

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Licensee:	Ladbrokes Digital Australia Pty Ltd
Complainant:	Mr P
Proceedings:	Dispute Relating to Betting - Section 85 of the <i>Racing and Betting Act</i>
Heard Before:	Mr John Boneham (Presiding Member) Ms Cindy Bravos Mr Andrew Maloney
Appearances:	Mr P Mr Adam Bennet (Corporate Counsel for Ladbrokes) Mr Travis TeWhata for Licensing NT
By Telephone:	Mr Patrick Brown (General Council for Ladbrokes) Mr Peter Stevenson (General Manager Client Services for Ladbrokes)
Date of Hearing:	23 February 2018
Date of Decision:	11 April 2018

BACKGROUND

1. Ladbrokes Digital Australia Pty Ltd (Ladbrokes) is the holder of licence issued by the Northern Territory Racing Commission (the Commission) to conduct the business of a sports bookmaker in the Northern Territory
2. On 4 August 2017, Mr P lodged a complaint with the Commission in which he alleged that Ladbrokes had failed in its 'duty of care' to him in that he was able to engage in wagering activity over a seven day period that resulted in him losing \$125,000.
3. On 14 and 16 August 2017, Mr P provided further information in which he states that during a 31 day period, he made deposits of \$226,146.69 into his Ladbrokes betting account. Mr P advised that he had also made a number of withdrawals in the amount of \$54,303.52 during the same period which resulted in a net loss of \$171,843.17.
4. Mr P further advised that he often made bets in the amount of thousands of dollars in the early hours of the morning on overseas races "*...on horses at ridiculous odds, in pools that would have provided minimum payout.*"
5. Mr P states that at the time, he was suffering from severe depression and anxiety following his redundancy from his employer of 21 years. He states that as a result he was taking a number of medications including anti-depressants and sleeping tablets.

6. Mr P states that he received a redundancy payment of \$173,000 of which he lost \$171,843.17 of it over a four week period through his wagering activity with Ladbrokes.
7. Mr P alleges that his betting activity should have raised concerns with Ladbrokes and that they should have taken some form of action to curb his losses.
8. Mr P advises that whilst he is “...*not trying to exclude [himself] from any of the blame or responsibility in this absolute disaster that has taken place...*”, that he is “...*seeking some form of compensation from the bookmaker – Ladbrokes, for the significant sum of money I was able to deposit and wager in such a short period of time*”.

THE HEARING

9. A hearing regarding this matter was convened on 23 February 2018. The Commission informed the parties to the hearing that the role of the Commission in this matter was to determine whether the bets made were lawful pursuant to section 85 of the *Racing and Betting Act* (the Act). In addition the Commission advised that it intended to examine Ladbrokes actions with reference to the Northern Territory Code of Practice for Responsible Online Gambling 2016 (the Code). The Commission emphasised that it was not the role of the Commission to determine whether compensation was payable to Mr P or not.
10. Senior Counsel for Ladbrokes, Mr Brown submitted that Mr P’s substantive allegations lacked merit and that the Commission should find in Ladbroke’s favour.
11. However, in the alternative Mr Brown submitted that whilst section 85(3) of the Act permits the Commission to issue a summons and to require a party to provide evidence where a dispute has been referred under section 85(1) or declared under section 85(2A) of the Act, it is the view of Ladbrokes that neither of subsections 85(1) or 85(2A) apply in respect to this matter.
12. Section 85(1) of the Act states:

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.
13. Mr Brown submitted that subsection 85(1) of the Act does not apply given that it applies in respect of the recovery of moneys for lawful bets only. Mr Brown submitted that as Mr P’s allegation is that the bets were unlawful and does not relate to whether funds should be recovered for lawful bets or not.
14. Subsection 85(2A) of the Act states:

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.

