

NORTHERN TERRITORY RACING AND WAGERING COMMISSION

DECISION NOTICE AND REASONS FOR DECISION

MATTER: Complaint for determination by the Northern Territory Racing and Wagering Commission (pursuant to section 224 of the *Racing and Wagering Act 2024*)

COMPLAINANT: Mr M

LICENSEE: BlueBet Pty Ltd

HEARD BEFORE: Mr Alastair Shields (Presiding Member)
Ms Cindy Bravos
Mr Ian Curnow
Ms Susan Kirkman
Mr Scott Perrin
Ms Rachael Shanahan

DATE OF DECISION: 10 March 2025

DECISION

1. For the reasons set out below, the Northern Territory Racing and Wagering Commission (**Commission**) is satisfied that the conduct of BlueBet Pty Ltd (**BlueBet**) in relation to the Complainant was not in contravention of the *Racing and Wagering Act 2024* (**RWA**), the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**2019 Code**) or the conditions of the sports bookmaker licence issued to it.

REASONS

Background

Complaint 1

The Complaint

2. On 19 July 2024, the Complainant lodged a complaint with the Commission pursuant to section 221(2) of the RWA. In that complaint, the Complainant alleged that:
 - i. several years ago, he self-excluded himself from being able to wager with BlueBet;
 - ii. he was a long-term customer of NTD Pty Ltd (**Betr**);
 - iii. when Betr merged with BlueBet on 1 July 2024, he was able to continue wagering using his Betr account for a period of one and a half weeks prior to his betting account being permanently closed by BlueBet due to his previous self-exclusion with BlueBet; and
 - iv. during this same period, he continued to receive promotional offers from Betr.

3. Prior to lodging a complaint with the Commission, the Complainant lodged a complaint directly with the Licensee, which resulted in the Complainant receiving a full refund of all deposits made into his Betr account from 1 July 2024 until its closure.
4. However, the Complainant has submitted to the Commission that in his view, in addition to refunding the money, the sports bookmaker should also be held accountable by the regulator for its actions.

Investigation of the Complaint

5. Section 222(1) of the RWA empowers the Director of Racing and Wagering (the Director) on behalf of the Commission, to investigate complaints lodged with the Commission. To support the Director in that function, section 33(2)(b) of the RWA authorises an Inspector to conduct investigations on behalf of the Director for the Commission.
6. On 3 October 2024, the Commission received a preliminary report from an Inspector summarising the findings of an investigation undertaken on behalf of the Director into the complaint. Upon review of that report, the Commission requested for the Director to prepare a report on the investigation in compliance with section 223 of the RWA and to give that report to the Commission for its consideration.
7. On 5 December 2024, the Commission received a report from a delegate of the Director, summarising the findings of the investigation undertaken into the complaint - attaching submissions received from the parties to the complaint; evidence obtained during the investigation; and recommendations in relation to the complaint.
8. As a matter of procedural fairness to both BlueBet and the Complainant, a draft of the Commission's determinations was supplied to both parties for comment. In response, BlueBet made a number of comments which have been taken into consideration by the Commission in finalising the Decision Notice. The Commission did not receive a response from the Complainant.

Complaint 2

9. Subsequent to the lodgement of the above complaint, the Complainant lodged a further complaint with the Commission on 6 August 2024 in which he has alleged that while wagering with Betr, the sports bookmaker did not identify that he was displaying behaviours indicative of a person experiencing harm from his wagering, nor did Betr take appropriate action to address those behaviours.
10. This second complaint is currently subject of an investigation being undertaken by an Inspector. The Commission will consider the Director's report on the findings of the investigation into Complaint 2 in due course.

Consideration of the Issues

Account Activity

11. The Commission has reviewed the Complainant's wagering activity through his use of the Betr account between 1 July 2024 and 11 July 2024 and notes that during this period, the Complainant:
 - i. deposited a total of \$640 into the account;

- ii. placed a variety of winning and losing wagers with stakes ranging between \$50 and \$350; and
- iii. received a maximum winning payout of \$698.05.

