

NORTHERN TERRITORY RACING AND WAGERING COMMISSION

DECISION NOTICE AND REASONS FOR DECISION

MATTER: Gambling Dispute for determination by the Northern Territory Racing and Wagering Commission (pursuant to section 310(4) of the *Racing and Wagering Act 2024* and section 85(2) of the *Racing and Betting Act 1983*)

COMPLAINANT: Mr Q

LICENSEE: PlayUp Interactive Pty Ltd (PlayUp)

HEARD BEFORE: Mr Alastair Shields (Presiding Member)
(on papers) Ms Cindy Bravos
Ms Susan Kirkman

DATE OF DECISION: 12 March 2025

DECISION

- 1) For the reasons set out below, the Northern Territory Racing and Wagering Commission (**Commission**) is satisfied that, other than the failure by PlayUp Interactive Pty Ltd (**PlayUp**) to record two telephone calls between the Complainant and his PlayUp account manager on 10 September 2021, PlayUp has complied with the now repealed *Racing and Betting Act 1983* (**RBA**), the conditions of the sports bookmaker licence (**Licence Conditions**) it holds, and the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**the Code**) throughout its dealings with the Complainant.
- 2) Given the findings that the Commission has made in respect of the content of the telephone calls that were not recorded, the Commission is satisfied that all of the wagers made by the Complainant in the period that his account was open were lawful.
- 3) The Commission has determined that it is appropriate to take disciplinary action against the Licensee pursuant to section 80(1)(d) of the RBA for its contravention of condition 19 of its licence by the imposition of a fine of 85 penalty units, being 50% of the maximum penalty available, equating to \$13,345 (in the 2021/2022 financial year the penalty unit value was \$157).

REASONS

Background

The Licensee

- 4) PlayUp was originally granted a sports bookmaker licence by the former Northern Territory Racing Commission (**former Commission**) on 11 November 2016 under the licensing regime contained within the now repealed RBA. Under the transitional arrangements contained within the *Racing and Wagering Act 2024* (**RWA**), which commenced on 1 July 2024, any licence issued under the repealed Act that was valid immediately before the commencement of the RWA continues in effect on the commencement of the RWA as a licence under the RWA. PlayUp's current licence is due to expire on 10 November 2026.

The Complaint

- 5) On 21 December 2021, the Complainant lodged an online complaint with the former Commission about his dealings with PlayUp. The Complainant's allegation is that PlayUp:
- a) enticed him and offered him inducements during a telephone call on 9 September 2021 to re-open his betting account with them while it was closed;
 - b) reopened his account notwithstanding that he advised that he wanted the account to remain closed because he was trying to stop gambling and close his betting accounts;
 - c) allowed him to gamble using credit when funds he had deposited had not been cleared; and
 - d) ignored red flags arising from his failure to pay \$8,000 into his account to cover a Poli deposit that was subsequently reversed;
- and that PlayUp's actions resulted in him losing more than \$234,000.

PlayUp Response to the Complaint

- 6) In response to the complaint, PlayUp submitted that the Complainant's account was suspended, (rather than closed) due to a Poli deposit being reversed after the funds had been wagered, leaving the Complainant with a negative account balance with PlayUp. PlayUp acknowledged that the Complainant's account manager incorrectly referred to the Complainant's account being referred to as "closed", rather than "suspended", in telephone calls and in text messages with the Complainant.
- 7) PlayUp further submitted that the Complainant did not, at any time prior to the closure of his account on 6 December 2021, indicate that he wished his account to be closed or that he had any problems with gambling, and that he stated that he gambled with other operators and that his normal betting behaviour was deposits of \$50,000 - \$100,000 per week.
- 8) It was submitted by PlayUp that the Complainant was not permitted by PlayUp to gamble using credit, but rather the initial Poli deposit was authenticated, and subsequently reversed, due to an intervening event (such as a customer reporting a stolen credit card and requesting all transactions to be suspended). PlayUp submitted that the reversal led to the account being suspended in accordance with PlayUp's terms and conditions, and that one of the purposes of the call to the Complainant on 9 September 2021 was to speak to the Complainant to request payment of the reversed deposit of \$8,000 which had left his account with a negative balance.

Commission Hearing

- 9) In accordance with the transitional arrangements contained at subsection 310(4) of the RWA, any matters under consideration of the former Commission that were not determined under the now repealed RBA before the commencement of the RWA are to be determined by the Commission in accordance with the repealed RBA as if it was not repealed.
- 10) The complaint which is the subject of this Decision Notice was lodged on 21 December 2021 and had not yet been determined by the former Commission prior to the commencement of the RWA. Given this and in accordance with the transitional arrangements under the RWA, the Commission has determined to hear the dispute and make its determinations pursuant to subsection 85(4) of the RBA.