15. With reference to the above section, Mr Brown submitted that as this subsection relates to the integrity of the event it is also not applicable to Mr P's matter.
16. Mr TeWhata on behalf of Licensing NT who are responsible for providing investigative and administrative support to the Commission provided an overview of Mr P's complaint.
17. Mr TeWhata stated that on 4 August 2017, Mr P lodged an online dispute form relating to the matter subject of the hearing. Licensing NT made contact with Mr P to obtain further information following which the substance of the complaint was referred to Ladbrokes for comment. In summary, Mr P alleged that:
 - a. he had wagered through his redundancy payment in the sum of \$171,843.17 in a short period of time; and
 - b. that there was a lack of duty of care shown to him on behalf of the bookmaker
18. Mr TeWhata advised that a response to the complaint was received from Ladbrokes on 18 August 2017 in which Ladbrokes stated that:
 - a. Mr P had opened his account with Ladbrokes on 2 June 2017;
 - b. Ladbrokes suspended the account on 8 June 2017 pending verification of the credit card used to deposit funds into his account as an internal review had identified a need to make sure that Mr P's wagers were genuinely funded;
 - c. on 15 June 2017, Ladbrokes identified that Mr P's gambling activity and deposit amounts had significantly increased compared to previous activity and as a result a Ladbrokes' Responsible Gambling Officer emailed Mr P advising that Ladbrokes had noted an increase in the time and money Mr P was spending on gambling activity compared to recent times. Ladbrokes provided a link in the email to Gambling Help Online;
 - d. on 5 July 2017, Ladbrokes received a request from Mr P to be self-excluded from his account with Ladbrokes at which time Ladbrokes immediately closed his account;
 - e. on 6 July 2017, Ladbrokes registered Mr P as self-excluded following receipt of the relevant paperwork from Mr P; and
 - f. at no time during the course of Ladbroke's dealings with Mr P did he raise that he was worried about his gambling or that he was a problem gambler nor did he raise that he was experiencing mental health issues or taking medication.
19. Mr TeWhata advised the Commission that in relation to the issue of a duty of care, Ladbrokes made reference to a previous decision of the Commission on this matter. Further, Ladbrokes advised that they considered that all bets made by Mr P were lawful and that the consideration or provision of compensation is not within the remit of the Commission.

20. Mr TeWhata further advised that Licensing NT undertook further inquiries in relation to Ladbrokes activities with respect to the Code, specifically in relation to activity following the email from Ladbrokes to Mr P on 15 June 2017. As a result of these inquiries, Ladbrokes advised that after the email was sent to him, Mr P's wagering activity decreased. Ladbrokes advised Licensing NT that this occurred as a result of the proactive action taken by them.
21. Mr P then made a submission to the Commission during which he advised that the main reason he had brought this matter to the attention of the Commission was due to his view that Ladbrokes had shown a lack of duty of care to him. Mr P advised the Commission that it was a considerable amount of money that he had deposited, bet and lost in a four week period.
22. Mr P gave a number of examples of his wagering activity where he was of the view that it demonstrated that he was not acting in a manner consistent with reasonable gambling activity. In one example, Mr P advised that he had deposited and lost some \$83,000 on one day of which \$80,000 had been lost during the hours of 12.30am to 3.00am on bets that in his view, no reasonable gambler would have made.
23. Mr P spoke candidly about his problems with gambling, which stretched back over many years, and the impact that this latest bout of gambling had had on his family and his own mental health, not to mention the impact that the loss of his redundancy monies, has had on his emotional wellbeing ie depression, inability to sleep well and a general state of anxiety.
24. Mr P further submitted that he is aware that in terms of common law precedents, upholding the autonomy of the individual, he must bear personal responsibility for his actions and his subsequent predicament.
25. However, Mr P submitted that the bookmaker must also share the responsibility in that they permitted him to bet for long periods of time and in large amounts prior to them sending the email to him on 15 June 2017. Mr P submitted that the actions of Ladbrokes were in effect, a failure of their duty of care towards him.
26. Mr P claimed that the email he received from Ladbrokes on 15 June 2017 was manifestly inadequate in that it only addressed his situation in generic terms and offered no options that would allow him to reconsider his actions and minimise the harm that they were causing. Mr P also submitted that following the receipt of the email, some seven days later Ladbrokes made contact with him inviting him to become a 'VIP' customer. Mr P further stated that he continued to receive bonus bets on his account including receiving a text message twice on the same day being 5 July 2017 encouraging him to take advantage of bonus bets.
27. General Counsel for Ladbrokes, Mr Adam Bennett submitted that Ladbrokes has complied with the Code, the aim of which is to minimise harm. Mr Bennett submitted that Ladbrokes had met its requirement under the Code, by having not only adhered to its requirements but actually going above and beyond which could be demonstrated in the sending of the email to Mr P on 15 June 2017.
28. Mr Bennett submitted that Ladbrokes had very effective responsible gambling protocols in place and highlighted the provision of self-exclusion features and pre commitment facility links on the Ladbrokes website and the references to same at Sections 4 and 5 of Ladbrokes Terms and Conditions. Mr Bennett submitted that

each of these were available to Mr P to read at the time of account opening and at any time thereafter.