The Merger

12. Under the licensing regime contained within the now repealed *Racing and Betting Act 1983 (RBA)*, the Northern Territory Racing Commission (**former Commission**) granted sports bookmaker licences to:
- i. BlueBet on 21 December 2020; and
 - ii. Betr on 11 August 2022.
13. Betr with BlueBet copied in, wrote to the former Commission on 24 May 2024 seeking its regulatory consent for licensing purposes on several aspects related to the then proposed merger of Betr with BlueBet. In that letter, the former Commission was advised that the merger was scheduled to complete on 1 July 2024 and that if approved by the former Commission, the Betr wagering platform would continue to operate under the BlueBet licence for up to six months following the completion of the merger.
14. In support of this request, the former Commission was advised among other things that:
- i. at the completion of the merger, *"...individuals who have permanently self-excluded from BlueBet will have their self-exclusion applied on the Betr platform..."*;
 - ii. *"[w]e are undertaking a review of active Betr customers who have self-excluded from Bluebet to determine whether any ought to be permitted to have their Betr account remain open post-Completion (subject to the Commission's approval)"*; and
 - iii. the author of the letter being the then Chief Executive Officer of Betr, Mr Andrew Menz would become the Group Chief Executive Officer of the combined businesses of BlueBet and Betr.
15. On 6 June 2024, the former Commission gave its consent for licensing purposes for:
- i. Betr to merge with BlueBet on 1 July 2024; and
 - ii. the Betr wagering platform to operate under the BlueBet licence for up to six months following the completion of the merger.
16. On 17 June 2024, the former Commission advised both Betr and BlueBet of the above consent. In that same correspondence, the former Commission raised concerns about the way some self-excluded accounts were intended to be treated following the completion of the merger, specifically the allowing of individuals who had permanently self-excluded with Betr but not from BlueBet to continue to hold an account with BlueBet.
17. On 26 June 2024, BlueBet responded to the former Commission advising that it now intended to apply all permanent self-exclusions from Betr to the BlueBet wagering platform except for a small number of BlueBet customers who are able to demonstrate to BlueBet that they were in control of their wagering. BlueBet also emphasised its commitment to the provision of a responsible gambling environment and advised the former Commission that:

We are undertaking a significant amount of work in preparation for completion, including in relation to the treatment of permanent self-exclusions across both platforms so that the necessary account settings (however directed by the Commission) are implemented on 1 July 2024.

Notwithstanding these preparations, the process of applying self-exclusions between the BlueBet and Betr platforms will unavoidably involve a degree of manual review on approximately 20% of customers who hold accounts on both platforms. Primarily, these reviews will address 'fuzzy' matches where details have been changed slightly (e.g. use of a name such as Chris vs Christopher) or where the same customer has used a different address, email or phone number.

While we have assigned top priority to this task, we expect that applying the permanent self-exclusions across both platforms may not be completed until Friday, 5 July 2024. To minimise the impact of this process, we will prioritise the review of all active accounts to help ensure that any necessary self-exclusion setting is applied expeditiously following completion for higher risk customers.

For the avoidance of doubt, in the unlikely event that a customer who ought to be self-excluded is able to bet, we will take a customer favourable approach to resolving any disputes. We do not seek any express concession in this regard but would merely like the Commission to be fully informed of the circumstances that may arise and the reasons why.

18. On 28 June 2024, the former Commission wrote to BlueBet and advised that it approved the approach intended to be taken in relation to those existing BlueBet customers who had previously self-excluded from Betr. The former Commission's approval did not provide any express concessions to BlueBet in respect of BlueBet's notification that it might take several days to identify the details of self-excluded customers with Betr accounts who were permanently self-excluded with BlueBet.

