

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant: Mr D

Licensee: Sportsbet Pty Ltd

Proceedings: Gambling dispute for determination by the Northern Territory Racing Commission pursuant to section 85(2) of the *Racing and Betting Act 1983*

**Heard Before:
(on papers)** Ms Susan Kirkman (Presiding Member)
Mr Kristopher Evans
Ms Cindy Bravos

Date of Decision: 25 July 2023

Background

1. On 16 September 2020, pursuant to section 85(2) of the *Racing and Betting Act 1983* (the Act), the Complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, Sportsbet Pty Ltd (trading as Sportsbet).
2. Sportsbet merged with sports bookmaker BetEasy.com.au (trading as BetEasy) on 8 September 2020. BetEasy is also licenced as a sports bookmaker by the Commission however, has not operated a betting platform since the merger.
3. The Complainant has submitted to the Commission:
 - a. that he previously held a betting account with BetEasy however, permanently closed his BetEasy betting account in August 2020 due to having problems with gambling. The Complainant stated that he also held a betting account with Sportsbet and when BetEasy merged with Sportsbet on 8 September 2020, he should have been unable to continue to use his Sportsbet betting account due to having permanently closed his BetEasy betting account prior to the merger;
 - b. on the day of the merger he deposited a total of \$15,177 into his Sportsbet betting account which he went on to lose. The Complainant is seeking for Sportsbet to refund this money to him given his assertion that Sportsbet should have prevented him from accessing his Sportsbet betting account following the merger with BetEasy;
 - c. that given his account closure with BetEasy, Sportsbet should not have sent marketing material to him in the form of text messages at the time of the merger encouraging him to continue betting, and should not have sent marketing material to him following the permanent closure of his betting account with Sportsbet;
 - d. that both BetEasy and Sportsbet failed to identify and respond to red flag behaviour that indicated he was not in control of his gambling and was suffering harm caused by his gambling activity; and

- e. that Sportsbet failed to provide him with statements of his betting account activity upon request.

In response to the claims Sportsbet has submitted:

- a. the Complainant was an active Sportsbet customer at the time of the merger on 8 September 2020 and his BetEasy account was closed on 15 July 2020 at management discretion;
 - b. as an existing Sportsbet customer the migration of BetEasy customers was of no relevance to the Complainant given his BetEasy account had been closed prior to the merger;
 - c. prior to the activity on the day of the merger the Complainant's Sportsbet account was in profit of \$11,381.12 and the account was closed on 8 September 2020 with a loss over the life of the account of \$3,795.88;
 - d. marketing material was not sent to the Complainant following closure of his Sportsbet account; and
 - e. the Sportbet's Responsible Gambling team engaged with the Complainant on a number of occasions to ensure he was betting within his means.
4. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

5. The 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.
6. All licensed bookmakers' licence conditions and the Act, require compliance with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016 (the 2016 Code). 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.
7. 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 gambling operators. 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.

Self-Exclusion

8. At the time of the merger the Complainant was an existing Sportsbet customer and had been actively using his Sportsbet account opened on 21 July 2017. The question before the Commission is whether the Complainant had self-excluded with BetEasy prior to the merger with Sportsbet on 8 September 2020, and if so whether provisions contained within section 4.2 (c) of the 2019 Code requiring sports bookmakers to not knowingly permit a permanently self-excluded person to re-open or open a new account should have been considered by Sportsbet and action taken to close the Complainant's Sportsbet

betting account.