29. Mr Bennett submitted that Ladbrokes were being punished for going above and beyond the requirements contained within the Code, by having the content of its email questioned by Mr P and in turn the Commission.
30. Mr Bennett advised the Commission that he had listened to all of the recorded phone conversations between Mr P and Ladbrokes' representatives and in his view, Mr P came across as a measured and coherent person, giving no cause for concern to Ladbrokes staff regarding his state of mind at the time or indeed his sobriety.
31. Mr Bennett submitted that that during the course of the account, Mr P had on a number of occasions requested loyalty (bonus) bets, the majority of which were granted but by no means all. This included the bonus bets that Mr P referred to in his submissions.
32. Mr Bennett submitted that Ladbrokes had adhered to its Terms and Conditions in opening the account, had ensured all wagering protocols were satisfied and had moved swiftly to close Mr P's account upon his request to do so.
33. Mr P made further submissions to the Commission in relation to the impact his gambling had had on his financial status, his family like and his emotional wellbeing.
34. The Commission queried Mr P as to whether he had previously held any other accounts with sports bookmakers to which he responded that he had. Upon further questioning by the Commission, Mr P advised that he had held an account with another sports bookmaker for an approximate period of two years. Mr P advised the Commission that prior to the opening of his account with Ladbrokes which is subject of the Hearing, he had wagered and lost his redundancy payment with another sports bookmaker, prior to account closure and an agreement to a negotiated financial settlement.
35. Mr P advised the Commission that he could not provide full disclosure regarding the matter, as he had signed a confidentiality agreement with the sports bookmaker as a condition of settlement. He did however divulge that the amount of the settlement was substantial, similar in size to his current losses to Ladbrokes.
36. Mr P further advised the Commission that he has been seeking counselling and medical support from a psychiatrist for his gambling issues, however this was at his own volition and not as a condition of the settlement.
37. The Commission queried Mr P's claim that he had lost approximately \$125,000 in the first week of operating his account with Ladbrokes. As a result, it was established that during the course of the first ten days of the account Mr P had met with some wagering success. His wagering patterns were heavy with the amounts of his wagers gradually increasing as a result of some early winning wagers.
38. Through questioning, the Commission identified that between 5 June 2017 and 13 June 2017 Mr P made a number of deposits to the value of some \$37,000, withdrawals of \$18,037 for a net loss of \$18,962.

39. On 15 June 2017, over the course of a 24 hour period Mr P made 92 wagers, some winning but the majority losing, incurring losses of approximately \$128,000 in that period.
40. The Commission noted, that whilst heavy, Mr P's wagering patterns on this day were not totally out of keeping with the prior activity on his account. The main difference on this day was that he made a string of losing wagers with only the odd winning wager.
41. The Commission further questioned Ladbrokes and Mr P regarding the conduct of the account including Mr P's state of mind during his period of heavy gambling and the protocols in place within Ladbrokes structure to identify problem gambling patterns exhibited by clients.
42. Mr Bennett in his final submissions highlighted the fact that from day one of the account opening, Mr P exhibited signs of being a sophisticated punter who outlaid large amounts, with some initial success and that once they realised on 15 June 2017 that he was exhibiting strong losing tendencies, they acted proactively by sending an email to him, albeit with no reply forthcoming.

CONSIDERATION OF THE ISSUES

43. On the evidence before the Commission, it is clear that Mr P has suffered significant financial and personal loss as a result of his wagering activity. In this respect, the Commission notes the positive steps currently being undertaken by Mr P in seeking professional help to address his gambling activity and encourages him to continue to do so.

Whether bets made were lawful

44. With respect to the matters subject of this complaint, the Commission must first determine whether the bets made were lawful pursuant to section 85 of the Act. Whilst noting the submissions made by Mr Brown on behalf of Ladbrokes that section 85(1) of the Act should not apply in this matter, it is the view of the Commission that for the purposes of section 85 of the Act, a bet is not lawful if following an investigation the Commission declares the bet to be not lawful.
45. In order for the Commission to make a determination in this respect, the Commission must look to amongst other things, the substance of the betting transaction and whether it should be enforced or not. In doing so, the Commission must look at the fundamental qualities of the betting transaction itself including examining whether the bet is one which is permitted by the Act and the terms and conditions of the bookmaker's licence which include the terms and conditions of agreements entered into between bookmakers and their customers.
46. Where it is the view of the Commission that a contravention of a condition of licence may be regarded as so serious as to undermine the integrity of the betting transaction itself, it is open to the Commission to conclude that the betting transaction was not lawful.
47. All bookmakers licenced in the Northern Territory are required to comply with the Code, the aim of which is to minimise harm. For any avoidance of doubt with respect to Ladbrokes, licence condition 16 specifically requires that they "...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.”