BlueBet Submission

19. BlueBet has submitted that:

- i. the Complainant permanently self-excluded from BlueBet on 15 November 2016;
- ii. at the completion of the merger on 1 July 2024, the Complainant had an active Betr account;
- iii. as the Complainant's residential address and mobile phone number differed between his BlueBet and Betr accounts, his accounts were not automatically matched on 1 July 2024, and he was not self-excluded by it at that time;
- iv. as part of its manual review of accounts, the Complainant's details were matched on 11 July 2024 and his Betr account was permanently self-excluded due to the previous BlueBet self-exclusion;
- v. on 11 July 2024, the Complainant raised a complaint with BlueBet regarding the closure of his account and having been permitted to wager when he should have been permanently self-excluded on 1 July 2024;

- vi. on 12 July 2024, BlueBet refunded all losses for the Complainant's Betr account from 1 July 2024 to 11 July 2024, being \$640; and
- vii. BlueBet did not send any direct marketing to the Complainant between 1 July 2024 and 11 July 2024.

20. BlueBet has additionally submitted the following mitigating circumstances:

- i. if not for the merger, the Complainant would have been able to continue wagering with Betr;
- ii. the Complainant was upset and disappointed that his Betr account had to be closed as a result of his self-exclusion with BlueBet eight years earlier and it was this disappointment that led the Complainant to lodge a complaint with the Commission;
- iii. BlueBet has already addressed the complaint by ensuring that the Complainant has not sustained any loss from his wagering activity between 1 July 2024 and 11 July 2024; and
- iv. the Complainant's account has been treated in accordance with the merger arrangements agreed with the [former] Commission.

2019 Code

21. In accordance with the transitional arrangements contained within the RWA at section 307, any licence issued under the repealed Act that was valid immediately before the commencement of the RWA continues in effect on the commencement of the RWA as a licence under the RWA. Subsection 307(3) of the RWA further provides that a condition on a licence under the repealed Act that is valid immediately before the commencement continues in effect after the commencement as a condition under the RWA, unless inconsistent with a provision of the RWA.
22. Noting the above, BlueBet's licence continued in effect on the commencement of the RWA on 1 July 2024 being the same date as the merger, as did the licence condition attached to its licence that required it to adhere to any codes of practice. The RWA sets out at section 155(1) that a licensee must comply with any condition and restriction imposed on the licensee or licence.
23. The 2019 Code came into effect on 26 May 2019 having replaced an earlier code of practice and was approved by the former Commission to provide guidance on responsible gambling practices that must be implemented by sports bookmakers to minimise the impact of any harms that may be caused by online gambling. Under the transitional arrangements contained within the RWA at section 313, any codes of practice made under the now repealed RBA and in effect immediately before the commencement of the RWA continue to apply as if they were adopted or established under the RWA.
24. The RWA sets out at section 204 that a person commits an offence if the person intentionally engages in conduct that contravenes a code of practice.
25. Clause 4.2(e) of the 2019 Code provides that:
- ...
- e. Where a person requests that they be permanently self-excluded for any reason or is permanently excluded by the online gambling provider due to problem gambling

concerns, the online gambling provider must not knowingly permit that person to re-open or open a new account.

...

