrokes to comply with the Act, any licence conditions attached to its licence and any Codes issued by the Commission.
36. Whilst a substantial amount of the business of sports bookmakers who hold licences in the Northern Territory consists of bets placed by customers who are physically situated outside the Northern Territory and in some cases outside of Australia, the manner in which the sports bookmaker licence is operated must first and foremost comply with the Act, its licence conditions and any Codes issued by the Commission. To not do so, places the licensee at risk of disciplinary action being taken against it with these actions ranging from a reprimand or a monetary fine through to suspension and/or cancellation of the licence.
37. All sports bookmakers licensed in the Northern Territory also have a licence condition that requires the licensee to comply with all laws of other jurisdictions in Australia. The effect of that, is that should any other jurisdiction within Australia have laws which impose stricter regulatory control on a sports bookmaker operating within that jurisdiction, then the sports bookmaker must comply with those laws in that jurisdiction in addition to all relevant Northern Territory laws or be at risk of regulatory intervention from that jurisdiction.
38. However, if the Northern Territory regulatory controls impose a stricter environment than that of other jurisdictions, the sports bookmaker must comply with the Northern Territory regulatory controls or be at risk of disciplinary action.
39. As such, the Commission is somewhat surprised by the Ladbrokes commentary that confusion would exist should the Commission determine that the Cash in Cards were offered as an inducement in breach of the Northern Territory 2019 Code. To the Commission's mind, there is little doubt as to the necessity for Northern Territory sports bookmaker licensees to firstly comply with the Northern Territory regulatory regime after which the sports bookmaker must then comply with the regulatory regime of any jurisdiction within which it may be operating.

Decision

40. On the weight of the evidence before it, the Commission is satisfied that offering of Cash in Cards to existing Ladbrokes customers as a reward is not a breach of the 2019 Code.
41. The Commission however, is not satisfied that the Cash in Card promotion is not targeting both existing and non-existing customers as suggested by Ladbrokes. At the Ladbrokes Talking Racing Luncheon held in Darwin on 1 August 2019 alone, over 10% and edging towards 20% of the persons who did not have a betting account with Ladbrokes at the time of receiving a Cash in Card, subsequently opened a betting account and became customers of Ladbrokes.

42. Given this relatively high rate of take-up to open a new account in order to redeem the monetary value of the Cash in Card, the Commission has formed the view that these persons were incentivised to open a betting account with Ladbrokes as a result of being offered a Cash in Card and were not simply an accidental or unintended byproduct of the promotion.
43. Had Ladbrokes put in place a system to ensure that any Cash in Card distributed during a promotional event was able to be utilised by existing customers only, then persons who were not existing customers at the time of receiving the Cash in Card would not have been able to redeem the Cash in Card at the time of opening their betting account.
44. As such, the Commission has determined that Ladbrokes has not complied with clause 5.5(a) of the 2019 Code and as a result, pursuant to section 80(1)(d) of the Act, has failed to comply with Condition 15 of its licence.
45. 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.
46. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. With that in mind, the Commission considers the offering of incentives to non-existing customers to open a betting account is a serious breach of the 2019 Code.
47. Given the serious nature of this matter, the Commission has determined not to suspend or cancel Ladbrokes licence at this time but has determined to impose a fine of 170 penalty units. As at 1 July 2019, the value of a penalty unit in the Northern Territory is \$157. As the Ladbrokes Talking Racing Luncheon held in Darwin on 1 August 2019 is after that date, the fine imposed equates to \$26,690.
48. The Commission has also determined that given the serious nature of this breach, that this decision will be published on the Commission's website.



Alastair Shields
Chairperson

5 November 2019