- 11) The hearing of the dispute has been conducted in the absence of the parties, based on the evidence before the Commission. That evidence includes submissions to the Commission and the former Commission by both the Complainant and PlayUp, as well as additional evidence obtained on behalf of the Commission by the Commission's betting inspectors.
- 12) As a matter of procedural fairness to both PlayUp and the Complainant, a draft of the Commission's determinations was supplied to both parties for comment. In response, the Complainant made a number of comments which have been taken into consideration by the Commission in finalising the Decision Notice. The Complainant also expressed concerns at the time taken by the Commission to finalise his dispute. PlayUp advised the Commission that it did not have any comments on the draft.

Consideration of the Issues

- 13) The Commission considers that it is important that the adverse impacts of gambling are taken seriously and that licensees have in place effective processes to interact with those of its customers who may be at risk of experiencing harm from their gambling activity. This was also the view of the former Commission. Both the RBA (and RWA) and all Northern Territory licensed sports bookmakers' Licence Conditions require that licensees are to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the Code) which was approved by the former Commission on 26 May 2019. The Code provides practical guidance to licensees on responsible gambling practices that are to be implemented so as to minimise the harm that may be caused by online gambling.
- 14) Clause 5.5 (a) of the Code provides that: *"Online gambling providers must not offer any credit, voucher or reward to a person to open a betting account or to an account holder as an inducement to refer another person to open a betting account."*
- 15) Clause 5.6 (c) of the Code provides that *"Online gambling providers must not directly promote or market to a customer following an account closure."*
- 16) Clause 3.2 of the Code requires that as soon as a licensee identifies that a user may be at risk of harm due to their gambling activities, the licensee must interact with the customer in a way that will minimise that risk. The Commission is of the view that this interaction must occur quickly and be proportionate to the risk identified, with the aim of the interaction being to assist the user to reflect on their gambling behaviour and to moderate their gambling activity where there is reason to do so.
- 17) Condition 19 of PlayUp's sports bookmaker licence provides that PlayUp: *"will ensure that all telephone conversations with customers, and any other conversations relating to wagers, complaints or disputes, regardless of medium, are recorded on approved recording equipment."* The purpose of this license condition is to enable the Commission to independently verify claims by both licensees and complainants about the veracity of complaints, particularly whether the content of telephone conversations have raised indicators of harmful gambling, and any indicators have been appropriately addressed.
- 18) The Commission has reviewed the Complainant's betting account activity, PlayUp's account notes concerning the Complainant's account, text messages between the Complainant and his PlayUp Account Manager, and listened to the various telephone call recordings between the Complainant and PlayUp, during its investigation of this gambling dispute.

Commission Findings and Assessment

- 19) The Complainant opened his account with PlayUp on 3 September 2021 and deposited \$8,000 using a Poli deposit. He then went on to place 33 bets that day, some of which won, and others which lost, and ended the day with a zero balance in his account.
- 20) On 4 September 2021, PlayUp became aware that the \$8,000 Poli deposit had not been received, thus putting the Complainant's account into a negative balance of \$8,000. PlayUp subsequently suspended or closed the Complainant's account on the same day as a direct result of the Poli deposit not being received, and not as a result of any request by the Complainant to close the account.
- 21) On 9 September 2021, there was a telephone discussion between the Complainant and his PlayUp account manager. The call (a recording of which has been listened to by the Commission) was 11.09 minutes in duration, and during the course of the call:
 - (a) The PlayUp account manager stated that the Complainant's account had been closed, due to the Poli deposit not becoming received by PlayUp;
 - (b) The Complainant stated that he had multiple betting accounts, and he normally deposited between \$50,000 - \$100,000 per week;
 - (c) There was a discussion about the Complainant's account with another sports bookmaker, including deposit bonuses, dispute resolution, and what offers PlayUp may be able to make to the Complainant;
 - (d) There was a discussion about the need for the Complainant to update his address to enable his account to be fully verified;
 - (e) The PlayUp account manager raised the issue of the \$8,000 Poli deposit that had not been received by PlayUp, and there was a request that the Complainant would follow it up with his bank and seek to have it investigated;
 - (f) Contrary to the information provided by the Complainant, he did not indicate that he wished that his account remain closed, or that he was experiencing problems with his gambling or was seeking to control his gambling.
- 22) On 9 September 2021, the Complainant's account was fully verified using Green ID.
- 23) On 10 September 2021, there were two telephone discussions between the PlayUp account manager and the Complainant (as disclosed in the Complainant's telephone records). PlayUp was unable to provide recordings of these telephone calls, however the Complainant's account notes state that the Complainant advised that an investigation with his bank resulted in advice that the Complainant's card transactions had been cancelled due to a security breach, and that he would deposit \$8,000 that morning and would look at depositing \$30,000 for the weekend. On balance, having regard to the account notes and the content of telephone discussions and text messages both before and after 10 September 2021, the Commission is satisfied that there was no indication by the Complainant during either of those calls that he wished that his account remain closed, or that he was experiencing problems with his gambling, or was seeking to control his gambling.
- 24) On 14 September 2021, there was a telephone discussion between the Complainant and a customer service operator during which the Complainant asked if his account was closed, and (after some initial confusion about whether the account was open or closed), he was advised that the account had been reopened so that he could make a deposit to cover the Poli deposit. There was a further discussion about how much money the Complainant would deposit in addition to the outstanding Poli deposit. Again, there was no indication by the Complainant

