

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr S
Licensee:	Sportsbet
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)	Ms Cindy Bravos (Presiding Member) Ms Amy Corcoran Mr James Pratt
Date of Decision:	5 June 2020

Background

1. On 12 March 2019, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Commission against the Northern Territory licensed sports bookmaker, Sportsbet.
2. The complainant is seeking a refund from Sportsbet of \$31,318.33, being all monies that the complainant had deposited (less withdrawals made), into a betting account that he first opened with Sportsbet on 1 December 2017 and subsequently, permanently closed on 6 March 2019.
3. The complainant alleges that Sportsbet failed to undertake sufficient checks on his appropriateness to operate a betting account, at the time the betting account was first opened. The complainant submits that had Sportsbet done so, it would have identified that the complainant has several credit defaults recorded against him and a history of financial instability, including a 2004 criminal conviction for obtaining financial advantage by deception that the complainant states had resulted after he had begun to experience financial difficulty due to gambling.
4. The complainant further alleges that Sportsbet failed to meet its responsible gambling obligations to identify red flag behaviours indicative of problem gambling, throughout the lifetime of the betting account. The complainant submits that these red flag behaviours included the repeated opening and closing of his betting account, changes to bank account and card details used to deposit funds into the account on five occasions and showing concerns about losses.
5. The Commission affords all sports bookmakers licensed in the Northern Territory an opportunity to provide a response to the Commission, should a gambling dispute be made against it. In response to this gambling dispute, Sportsbet advised that at the time of the opening of the complainant's betting account, an automatic identification check was undertaken which confirmed that the complainant was a person that does exist and who was over 18 years of age. Sportsbet submitted that it is not obliged to conduct an enhanced customer due diligence or background research on every customer that opens and operates a Sportsbet betting account. Sportsbet further submit that the none of the complainant's spend, deposit or bet activity during the life of the betting account triggered a need to conduct an enhanced customer due

diligence review, which is designed to assist Sportsbet to identify and mitigate activity that may be indicative of money laundering or terrorist financing.

6. Sportsbet also advised that the complainant did not display any red flag behaviours during his betting activity or through his contact with Sportsbet employees. Sportsbet further submitted that the complainant did not have any significant increases or changes in his betting activity nor did the complainant “...*mention..he was struggling with his gambling.*” Sportsbet advised that when the complainant closed his account on multiple occasions, the reasoning given was that it was due to a lack of service or lack of generosity. Further, Sportsbet submitted that while the complainant, “...*had access to Sportsbet responsible gambling products including setting a deposit limit or taking a short-long term break on his account should he have been struggling, he did not take up any of these options.*”
7. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission and provided to the Commission, which determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

Code of Practice

8. Pursuant to the Act and licence conditions, all Northern Territory licensed sports bookmakers are required to comply with the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code).
9. 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). Both Codes provide 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 currently encouraged by the Commission to implement additional strategies to further minimise harm.
10. As the activity subject of this gambling dispute occurred between 1 December 2017 and 6 March 2019, the 2016 Code applied to the activities of the complainant and Sportsbet during this period.
11. The 2016 Code amongst other things required at clause 2.1, that with respect to interaction with customers, that:

Online gambling operators must have an appropriate level of management available to:

- assist staff and clients during those hours where staff are available to speak to clients
- provide appropriate information and assistance to clients with gambling related problems
- support staff in providing assistance to these affected clients

- provide confidential assistance to any staff who themselves may have gambling related issues
 - establish policies and procedures that allow customers to take steps to limit their gambling if desired
 - have available, for clients and staff, details of appropriate gambling support services.
12. Clause 2.3 of the 2016 Code also required that online gambling operators were to establish and promote mechanisms to recognise and resolve issues relating to client problem gambling incidents.
 13. Clause 3.1 of the 2016 Code required that all sports bookmaker staff that engaged in client interaction must have completed responsible gambling training so as to be able to identify problem gambling red flag behaviours.
 14. In addition, clause 4.6 of the 2016 Code required online gambling operators to have in place, suitable procedures to ensure that correspondence of promotional material is not sent to customers that are excluded from using their services or who request that this information not be sent to them.
 15. Similarly, clause 8.6 of the 2016 Code required that online gambling operators were not to call or otherwise urge non-gambling clients to use their gambling services.
 16. It is implicit through both the 2016 Code and the current 2019 Code, that all sports bookmakers should interact with their customers in a way which minimises the risk to their customers, of experiencing harms associated with gambling. While there is no guarantee that this interaction will identify all customers who are experiencing or at risk of harm, attempts should be made by all sports bookmakers to reduce harm at the earliest opportunity.

