

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr R
Licensee:	William Hill
Proceedings:	Pursuant to Section 80 of the <i>Racing and Betting Act</i> – in failing to comply with a licence condition, specifically condition 16. <i>The sports Bookmaker must comply with any Codes or Guidelines issued by the Commission pursuant to the Racing and Betting Act, as amended from time to time.</i>
Heard Before: (on papers)	Andrew Maloney (Presiding Member) David Loy Jim McNally
Date of Decision:	30 January 2018

Background

1. On 29 September 2017 the Complainant pursuant to section 80 of the *Racing and Betting Act* (the Act), lodged a gambling dispute against William Hill alleging that the Bookmaker failed in its responsibility as provided in the Responsible Gambling Code of Conduct.
2. The Complainant asked to be self-excluded on 12 October 2015 and again on 3 April 2017.
3. On both occasions the Bookmaker advised the Complainant that his account and been closed and would not be able to bet with them again.
4. On 31 March 2016 the Complainant requested his account be re-opened so he could bet again with the Bookmaker and was allowed to do so.
5. The Complainant had three accounts with the Bookmaker and it had come to light that one of the accounts had not been closed properly and remained active.

Consideration of the Issues

6. It appears that there were a number of failures on behalf of the Bookmaker to adequately discharge their responsibilities in relation to the Responsible Gambling Code of Conduct.
7. The Bookmaker firstly allowed the Complainant to reopen a betting account on 31 March 2016 after the Complainant had self excluded on 12 October 2015 and allowed the Complainant to continue betting.
8. The Complainant contacted the Bookmaker on 3 April 2017 to again self exclude however an operator error allowed one of his three accounts to remain open and the Complainant continued to bet with them.

9. On 18 September 2017 the Complainant again contacted the bookmaker to have the account that was left opened also closed.
10. The Bookmaker subsequently sent promotional material to the Complainant.
11. It is clear from considering the above issues that the Bookmaker's operator and systems were deficient in ensuring that once the Complainant had requested self-exclusion that he should never have been allowed back in and should have been excluded from all mailing lists.
12. Legislation:

80 Suspension or cancellation of licence or permit

(1) The Commission may discipline a bookmaker by reprimanding him,

imposing on him a fine not exceeding 17 penalty units or, in the case of a sports bookmaker, not exceeding 170 penalty units [\$26,180] or suspending or cancelling a licence or permit granted under this Part if it is satisfied that the bookmaker:

(a) has committed an offence against this Act or rules made under section 83 or has failed to perform a duty required of him by this Act; or

... (d) has failed to comply with a condition of his licence or permit

83 Commission may make rules

(1) In this section, **betting** includes the determination of an official starting price and the negotiation, acceptance and distribution of moneys in connection with bets and the settling of bets.

(2) The Commission, with the approval of the Minister, may make rules, not inconsistent with this Act, for the control and regulation of betting by bookmakers.

(3) Rules made under subsection (2) may impose penalties, not exceeding \$5,000, for offences against the Rules.

Further, section 148A(4) makes it an offence for a bookmaker not to comply with a Code approved by the Commission

148A Codes of practices

(4) A bookmaker must not contravene or fail to comply with a code of practice approved under this section. Maximum penalty: 17 penalty units.

85 Legal proceedings in respect of bets

(1A) For the purposes of this section, a bet is not lawful if it is declared by the Commission, after an investigation in accordance with this section, to be not lawful.

(1) Subject to this section, a person may take proceedings for the recovery of moneys payable on a winning lawful bet, or for the recovery of moneys payable by a bettor on account of a lawful bet made and accepted.

(2) Where a dispute relating to lawful betting occurs between a bookmaker and a person, the dispute shall be referred by the bookmaker, and may be referred by the other party to the dispute, to the Commission.

(2A) Where it appears to the Commission, on the complaint of a person or of its own motion, that a sporting event (other than a horse race, trotting race or greyhound race) may not have been fairly or lawfully conducted or for any other reason the result of the event, either generally or in relation to a particular bet or class of bets, is not what would be legitimately expected if all steps in the proceedings of the event or the declaration of its result were honestly and fairly conducted or declared, the Commission may declare the event to constitute a dispute for the purposes of this section and declare any person to be a party to the dispute.

(3) Where a dispute has been referred under subsection (1) to the Commission or declared under subsection (2A), the Commission may:

(a) summon the parties to the dispute to appear and to give evidence before it;

(b) take evidence relating to the dispute from other persons; and

(c) require a party to the dispute to produce any books, accounts, tickets or other documents which, in the opinion of the Commission, ought to be examined in order to determine the dispute.

(4) The Commission shall hear and determine all disputes referred to it under this section.

(5) Where a party to a dispute who has been summoned to attend before the Commission fails without reasonable excuse to attend, the Commission shall determine the dispute in favour of the party who attends or, in the case of a dispute declared under subsection (2A), as it thinks fit, including declaring the event void.

(6) The determination by the Commission of a dispute referred to it under subsection (1) shall be final and conclusive as to the matter in dispute.

(7) In determining a dispute under this section, the Commission shall not be bound by rules of procedure or evidence but may inform itself of the facts necessary to determine the dispute in such manner as it thinks fit.

87 Liability of bookmakers' employees

(1) Where an employee of a bookmaker, by act or omission related to the business of the bookmaker, commits an offence against this Act, the bookmaker and the employee shall be severally liable in respect of the offence.

(2) In a prosecution of a bookmaker for an offence against this Act for an act or omission of his employee, it is not a defence: (a) that the bookmaker had no knowledge of the act or omission of the employee; or (b) that it was not the intention of the bookmaker that the employee should do the act or make the omission.

Decision

13. On the evidence before the Racing Commission it is not disputed that the client is a problem gambler, has provided the bookmaker with this knowledge in self-excluding

from their services, and has suffered significant financial and personal loss as a result of his wagering activity.

14. Based on the evidence the bookmaker has failed to prevent their self-excluded client and a known problem gambler from reopening their account and wagering. Having failed once may be contributed to human error however to fail again, and in the similar circumstances raises questions to the combination of errors being systemic.
15. It is without doubt that the bookmaker had the requisite knowledge of their client being a self-excluded problem gambler and their systems and process have failed in this regard.
16. **PENALTY:** Pursuant to section 80 of the Act, if the Commission is satisfied that the licensee has committed a breach, it may:
 - a. Issue a reprimand;
 - b. Issue a fine (up to a maximum of *170 penalty units* [\$26,180]);
 - c. Suspend the licence; or
17. As such and in accordance with section 80 of the Act, on the basis of the information provided in respect of the serious nature of the issue and multiple failings by staff and systems and for the reasons set out above, the Commission has determined to issue a fine equivalent to 70% of the maximum penalty of 170 penalty units being 119 penalty units (\$18,326). Payment of the penalty is to be made by 14 February 2018.
18. In accordance with Section 85 the Commission has also determined that the bets made between April 2016 and September 2017 are to be considered unlawful.



Andrew Maloney
Presiding Member
Racing Commission

30 January 2018