during that call that he wished that his account remain closed, or that he was experiencing problems with his gambling, or was seeking to control his gambling.

- 25) On 10, 17, 21, 22 and 23 September 2021, the PlayUp account manager sent text messages to the Complainant seeking information about when the Complainant would be making a deposit to cover the Poli deposit. The account manager also made a telephone call to the Complainant which was not answered.
- 26) On 23 September 2021, the Complainant deposited \$28,000, \$8,000 of which cleared his negative account balance, leaving him with \$20,000 for wagering. Between 23 September 2021 and 6 December 2021, the Complainant placed 452 bets, deposited \$226,000, made no withdrawals, received \$121,900 in bonus bets, and had an account balance of \$0.45 when his account was closed on 6 December 2021.
- 27) Based on the above findings, the Commission is satisfied that:
 - (1) Given the circumstances surrounding the Poli deposit, there was no credit betting by the Complainant, and the negative account balance occurred because there was positive action required to reverse the Poli deposit which had already been accepted by PlayUp (the Commission understands that, since September 2023, Poli deposits are no longer available in Australia);
 - (2) Irrespective of whether the Complainant's account with PlayUp was suspended and had the suspension lifted, or was closed and then reopened, there was no inducement or enticement offered to the Complainant to open an account in breach of clause 5.5(a) of the Code, because the account was reopened or had the suspension lifted for the purpose of settling the Complainant's negative account balance, and the initial account suspension or closure was instigated by PlayUp due to the negative account balance;
 - (3) The action taken by PlayUp to suspend or close the Complainant's account was not due to any request by the Complainant;
 - (4) The telephone calls and text messages by PlayUp did not constitute promotion or marketing to the Complainant following an account closure, either because the account was suspended (rather than closed), or that the primary reason for the contact was to recover the failed \$8000 Poli deposit;
 - (5) There is nothing in any of the text messages or telephone recordings or any other dealings with the Complainant to suggest that the Complainant was experiencing any difficulty with his wagering or that he wanted to close his account or for it to remain closed;
 - (6) The Complainant's deposits and wagering activity were well within the deposit limits that the Complainant advised were usual for him; and
 - (7) PlayUp was in breach of its Licence Conditions when it failed to record the telephone calls between PlayUp and the Complainant on 10 September 2021.
- 28) The Commission has therefore formed the view that, other than the failure by PlayUp to record the two telephone calls between the Complainant and his PlayUp account manager of 10 September 2021, PlayUp has complied with the regulatory framework in place during the period identified in the Complainant's complaint to the Commission. Given the findings that the Commission has made in respect of the telephone calls, the Commission is satisfied that all of the wagers made by the Complainant in the period that his account was open were lawful.

- 29) As noted above, the requirement in PlayUp's Licence Conditions to record all telephone calls is important because it enables the Commission to independently verify claims by both licensees and complainants about the veracity of complaints, particularly in respect of allegations of red flag behaviours and the appropriateness of any interventions by licensees. When questioned about the failure to record the telephone calls, PlayUp advised that, at the relevant time, PlayUp's recording system only allowed outgoing calls from PlayUp mobiles to be recorded, and that the policy at the time was to require account managers to not answer incoming calls, and to return them when the call could be recorded. Whilst the Commission is pleased that PlayUp has advised that this issue has now been addressed, it does not lessen the seriousness of the breach.

NOTICE OF RIGHTS

- 30) Section 85(6) of the RBA provides that a determination by the Commission of a dispute referred to it pursuant to section 85 of the RBA shall be final and conclusive as to the matter in dispute.



Alastair Shields
Chair
Northern Territory Racing and Wagering Commission

On behalf of Commissioners Shields, Bravos and Kirkman