26. On completion of the merger, the businesses and workforces of BlueBet and Betr came together under the BlueBet corporate entity. BlueBet with approval of the former Commission commenced operating the BlueBet and Betr wagering platforms in parallel under BlueBet's licence while it prepared to migrate Betr's customer base onto the BlueBet technology platform in the latter half of 2024.
27. In determining whether a contravention of the 2019 Code has occurred given that clause 4.2(e) of the 2019 Code sets out that the licensee must not knowingly permit a self-excluded person to re-open or open a new account, is consideration of whether, when the Complainant's Betr account was carried over from the Betr licence to the BlueBet licence, was it:
- i. a continuation of the original account with BlueBet assuming responsibility for it and its associated data under the terms of the merger; or
 - ii. a re-opened or new account.
28. As the Commission understands it, in most cases when a merger occurs and an account is carried over from one company to another, it is not legally considered to be a new account. Instead, it is typically viewed as a continuation of the original account, with the new company assuming responsibility under the terms of the merger. This is because the account maintains its original history, terms, and agreements, even though the managing entity has changed. However, this can vary based on specific regulatory requirements, the terms of the merger agreement and the nature of the account. Some agreements may require re-registration of the account or formal acknowledgement from the account holder.
29. In support of the Commission's understanding above, the Commission notes that in a schedule attached to the Betr 24 May 2024 correspondence detailed at paragraphs 13 and 14, Betr set out that:
- Customers of both BlueBet and Betr will continue to access and use their accounts without any material change. All customer details, account balances and pending bets will remain in a customer's account without change...
30. Additionally, the former Commission was advised by BlueBet by way of a sample communication email, that Betr customers would be advised prior to the merger that:
- i. BlueBet Pty Ltd has recently acquired Betr, owned and operated by NTD Pty Ltd;
 - ii. their account balance, bonus cash, pending bets etc. will all remain the same;
 - iii. customer accounts would now operate in accordance with the BlueBet privacy policy; and
 - iv. all other terms and betting rules would remain the same.

Findings

31. There is no doubt and as has been admitted to by BlueBet, that the Complainant was a self-excluded customer of BlueBet yet he was able to continue to wager under the BlueBet licence using the Betr account from the period 1 July 2024 until 11 July 2024.

32. There is also no doubt that BlueBet did not in a timely manner, treat the Complainant's account in line with the commitments made and merger arrangements agreed to with the former Commission - given that at the completion of the merger, the Complainant's BlueBet self-exclusion was not applied to the Betr account.
33. However, after a thorough review of the matter, the Commission considers that there is a critical technicality in the interpretation of clause 4.2 of the 2019 Code which must be taken into consideration. The wording of clause 4.2 of the Code introduces an ambiguity that precludes a definitive conclusion of a contravention. More specifically, the wording that, "*...the licensee must not knowingly permit a self-excluded person to re-open or open a new account,*" is subject to an interpretation that does not explicitly during a merger process, require compliance in a manner that was likely anticipated by the former Commission.
34. As such, while the Commission considers that the conduct of BlueBet likely did not meet the expectations of the former Commission, in that the self-exclusion was not applied immediately upon the completion of the merger, the language of the 2019 Code does not support a formal finding of a contravention.

Actions by Commission in relation to Complaints

35. Section 224 of the RWA sets out that following consideration of a report provided to it by the Director regarding the investigation of a complaint, the Commission may take no action, issue a direction to a licensee to resolve the complaint, declare a wager to be void or valid, schedule a hearing or take disciplinary action.
36. Given the technical difficulty identified by the Commission in making a finding that a contravention of the 2019 Code has occurred due to the wording of clause 4.2, the Commission has determined pursuant to section 224(2)(a)(i) of the RWA to take no action over the complaint as there are no grounds or evidence to justify taking action.
37. In making this decision, the Commission notes that BlueBet upon receiving a complaint to it directly from the Complainant, took action to return the funds that were used by the Complainant to wager between 1 July 2024 and 11 July 2024, thus ultimately resulting in the Complainant's financial position being unaffected by BlueBet not adhering to the commitments made by it to the former Commission in a timely manner.

NOTICE OF RIGHTS

38. Section 239(1)(g) of the RWA sets out that a decision or action of the Commission referred to in section 224 in relation to a complaint in relation to a wager is reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**) if the amount of the:
- i. wager is more than the amount prescribed by regulation (\$500); or
 - ii. pay out on the wager would be more than the amount prescribed by regulation (\$20,000).
39. The decision of the Commission in this matter is not reviewable by NTCAT as it does not meet the specific criteria established by section 239(1)(g) of the RWA for initiating a review.

A handwritten signature in black ink that reads "Alastair Shields". The signature is written in a cursive, flowing style.

Alastair Shields
Chair
Northern Territory Racing and Wagering Commission

On behalf of Commissioners Shields, Bravos, Curnow, Kirkman, Perrin and Shanahan