

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr S
Licensee:	Entain Group Pty Ltd (Ladbrokes)
Proceedings:	Gambling Dispute for determination by Racing Commission (pursuant to section 85(2) of the <i>Racing and Betting Act</i>)
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Mr Allan McGill
Date of Decision:	23 June 2021

Background

1. On 16 October 2019, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the then licensed sports bookmaker GVC Australia Pty Ltd which at that time operated the betting platform Ladbrokes. Due to a number of corporate restructures since that time, the Ladbrokes betting platform now operates under the sports bookmaker licence currently held by Entain Group Pty Ltd. For the purposes of this decision notice, the licensee will be referred to as Ladbrokes.
2. The complainant is seeking a refund of over \$70,000, being the deposits he made into his betting account with Ladbrokes on 28 September 2019 on the basis that Ladbrokes sent him promotional material which caused him to bet despite having previously instigated a '30 day time out' on his betting account the year before. In documentation submitted to the Commission by the complainant, the complainant has stated that he "...had placed a 30 day ban on an account for betting last year [2018] as I knew I had serious problems and since then after the ban was up I have received no[n] stop soliciting email..." from Ladbrokes. The complainant has stated that following the receipt of two emails from Ladbrokes in two days in which he was offered 'free money' to play with, he "...lost [his] entire savings of \$75,000 in a matter of 2 hours."
3. The complainant has also expressed his dissatisfaction that given the value of the deposits that he made during this period, his deposit activity did not trigger an alert with Ladbrokes that would cause the sports bookmaker to contact him to ensure that he was gambling within his means.
4. The complainant has advised the Commission that after this period of betting, he made contact with Ladbrokes and requested a refund of the monies that he had deposited however, he was advised that Ladbrokes would not refund the money.
5. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission. Subsequently, the Commission determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

Ladbrokes' Response to the Gambling Dispute

6. The Commission affords all sports bookmakers licensed by it, the opportunity to respond to each of the gambling disputes lodged against it. In response to this gambling dispute, Ladbrokes advised the Commission that:
 - a. it has monitoring systems in place to identify red flag behaviour as well as processes and policies that detail what action to take if red flag behaviour is identified;
 - b. the complainant opened a betting account with Ladbrokes on 17 March 2018 at which time he agreed to Ladbroke's terms and conditions which included in its terms of use:
 - i. Term 3.5 - You acknowledge that there is a risk of losing money when gambling through our Betting platforms and you accept responsibility for any such loss. Your use of our Betting Platforms and your Account are at your sole option, discretion and risk. You may close your Account at ant time in accordance with clause 17.1.
 - c. the complainant subscribed to receiving promotional material from Ladbrokes when he opened his betting account;
 - d. on 21 September 2018, the complainant deposited \$3,200 into his betting account which was flagged in Ladbrokes' internal reports as the amount was recognised as an increase from previous depositing behaviour;
 - e. on 22 September 2018, a Ladbrokes' responsible gambling officer attempted to contact the complainant by telephone. The telephone call was not answered by the complainant however, the responsible gambling officer left a voicemail and sent an email to the complainant advising him of the sensibility of setting a spend limit;
 - f. following the responsible gambling intervention by Ladbrokes, the complainant initiated a 'time out' on his betting account up until 1 November 2018 in addition to turning off the ability to cancel withdrawal requests;
 - g. during the period that the complainant had taken a 'time out', Ladbrokes unsubscribed the complainant from marketing communications;
 - h. the complainant started using the betting account again in 2019 and on 13 July 2019 made a \$1,200 deposit to take advantage of a deposit match offer;
 - i. on 13 July 2019, the complainant actioned a deposit limit reminder notification¹ but did not set a deposit limit;

¹ Clause 5.1(c) of the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 requires that sports bookmakers licensed by the Commission must ensure that each of its customers is prompted to review and set a deposit limit at least once within the first

- j. the complainant did not use his betting account between 17 July 2019 and 27 September 2019;
- k. on 28 September 2019, the complainant started placing bets at around 6:45pm (Australian Eastern Standard Time (AEST)) through to 11:30pm AEST and during which the complainant deposited a total of \$75,650;
- l. after the complainant's betting activity on 28 September 2019, the complainant contacted Ladbrokes via Live Chat and stated that he had a serious illness, is a veteran on disability support and requested a refund of the money he had deposited;
- m. in response to the Live Chat, Ladbrokes immediately suspended the complainant's betting account and subsequently permanently closed the complainant's betting account the following day;
- n. as the complainant's deposits occurred over a short period of time outside of business hours, it was not possible for Ladbrokes to identify, investigate and contact the complainant during that time as while Ladbrokes have responsible gambling officers working seven days per week, they do not provide an overnight coverage;
- o. the increase in the complainant's deposits on Saturday 28 September 2019 would have been identified and actioned on the Sunday morning however, the complainant had already been in contact with Ladbrokes by that time.