9. Prior to the merger, Sportsbet provided the Commission with details of the proposed approach to the migration of active BetEasy customers to Sportsbet. The proposed approach was considered by the Commission to appropriately manage the transfer of active BetEasy customers to Sportsbet, including cross referencing any self-excluded Sportsbet accounts against active BetEasy accounts to identify those to be excluded from transfer. Closed accounts were out of scope and as such excluded from consideration for transfer.
10. Upon reviewing BetEasy's Client Notes detailing the Complainant's account history, the Commission found no evidence indicating the Complainant had requested permanent account closure or that his account be closed for self-exclusion purposes. The Client Notes detail a number of accounts opened by the Complainant with BetEasy, all of which were closed at the bookmaker's discretion and prior to 15 July 2020. The Commission has also listened to a telephone recording between BetEasy and the Complainant where the Complainant was advised his account had been closed at the discretion of the bookmaker.
11. Based on the evidence provided the Commission is of the view that at the time of the merger, the Complainant had at no time self-excluded with either BetEasy or Sportsbet, or held an active account with BetEasy. In the absence of any advice from the Complainant to BetEasy to close his account, self-exclusion provisions could not have been applied to the Complainant's Sportsbet account.

Promotional Material

12. The Commission has given consideration as to whether Sportsbet failed to comply with provisions within section 5.6 (c) of the 2019 Code requiring online gambling providers to ensure promotion or marketing is not made to a customer following account closure or when a request has been made for this information not to be sent. The Complainant submits he received text messages from Sportsbet at the time of the merger that encouraged gambling activity and that as his BetEasy account had been closed, this should not have occurred.
13. There is no evidence before the Commission that supports the Complainant's claim to have been sent marketing material from Sportsbet at the time of the merger however as marketing material was allegedly sent by Sportsbet and not by BetEasy, and as an active Sportsbet customer who had not requested to be excluded from the receipt of marketing and promotional material, the Commission considers marketing activity by Sportsbet to be acceptable in this instance.
14. The Complainant also submits that he received text messages from Sportsbet following the closure of his Sportsbet account on 8 September 2020. Investigation into the text messages provided by the Complainant has revealed the phone number used was attached to an account of an individual with a different surname. Sportsbet has advised that this account has since been suspended until such time as the individual has been contacted and confirmed the validity of the account. As the text messages in question were not sent to the Complainant using his closed account information, the Commission is of the view that Sportsbet has complied with provisions within the 2019 Code in relation to promotional material in this instance.

Red Flag Behaviours

15. The Commission has given further consideration as to whether Sportsbet failed in its duty to identify and respond to red flag behaviours, indicating the Complainant was a potential problem gambler, as required under section 3.2 of the 2019 Code. Red flag behaviours include but are not limited to gambling for extended periods, changing gambling patterns, exhibiting signs of distress such as crying or swearing, verbally abusing staff and showing concern about losses and payouts.
16. In order to determine this, the Commission has reviewed the Complainant's betting activity with Sportsbet including deposits made into; and withdrawals made from the betting account. The Commission has also reviewed Client Notes, Gambling Incident Register, and a number of emails and online chats between the Complainant and Sportsbet, as well as reviewed transcripts to recorded telephone calls that occurred between the Complainant and Sportsbet in which responsible gambling was discussed. In addition, the Commission has reviewed Sportsbet's submission to the Commission which was made in response to the gambling dispute lodged by the Complainant.
17. Given evidence before the Commission that the Complainant's BetEasy account was closed prior to the merger and at the bookmaker's discretion, allegations against BetEasy for failure to identify and respond to red flag behaviour have not been further investigated by the Commission.

Account Closures

18. The Complainant submits that on numerous occasions he closed his accounts with Sportsbet and this action should have alerted the bookmakers that he needed a break from gambling and as such prompted intervention so as to limit or alleviate the affect the Complainant's betting activity was having on him. No evidence was provided by the Complainant in support of the closures.
19. The Commission has reviewed evidence provided by Sportsbet in the form of telephone call recordings, Client Notes, and a Gambling Incident Register extract relating to the Complainant's accounts. The evidence identifies that on two occasions during 2017 the Complainant initiated a seven day break on his account however there is no evidence that the Complainant requested his account be closed. There were instances reported where the Complainant's account was suspended however this occurred at the direction of the bookmaker and not the Complainant.

