

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr W
Licensee:	Ladbrokes Digital Pty Ltd
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) Mr James Pratt Ms Amy Corcoran
Date of Decision:	17 August 2020

Background

1. On 1 September 2018, 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 Betstar.com.au (**Betstar**) who at the time operated under the Ladbrokes Digital Australia Pty Ltd licence (**Ladbrokes**).
2. This dispute involves the Complainant setting a deposit limit on the platform of Ladbrokes.com.au that is also operated under the Ladbrokes' licence, however, when he opened an account with Betstar, he was able to deposit more than this limit. The Complainant submits that once he activated a deposit limit with Ladbrokes.com.au, it should have been applied across all the Ladbrokes' brands or platforms. The Complainant has also submitted that the Bookmaker should have detected red flag behaviour during the two (2) days he was able to deposit a total amount of \$21,200.00.
3. The Complainant created an account with Ladbrokes.com.au on 26 November 2014. On 12 January 2017, the Complainant chose to set a deposit limit of \$10 per month on this account. From this date, the Complainant had only limited activity on his Ladbrokes.com.au account for brief periods in June and October 2017.
4. On 9 September 2018, the Complainant created an account with Betstar. Between 9 September 2018 and 10 September 2018, he made deposits totalling \$21,200. The Complainant subsequently contacted Ladbrokes on 11 September 2018 asking to self-exclude. Ladbrokes immediately closed the Complainant's accounts with Ladbrokes.com.au, Betstar and Bookmaker.com.au and marked him as self-excluded. Until this point, Ladbrokes submit the Complainant had not indicated or advised that he may have been experiencing issues with gambling. The Complainant, although admitting he has a gambling problem during the investigation, has not submitted that he informed Ladbrokes that he had a gambling problem prior to 11 September 2018.
5. Information was gathered from both parties by the Commission's betting inspector and provided to the Commission which determined there was sufficient information before it, to consider the gambling dispute on the papers.

Consideration of the Issues

6. It is the view of the Commission that problem gambling is the most serious of issues and as such, holds all sports bookmaker operators licensed in the Northern Territory to a high standard with regards to any breaches.
7. 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)*.
8. 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 setting out certain practices to be adopted by licensed sports bookmakers in the provision of their services, so as to minimise the harm to consumers that may be adversely affected by gambling. Online gambling providers are also encouraged by the Commission to implement additional strategies to further minimise harm.

Deposit limits

9. As the betting activity that is subject of this gambling dispute occurred prior to 2019, the 2016 Code was in force at that time. The 2016 Code amongst other things, required a licensed sports bookmaker to provide voluntary pre-commitment features on its betting platforms to enable its customers the opportunity to set limits on time, deposit or spend. The relevant clause is set out below:

“5.1 Voluntary pre-commitment features

Online gambling operators must offer pre-commitment facilities that allow a client to set a maximum spend and/or deposit and/or time limit. Clients should be able to decrease these limits immediately, however, any increase to a limit, must not take effect for at least 24 hours.”

10. There is no suggestion that Betstar did not have such pre-commitment facilities available on its betting platform. The issue in dispute is whether a deposit limit set by the Complainant on the Ladbrokes.com.au betting platform should have automatically carried over onto all of Ladbrokes' betting platforms including Betstar.
11. At the time this dispute arose, Ladbrokes was the parent company of two betting platforms being Betstar and Bookmaker.com.au which were authorised by the Commission to be operated under the Ladbrokes sports bookmakers licence and also operated the Ladbrokes.com.au platform under the same licence.
12. The Commission has determined in previous decisions that it is the individual licensee who is responsible for compliance with the Act (see *B v PlayUp Interactive*, dated 17 January 2020 and *G v PlayUp Interactive*, dated 10 March 2020). Accordingly, as Betstar did not hold a sports bookmaker licence itself, it was Ladbrokes' responsibility to ensure compliance with their licence conditions, the Act and any Codes issued by the Commission in respect to all betting platforms it operates.
13. The question is whether Ladbrokes breached condition 5.1 of the 2016 Code because it did not enforce the deposit limit that was previously set by the Complainant on the Ladbrokes.com.au betting platform on the Betstar platform?