Analysis of Evidence

- 7. The Commission has reviewed the complainant's betting account records, Live Chat records and Ladbrokes responsible gambling records as provided to the Commission by Ladbrokes as well as Ladbrokes promotional emails as provided to the Commission by the complainant.
- 8. Having done so, the Commission can confirm that the complainant opened a betting account with Ladbrokes on 17 March 2018 which he then used to actively place both winning and losing bets at various times during the life of the betting account.
- 9. During the period that the betting account was opened, the complainant deposited a total of \$84,200 with the majority of these deposits occurring on 28 September 2019 when he made 11 separate deposits into the betting account totalling \$75,650. The deposit values on this day ranged from \$150 through to \$20,000.
- 10. On that same day, the complainant's betting records show that he placed his first bet of the day at 6:43pm AEST when he placed a bet with a stake of \$250 on Lady Cosmology to win the Birthday Stakes at Belmont Park Racecourse. Lady Cosmology placed fourth and this bet was the first of many losing bets made by the complainant during the next four and half hours of his betting activity. During that period, the complainant placed 90 bets of which only 19 were winning bets and the Commission notes that rather than walking away from this losing streak, the complainant's bet size gradually increased to the point where after two and a half hours of gambling, he was placing bets with stakes of \$1,000 or more. In a clear

12 months of opening their account and then at least once every 12 months thereafter unless that account has not been utilised to place a bet within that preceding 12 months.

attempt to retrieve his losses, the final four bets made by the complainant in the last forty minutes of betting were three bets of \$10,000 and a final bet of \$20,000, all of which were losing bets. Also of note is that the predominant period in which the complainant sustained the majority of his losses from his betting activity occurred in the last hour of betting during which the complainant placed 14 bets totalling \$68,650, all of which were losing bets.

11. In reviewing this period of betting activity and with the benefit of hindsight, the Commission is of the view that the complainant has clearly displayed behaviour that would lead a reasonable person to conclude that the complainant is a problem gambler.
12. As detailed at paragraph 2 above, the complainant has stated that this flurry of betting activity occurred as a result of receiving two emails from Ladbrokes in two days in which he was offered 'free money' to play with. The Commission has sighted these emails and notes that on 26 September 2019, Ladbrokes sent an email to the complainant in which he was offered a \$100 bonus bet to bet that weekend during the Spring Carnival. The second email was sent on 27 September 2019 and in which Ladbrokes offered the complainant a \$250 bonus bet.
13. The Commission notes that both of these emails provided the complainant with the opportunity to unsubscribe from Ladbrokes at anytime as well as responsible gambling messaging in which the details of the Gambling Helpline that provides assistance to those people that may be experiencing harms from their gambling activities was provided.
14. The complainant has suggested to the Commission that firstly, Ladbrokes should not have sent promotional material to him as he had previously taken 'time out' from gambling with Ladbrokes and secondly, that Ladbrokes should have identified that the complainant was experiencing a problem gambling issue on 28 September 2019 and as a result, Ladbrokes should have intervened during this period so as to limit or alleviate the complainant's betting losses that ultimately resulted from the complainant's betting activity.
15. As detailed in previous Commission decisions, the Courts have set a very high threshold of responsibility for the gambler as to their own actions. The Courts have ruled that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is suggested by the Courts, that only in the most extreme cases of deliberate and gross misconduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss.
16. All Northern Territory licensed sports bookmakers' licence conditions and the Act currently require licensees to comply with the *Northern Territory Code of Practice for Responsible Service of Online Gambling 2019* (the 2019 Code).
17. The 2019 Code came into effect on 26 May 2019, having replaced the *Northern Territory Code of Practice for Responsible Gambling 2016* (the 2016 Code), with both Codes providing guidance to online gambling providers on responsible gambling practices so as to minimise the harm that may be caused by online gambling. Online gambling providers are also encouraged by the Commission to implement additional strategies to further minimise harm.