Change in gambling patterns

20. The Complainant opened an account with Sportsbet on 21 July 2017 and used the betting account until 8 September 2020 at which time Sportsbet closed the account. During this period the Complainant deposited a total of \$83,132 into the betting account. During this same period, the Complainant made withdrawals from the betting account totalling \$79,336.12 which resulted in the Complainant making an overall loss of \$3,795.88 during the life of the account.
21. The Complainant submits that he was gambling for an extended period by gambling and using his account for years, during which time his betting activity changed from placing bets of between \$200 and \$500, to placement of three bets between \$1000 and \$5000 on 8 September 2020.
22. In reviewing his account activity the Commission noted the Complainant utilised the account sporadically, often using the account for two to three months, then not using the account for extended periods of time. There were three occasions between July 2017 and

April 2020 where the Complainant went between six and 11 months without depositing any money into his account.

23. It is noted that there was an increase in the Complainant's account activity from June 2020 and deposit and wager amounts gradually increased following him removing deposit limits on 6 August 2020. A comparison of the Complainant's betting activity in the weeks prior to 8 September 2020 indicates no substantial change in the value of bets placed. For example, on 4 September 2020 the Complainant placed eight bets ranging from \$500 to \$5000, not dissimilar to subsequent betting activity.
24. Of interest is the value of deposits and withdrawals made in the week leading up to 8 September 2020 where the Complainant made deposits of \$13,260.00 and withdrawals of \$25,838.00:

| | deposits | withdrawals | end of day balance |
|-----------------|------------------|------------------|-----------------------|
| 31 Aug | | | 0.00 |
| 1-Sep | 1,707.00 | | 633.07 |
| 2-Sep | 1,980.00 | | 0.00 |
| 3-Sep | 1,470.00 | | 1,500.00 |
| 4-Sep | 500.00 | 10,000.00 | 3,000.00 |
| 5-Sep | 2,200.00 | 5,500.00 | 6,600.00 |
| 6-Sep | 1,900.00 | 10,338.00 | 1,000.00 |
| 7-Sep | 3,503.00 | | 0.00 |
| Subtotal | 13,260.00 | 25,838.00 | |
| 8-Sep | 15,177.00 | | 0.00 |
| total | 28,437.00 | 25,838.00 | |

25. The Commission has determined that, notwithstanding the Complainant having gradually increased deposit and wager amounts, there appears to be consistency of use throughout the life of the account up to and including 7 September 2020.
26. The change in betting activity on 8 September 2020 due to increased number and value of bets as well as high deposits triggered Sportsbet to email the Complainant to remind him of responsible gambling tools available to him and then to suspend his account. Sportsbet have advised the Commission that the decision not to call was based on a discussion the Complainant had with a responsible service of gambling (RSG) team member five days earlier on 3 September 2020 where the Complainant confirmed he was in control of his gambling. Upon receipt of the email the Complainant contacted Sportsbet seeking return of the day's deposits on the basis that he had self-excluded with BetEasy and as such Sportsbet should have closed his account at the time of the merger. He was subsequently advised by Sportsbet that his account had been permanently closed.

Taking a break and deposit limits

27. The implementation of deposit limits and break options are recognised as being effective tools in supporting the management of an individual's gambling activity. Over the life of the account the Complainant took advantage of both options however submits he was able to increase deposits despite having deposit limits of \$200 and \$250 on previous occasions, and that past deposit limits had expired and were not renewed by Sportsbet.