14. Ladbrokes have submitted that deposit limits are not and should not be applied across all their platforms as it is merely a tool available for their account holders to manage and self-regulate their own gambling activities. Ladbrokes state that it is an account holder's responsibility to manually set any limits or restrictions on each account they may have under the Ladbrokes' licence and deposit limits are not an automatic indicator that a customer has a gambling problem.
15. It is the view of the Commission that the obligation under condition 5.1 is to offer pre-commitment features to customers to utilise voluntarily and as they see fit to their own personal circumstances. There is no requirement in the 2016 Code that a licensee must ensure that any pre-commitment features taken up by a customer must be placed on all of the customer's accounts across all of the licensees' betting platforms. The purpose of voluntary pre-commitment features is to provide tools to customers to be responsible for their own wagering and it is easily foreseeable that a customer may decide to set a maximum deposit limit in differing amounts between different betting platforms. The Commission also accepts that utilising a deposit limit is not of itself an indication a customer has issues with gambling.
16. It is noted that in the previous decisions named above, the Commission determined that condition 4.2 of the 2016 Code requires a licensee to ensure a customer is self-excluded across all of its betting platforms. These decisions can be distinguished from the current dispute as condition 4.2 states where a customer wishes to self-exclude, the licensee must provide them with "*the opportunity to exclude themselves from accessing the operator's gambling products.*" The licensee must therefore ensure in the instance of self-exclusions, customers of any of the licensee's betting platforms are unable to access any of its other gambling products across any of its betting platforms. There is no requirement under the 2016 Code for licensees to impose any voluntary pre-commitment features the customer takes advantage of across all of its gambling products and betting platforms.

Red flag behaviours

17. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. The 2016 Code sets out certain practices to be adopted by licensed sports bookmakers in the provision of their services, so as to minimise the harm to consumers that may be adversely affected by gambling.
18. The Code amongst other things, requires that licensed sports bookmakers must provide responsible gambling training including regular refresher training, to all employees engaged in customer interaction and that this training should include tools to identify gambling Red Flag behaviours. This Red Flag behaviour training is mandated so that licensed sports bookmakers can identify and assist customers with gambling related problems.
19. Red Flag behaviours include but are not limited to gambling for extended periods; changing gambling patterns; increase in deposit frequency; escalating sums of money deposited and accusing the gambling operator of remarks that may indicate serious overspending.
20. It is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions and that the duty to cease gambling remains with the individual gambler and not the gambling operator. It is suggested 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.

21. The Complainant submits that Red Flags should have been raised when he was able to make large deposits into his Betstar account and he should have been called to see "what was going on". The Complainant placed his first deposit into the account at 12.34pm on 9 September and made 3 deposits that day totaling \$2,700. The next day he made another 4 deposits totaling \$18,500 and had wagered through that money by 7.04pm that evening.
22. In response to the Complainant's claim that his account had not been flagged despite having lost a significant amount of money, Ladbrokes submitted that his Betstar account was in fact flagged internally for further monitoring however as it was closed within three (3) days of opening there was little opportunity to action it.
23. As soon as Ladbrokes was aware that the Complainant was experiencing problems with gambling during the telephone call on 11 September 2018, both of his accounts under the Ladbrokes banner were immediately closed and marked as self-excluded. Further, Ladbrokes excluded him from their third banner, Bookmaker.com.au, during that telephone discussion. Ladbrokes also provided the Complainant with various online gambling help resources.
24. Ladbrokes informed the Commission that after self-excluding from Ladbrokes, the Complainant attempted to open an account with Bookmaker.com.au on 20 September 2018 and this account was immediately identified and closed prior to the Complainant making any deposits.
25. In this instance, the Commission is satisfied that there was not sufficient time for Ladbrokes to take action in respect to the Complainant's flagged behaviour. It would appear that any such flag would have only be raised on the Complainant's second and final day of wagering using his account. Had the Complainant continued along the same or similar form and not closed his account the following day, it would have been reasonable to expect Ladbrokes to have actioned some form of contact with the Complainant to enquire as to whether this spend was within his means and he was experiencing problems with controlling his gambling.

Decision

26. The evidence before the Commission is that the Complainant had not placed a deposit limit on its Betstar account and there was no requirement under the 2016 Code for Ladbroke's to apply his deposit limit on his Ladbrokes.com.au account over to his Betstar account.
27. In respect to the Ladbrokes' obligations under the 2016 Code relating to detecting red flag behaviours, the Commission accepts there was insufficient time to appropriately detect and act on the Complainant's behaviour flagged prior to his account being closed.
28. Finally, Ladbrokes complied with its obligation under the 2016 Code by applying the Complainant's requested self-exclusion across all of their betting platforms to ensure the Complainant was no longer able to access any of its gambling products.

29. As a result, the Commission is satisfied that Ladbrokes has not breached a condition of its licence and has determined that the bets struck by the Complainant through his Betstar account from 9 to 10 September 2018 were lawful bets.

Review of Decision

30. 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

17 August 2020