18. The 2016 Code amongst other things, required that licensed sports bookmakers must provide responsible gambling training including regular refresher training, to all employees engaged in client interaction and that this training should include tools to identify gambling Red Flag behaviours. This red flag behaviour training was mandated so that licensed sports bookmakers could identify and assist clients with gambling related problems. Red flag behaviours include but are not limited to gambling for extended periods of time; increase in deposit frequency; escalating sums of money deposited and changing gambling patterns.
19. As discussed earlier in this decision, it is clearly apparent to the Commission that in September 2018, Ladbrokes identified that the complainant had displayed a red flag behaviour through his increase in deposit activity compared to previous depositing behaviour and as required by the 2016 Code which applied at that time, made contact with the complainant and provided him with information via email on responsible gambling tools that were available to him including the ability to set deposit limits on his betting account. This email also stated that, *“If you’re having a bad day betting, it’s better to stop for the day than chase your losses.”*
20. Shortly after this responsible gambling intervention, the complainant availed himself of the responsible gambling tool of taking a ‘time out’ from betting with Ladbrokes and as required by the 2016 Code, Ladbrokes removed the complainant from its marketing lists during that time.
21. The complainant resumed gambling with Ladbrokes on 27 January 2019 when he placed a single losing bet with a stake of \$100. The complainant did not bet again until some six months later when he placed several winning and losing bets between 13 July 2019 to 17 July 2019. The complainant did not use his Ladbrokes betting account again until the 28 September 2019, being the day on which the complainant deposited and lost \$75,650.
22. It is well established that an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. The Commission’s role in dealing with this complaint 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 acted in compliance with the Act, its licence conditions and the relevant Code in place at the time.
23. The 2019 Code mandates that all staff of a sports bookmaker must regularly be provided with responsible gambling training which must include amongst other things, training in identifying red flag behaviour so that online gambling providers can identify and assist customers with gambling related problems. The betting activity subject of this gambling dispute was conducted online, continuously over a four and a half hour period on a Saturday evening. The question before the Commission therefore, is whether during this relatively short period of time, should Ladbrokes have identified that the complainant was experiencing harms as a result of his betting activity.

24. In this respect, the Commission notes that in compliance with both the 2016 and 2019 Codes, Ladbrokes has monitoring systems in place to identify red flag behaviour including identifying when deposit levels increase from previous deposit behaviour. The effectiveness of these systems can be evidenced in this gambling dispute by the fact that in 2018 when the complainant deposited \$3,200 into his betting account, this deposit was flagged in Ladbrokes' internal reports as the amount was recognised as an increase from previous depositing behaviour. As a result, Ladbrokes made contact with the complainant which ultimately led to the complainant deciding to take a 'time out' from betting with Ladbrokes.
25. Ladbrokes has also submitted to the Commission that through these monitoring systems, the complainant's deposit and betting activity on 28 September 2019 would have been identified the following morning and responsible gambling action would have been taken but as a result of the complainant already having made contact with Ladbrokes after he sustained his losses, the complainant's betting account had already been suspended and was then subsequently closed permanently.
26. While the Commission actively encourages sports bookmakers to implement additional strategies to further minimise harm than those detailed in both the 2016 and 2019 Code such as increasing the utilisation of metadata and big data to identify potential problem gamblers and to interact with those persons in a timely manner, the Commission is unable to come to the view that Ladbrokes were required by the 2019 Code to immediately identify that the complainant had placed bets totalling \$68,650 between 10:29 pm and 11:26 pm AEST on the Saturday evening of 28 September 2019. The Commission has also come to a similar view when examining the full four and a half hours of the complainant's betting activity in which he sustained losses of \$75,650 on that same evening.
27. Both the 2016 and 2019 Codes require that online gambling providers must have suitable procedures in place to ensure correspondence or promotional material is not sent to any persons who are either excluded from their services, or who request that this information not be sent to them. The Commission notes that the complainant was removed from Ladbrokes' marketing communications while he took a 'time out' from betting with Ladbrokes in 2018 with this action being in compliance with the 2016 Code.
28. However, once he resumed his betting activity in 2019, Ladbrokes re-instated the complainant on its marketing lists and as a result, the complainant received promotional materials. As noted in paragraph 13 above, Ladbrokes promotional emails provide the recipient with both the opportunity to unsubscribe from Ladbrokes marketing at anytime as well as responsible gambling messaging. The complainant did not choose to avail himself of either of these options.
29. While some sports bookmakers licensed by the Commission have policies in place that result in no promotional material being sent to any of their customers who have previously utilised 'responsible gambling 'time-out' tools, this is over and above the current requirements of the 2019 Code.

30. As stated earlier, the Courts have ruled that the duty to cease gambling remains with the individual gambler and not the gambling operator. The complainant was reminded by Ladbrokes on 13 July 2019 about the ability to set deposit limits and apart from acknowledging the email, took no action to limit potential losses from gambling with Ladbrokes.

Decision

31. On the weight of evidence before it, the Commission is of the view that with respect to the betting activity participated in by the complainant with Ladbrokes on 28 September 2019, there are no indicators to the Commission that Ladbrokes breached the Act, its licence conditions or the 2019 Code. The duty to cease gambling rested with the complainant and not Ladbrokes, despite the fact that the complainant ultimately suffered a significant economic loss. Given this, it would be unreasonable for the Commission to form the view that Ladbrokes is now responsible for those losses.
32. The Commission has also determined that the sending of promotional material to the complainant after the conclusion of the complainant's 'time out' in 2018 was not in breach of either the 2016 or 2019 Codes.
33. As a result of these findings, the Commission has determined that all bets made by the complainant on 28 September 2019 were lawful bets as defined under the Act and as such is not of the view that Ladbrokes should now reimburse the complainant for any of the bets that he made with it.

Review of Decision

34. 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.



Alastair Shields
Chairperson
Northern Territory Racing Commission

23 June 2021