

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr L
Licensee:	Ladbrokes Digital Australia Pty Ltd
Proceedings:	Pursuant to Section 85(4) of the <i>Racing and Betting Act</i> – Referral of dispute to Racing Commission for determination
Heard Before: (on papers)	Mr John Boneham (Presiding Member) Mr Jim McNally Mr Andrew Maloney
Date of Decision:	1 May 2018

Background

1. On 11 April 2017, Mr L lodged a gambling dispute with the NT Racing Commission against the bookmaker (Ladbrokes Digital Australia).
2. Mr L alleges that he received a telemarketing call and email on 21 February 2017, offering him bonus bets with Ladbrokes, despite having claimed to have advised them by phone and email to cancel all marketing to him, as he had a gambling problem.
3. On 28 April 2017, Senior Compliance Officer Mr Glynn Verity referred the matter to the bookmaker who responded on 5 May 2017.
4. This response included (2) telephone recordings and (2) emails relevant to the dispute. These have been read and listened to by the Racing Commission members and will be elaborated upon late in this Determination.
5. On 9 May 2017, Mr Verity advised Mr L that Ladbrokes had confirmed that he had been removed from their database and would not receive further communications from the bookmaker.
6. In his reply to Mr Verity, Mr L further alleges that as far back as 2008 he has suffered from problem gambling and had issues around same, with other registered bookmakers. However, he was unable to provide any documentary proof of this.
7. In his complaint to the Commission Mr L also states he seeks “compensation for losses and pain and suffering due to a result of the bookmaker’s predatory gambling behaviour, as well as a breach of duty of care and unconscionable conduct”.

Facts of the Matter

8. In support of his complaint Mr L provided (2) marketing emails he received from the bookmaker. These emails were sent as a result of missed promotional calls and are reproduced in part below.

9. Marketing email one (1) received 31 March 2016 at 2:52pm:

“ Hey Mr L,

I just wanted to let you know that I tried calling you to discuss a promotional offer for your account. I may have been unsuccessful in reaching you because the time I called was inconvenient.

*Below is a quick debrief on the offer that is **NOW** available on your account:*

- We'll be happy to match you 100% with bonus bets up to \$500. To claim this offer I would ask that you **simply make a deposit** and the bonus amount will appear in your account.*

I look forward to hearing back from you, talk soon....”.

10. On 31 March 2016 at 10:35pm, the client in response to the email above replied to the bookmaker and advised:

“Please remove me from mailing lists and telemarketing. Thanks”.

11. On 31 March 2016 at 12:27pm the bookmaker replied to the client and advised:

Hi Mr L

Thank you for contacting Ladbrokes.com.au.

As per your request, you have been removed from our mailing list. Thanks for your understanding in this matter.

Please do not hesitate to contact us as required if we can be of any further assistance”.

12. Marketing email 2 received 21 February 2017 at 4:14pm:

Hi Mr L

I wanted to let you know that I tried calling you today to discuss a promotional offer for your account. I may have been unsuccessful in reaching you because the time I called was inconvenient.

*Below is a quick debrief on the exclusive offer available **now**:*

- 100% match on your next deposit up to \$250 in Bonus Bets.*

- *To claim this offer, simply make a deposit when logged into your account! Your bonus bets will automatically be credited, following a successful transaction....”.*

13. On 21 February 2017 the client in response to the email above replied to the bookmaker and advised:

To Whom it may concern,

I am writing to make a formal complaint about a telemarketing call and email I was sent at 4:14pm on the 21/02/2017 in regards to an offer of bonus bets with Ladbrokes. I have previously as well as explicitly requested over the phone and in writing to have all marketing such as bonus bet offers, etc to be stopped as to stop my habitual gambling as I have a gambling addiction which has destroyed my life..

Despite this I was shocked and surprised today to be contacted again in this regard, obviously a blatant attempt to entice me to continue to gamble with Ladbrokes.

I am currently getting legal advice from my solicitor as to what action I can take in regards to this matter and am also considering taking the matter to the ACMA, the AACC as well as media outlets.