28. The Commission has reviewed the Complainant's history of deposit limits and break options:

| DATE | ACTION |
|------------|---|
| 18/9/2017 | seven day break applied to account |
| 30/9/2017 | \$250 per week deposit limit applied to account |
| 1/10/2017 | seven day break applied to account |
| 10/10/2017 | \$250 per week deposit limit removed from account (removed by Complainant) |
| 26/4/2019 | \$200 per day deposit limit applied to account |
| 23/4/2020 | Deposit limit changed to \$200 per month |
| 28/5/2020 | \$200 per month deposit limit removed from account (removed by Complainant) |
| 23/7/2020 | \$200 per 14 day limit applied to account |
| 6/8/2020 | \$200 per 14 day limit removed from account (removed by Complainant) |

29. Based on the evidence provided it is reasonable to conclude that the Complainant's deposit limits did not expire, and in fact were removed by the Complainant. During its investigation the Commission considered several telephone calls made between the bookmaker and Complainant during which the Complainant was offered to either reduce or place deposit limits on his account yet declined to do so. Of particular interest is the call of 3 September 2020, five days prior to the date of the complaint's disputed loss of \$15,177, where a Sportsbet RSG team member asked the Complainant if he would like to put a deposit limit on his account as "*it is a good safeguard to know how much you can spend*" to which the Complainant advised "*...no I don't, I've got money...it's not a problem...I don't need a deposit limit*".

Bonus requests and aggressive behaviour

30. The Complainant submits he constantly sought bonus bets from Sportsbet and from time to time when these were denied, he would become frustrated, verbally loud and abuse staff on the phone and online. He states that this behaviour should have been an indication to the bookmaker that he was having a problem with his gambling activity and intervening action should have been taken.

31. Sportsbet have confirmed that during the time the Complainant was actively utilising his account he would frequently ask for bonus bets or compensation for minor issues. A review of Client Notes and the Gambling Incident Register maintained by Sportsbet identifies requests by the Complainant for a bonus were made however these were not always approved. Evidence identified requests being denied 32 times with seven being applied between 2017 and 2020. An email on 19 August 2020 banning the Complainant from receiving bonus bets further demonstrates intervention by Sportsbet in relation to this matter.

32. The Complainant's aggressive behaviour following the denial of bonus bets led to action being undertaken by Sportsbet to suspend his account on several occasions. A number of telephone call recordings obtained by the Commission of evidence discussions between the RSG team and the Complainant where the Complainant acknowledges responsibility for his behaviour and importantly, specifically acknowledging he was in control of his gambling.

33. It is apparent to the Commission that over the life of the account Sportsbet identified that the Complainant had displayed a number of possible red flag behaviours and appraised him of available responsible gambling tools, and implemented sufficient proactive

measures to verify that the Complainant was wagering in a responsible manner as required under the 2019 Code.

Provision of Statements

34. The Commission has given consideration as to whether Sportsbet failed to comply with section 5.3 of the 2019 Code requiring online gambling providers to ensure customer activity statements are available within seven days upon request by the customer.
35. In lodging his dispute with the Commission on 16 September 2020, the Complainant submits he was unable to access his betting statements as Sportsbet had not sent them to him.
36. A request from the Complainant for a betting statement was recorded in Sportsbet's Gambling Incident Register on 16 September 2020 and Sportsbet has provided the Commission with an email sent to the Complainant on 16 September 2020 responding to the request including an attached statement of the Complainant's account history from 21 July 2017 to 16 September 2020.

Decision

37. The Commission has often stated when determining gambling disputes that an inherent risk that cannot be avoided in the activity of gambling, is loss of money. The Commission's role in dealing with this gambling dispute is not to simply rectify self-inflicted economic losses from gambling following the lodging of a gambling dispute with the Commission but rather, to make a finding as to whether the sports bookmaker has acted in compliance with the Act, its licence conditions, and the relevant Code in place at the time.
38. 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 of care owed to prevent loss.
39. On the weight of the evidence before it, the Commission is satisfied that there has been no breach of the Act, licence conditions or of the 2019 Code by Sportsbet in relation to the Complainant. Given this, the Commission is not of the view that any monies deposited by the Complainant into the betting account should be returned to him.

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.



Susan Kirkman

Presiding Member

25 July 2023