48. The Code aims to minimise, to individuals and the community, the harms associated with the loss of control of gambling through the creation of responsible gambling environments in line with national and international best practice and community expectations. The Code sets out minimum requirements for Northern Territory online gambling operators to adopt in order to reduce harms associated with problem gambling.
49. The Code commits online gambling operators to responsible gambling practices with a focus on client protection. The Code provides guidance on the practices that must be adhered to including amongst other things the provision of information that allows clients to make informed decisions regarding their gambling habits, the ability for a client to self-exclude from their account as well as a requirement that sports bookmaker staff undertake training so as to be able to identify problem gambling red flag behaviours. The Code also requires that clients be encouraged to take responsibility for their gambling activity through the provision of clear terms and conditions, rules, odds and player returns.
50. It is clear through the email dated of 15 June 2017 that in accordance with the Code, Ladbrokes identified that Mr P’s gambling activity and deposit amounts had significantly increased compared to previous activity. As a result, a Ladbrokes’ Responsible Gambling Officer emailed Mr P advising that Ladbrokes had noted an increase in the time and money Mr P was spending on gambling activity compared to recent times. Ladbrokes provided a link in the email to Gambling Help Online.
51. Mr P alleges as part of his complaint to the Commission that his betting activity should have raised concerns with Ladbrokes and that they should have taken some form of action to curb his losses. On the evidence before the Commission, it is clear that Ladbrokes did identify a number of red flag behaviours as required by the Code. Whilst the Code is silent on what action should be taken once identified, the Commission notes that Ladbrokes acted proactively in the sending of their email of 15 June 2017.
52. The Commission notes that Ladbrokes did not receive a response to this email and Mr P continued to engage in gambling activity until the closure of his account. The Commission notes that it may have been a better practice for Ladbrokes to follow up the email when no response was forthcoming from Mr P rather than assume the email had achieved its desired result. However, as indicated above, the Code is silent on what action to take following the identification of red flag behaviours and as such the Commission has not formed the view that Ladbrokes was in breach of the Code.
53. This matter has highlighted to the Commission the need for a review of the Code to look at making it a more robust document, one that provides specific direction to sports bookmakers around communication and interaction with clients exhibiting possible problem gambling traits.

Duty of Care

54. In tort law, a duty of care is a legal responsibility that is imposed on an individual necessitating adherence to a standard of reasonable care while performing any acts that could foreseeably harm others. A claimant in an action of negligence must be able to show a duty of care imposed by law was breached by the defendant.
55. In this respect, the Commission is limited in its consideration as to whether Ladbrokes' actions were ones undertaken in compliance with the Act and the terms and conditions of the bookmaker's licence including the Code, as well as the terms and conditions of the agreement entered into between Ladbrokes and Mr P.
56. As indicated above at paragraph 51 above, on the evidence before the Commission, it is clear that Ladbrokes did identify a number of red flag behaviours relating to Mr P's gambling activity as required by the Code. Again, whilst the Code is silent on what action should be taken once identified, the Commission notes that Ladbrokes did take action in the sending of their email to Mr P of 15 June 2017. As a result, the Commission is of the view that Ladbrokes are not in breach of the Code, albeit that better practice may have been for Ladbrokes to make further contact with Mr P after not receiving any response to the email from him.
57. Whilst the Commission notes on Mr P's own admission that Mr P negotiated a financial settlement with another sports bookmaker in relation to wagering losses that he incurred of a similar value as in this matter, the Commission is positioned to only consider the facts as they relate to this matter. In that respect, the Commission has formed the view that the Ladbrokes have acted in a manner that is in accordance with the Act and importantly in accordance with the Code that forms part of their licence conditions.

DECISION

58. In order for the Commission to determine whether the bets made were lawful, the Commission must look at the fundamental qualities of the betting transaction itself including examining whether the bet is one which is permitted by the Act and the terms and conditions of the bookmaker's licence which include adherence to the Code.
59. The Commission is of the view that Ladbrokes have acted in a manner that is in accordance with the Act and further that Ladbrokes actions are not in breach of the Code that forms part of their licence conditions.
60. As a result and in accordance with section 85(1A) of the Act and for the reasons set out above, the Commission has determined that the bets are lawful.

REVIEW OF DECISION

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

A handwritten signature in blue ink, appearing to read 'John Boneham', is written in a cursive style.

John Boneham
Presiding Member
NT Racing Commission

11 April 2018