I am deeply disappointed and upset that Ladbrokes has breached their duty of care and attempted to entice a known problem gambler to continue to gamble with them despite requests no to do so. Please contact me as soon as possible so there can be a resolution to this matter.

14. On 21 February 2017 at 6:22pm the bookmaker replied to the client and advised:

Dear Mr L,

Thank you for your email.

We apologise for attempting to contact you today. We assure you that we take our responsible gambling obligations very seriously.

As you have indicated to us that you have a gambling addiction, we have closed your account in our system. To finalise this process can you please complete the attached forms and send them back to us.

We encourage you to self-exclude from any other operators that you have accounts with. Our Responsible Gambling Policy available at <https://www.ladbrokes.com.au/responsible-gambling/> contains links to the responsible gambling policies of other operators and information about how to self-exclude from other operators, as well as contact details of other resources (such as gambling helplines and financial counsellors) which may be of assistance to you”.

As part of the email above the bookmaker attached a self-exclusion form for the client.

15. It is important to note that the email of 21 February 2017 was sent after Mr L had continued to wager on a regular basis with the bookmaker since his advices of 31 March 2016, and had in fact requested bonus bets from the bookmaker on 25 January and 26 January 2017, both requests being denied.
16. The Commission members have listened to the (2) phone recordings, whereby Mr L requests the matching bonus bets and can confirm that at no time during the course of these calls did he mention his problem gambling issues.

Consideration of the Issue

17. The Racing Commission considers problem gambling to be the most serious of issues and holds all bookmakers to a high standard of conduct.
18. All bookmakers licences and conditions and the *Racing and Betting Act* require bookmakers to comply with the Northern Territory Code of Practice for Responsible Online Gambling 2016 (the Code).
19. The Code places requirements on bookmakers as follows:

“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”.

20. The Code is in line with established common law principles regarding autonomy of the individual.

Section 4.1 of the Code states:

“Patron responsibility. Gambling patrons will be encouraged to take responsibility for their gambling activity. Gambling providers are to provide patrons who feel they are developing a problem with gambling with the option of excluding themselves from the gambling venue or site”.

21. Given the aforementioned it is up to the Commission to determine if the bookmaker has breached any aspect of the NT Code of Practice for Responsible Online Gambling 2016, or has acted contrary to common law principles of autonomy of the individual.
22. However, it is not in the remit of the Commission to determine compensation for any perceived or proven failings around duty of care or unconscionable conduct, this is a matter for the Courts.

Decision

23. 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.
24. On review of all submissions there is no evidence of the client advising the bookmaker of his problem gambling prior to the email of 21 February 2017, and therefore on the balance of probabilities it is reasonable to conclude that the bookmaker had no such knowledge until the aforementioned email.
25. The position is confirmed by the bookmaker's submission that the first time the client provided them with the requisite knowledge of problem gambling was in the email referred above. That said and upon receiving notification the bookmaker immediately advised the client of their decision to close his account and provided links to their gambling policy and support agencies as well as information on how to self-exclude from other operators.
26. The evidence provided in this dispute would suggest after notifying the bookmaker to be removed from mailing lists and telemarketing in 2016 the client continued to wager with the bookmaker. This is supported by his account statement.
27. As stated above while duty of care, unconscionable conduct and the like are matters for the Courts the fact remains that the bookmaker contacted the client with telemarketing emails some 12 months after the client's request to be removed from the mailing lists and telemarketing. However with the client's bonus bet requests in January 2017, it could be reasonable in the circumstances to make contact with the client and advise such an offer was now available.
28. As such and in accordance with Section 85 (4) of the Act, on the basis of information provided in respect to the dispute and for all the reasons set out above, the Commission has determined that Ladbrokes Digital Australia (the bookmaker) had acted in accordance with its Terms and Conditions and has adhered to the requirements of the Northern Territory Code of Practice for Responsible Online Gambling 2016.



John Boneham
Presiding Member
Racing Commission

1 May 2018