Activation of the Betting Account

17. As detailed at paragraph 3 above, the complainant is of the view that insufficient research was undertaken by Sportsbet when he opened his Sportsbet betting account. The complainant is of the view that had Sportsbet accessed his credit history, Sportsbet would not have been able to come to any other conclusion than that he was not an appropriate person to operate a betting account.
18. In response, Sportsbet advised that at the time of the opening of the betting account, an automatic identification check was undertaken which confirmed that the complainant was a person that did exist and who was over 18 years of age. Sportsbet further submitted that it is not obliged to conduct an enhanced customer due diligence or background research on every customer that opens and operates a Sportsbet betting account.
19. Currently in accordance with Commonwealth legislation, sports bookmaker customers may open an online betting account, deposit funds into the account and start betting without having their identification verified. However, they will not be able to withdraw any winnings before verification of their identity has occurred nor will

they be able to use the online account after a period of 14 days if the identity verification has not been completed.

20. Prior to changes to Commonwealth legislation and at the time the complainant opened his betting account, Sportsbet had licence condition that required that:

The sports bookmaker must not allow any customer to withdraw monies from their nominated account until satisfactory proof of age and identity is provided in compliance with the Know Your Customer requirements pursuant to the *Anti Money Laundering and Counter Terrorism Financial Act*. In circumstances where the customer has failed to provide sufficient proof of age or identity within forty five (45) days of opening an account, the Sports Bookmaker shall immediately freeze the account and advise the customer that the account will remain frozen until sufficient proof of age and identity is obtained.

21. As can be seen from the above, in December 2017 Sportsbet were required to verify a customer's proof of age and identity within 45 days in order to allow a customer to continue betting or withdraw funds from the betting account, which it did in this case.
22. At this same time, in accordance with requirements under the *Anti-Money Laundering and Counter Terrorism Financing Act (Cth)*, Sportsbet had an 'Ongoing and Enhanced Customer Due Diligence' policy in place in order to identify and mitigate activity that may be indicative of money laundering or terrorist financing. That policy, set out the trigger points at which a customer's activity prompted Sportsbet to collect and verify additional Know Your Customer requirements which at that time, included where a significant transaction or series of transactions took place, a significant change occurred in the way a customer operated an account or where there was doubt about a customer's identity.
23. If the trigger points were activated, the policy details that Sportsbet may request additional information in relation to the customer's identity, details of the source of funds and the beneficiaries of transactions. The policy also detailed that various open source information tools such as google, Facebook and the like may be utilised to conduct additional searches.
24. Had the complainant's activity in this matter triggered the undertaking of enhanced customer due diligence inquiries, it is likely that the complainant's 2004 criminal conviction of obtaining financial advantage by deception would have been discovered. Had that occurred, Sportsbet may have undertaken a further assessment in relation to the complainant's gambling activity and financial capacity to do so.
25. However, having reviewed the complainant's betting statement from the time the account was opened on 1 December 2017 through to 6 March 2019, the Commission is satisfied that none of the trigger points as set out in the Sportsbet 'Ongoing and Enhanced Customer Due Diligence' policy were reached.
26. Given the above, no legal or policy obligation rested with Sportsbet to undertake any further research or conduct any further checks than the initial verification of the complainant's identity and age at the time of the opening of the betting account.

Experiencing or at Risk of Harm

27. As detailed at paragraph 13 above, clause 3.1 of the 2016 Code Clause required that all sports bookmaker staff that engaged in client interaction must have completed responsible gambling training so as to be able to identify problem gambling red flag behaviours.
28. The 2016 Code provided guidance to licensees as to some of the behaviours that may be indicative that a person may be experiencing or at risk of harm as a result of their gambling activity. These behaviours included activity such as gambling for extended periods, changing gambling patterns, accusations that online gambling operators were changing payouts or rigging systems and/or verbally abusing staff. The 2016 Code specified that the list of red flag behaviours provided in it was not an exhaustive list.
29. It is clearly apparent that a sports bookmaker customer who is experiencing or at risk of harm associated with gambling will not trigger every red flag behaviour trigger point. The Commission expects however, that licensed sports bookmakers will continually monitor customer accounts from the time they are opened in order to identify those of its customers who are experiencing or at risk of harm associated with gambling so as to be able to intervene at the earliest opportunity.
30. The Commission has reviewed the betting activity of the complainant during the life of his betting account with Sportsbet as well as a number of chat records between the complainant and Sportsbet representatives and notes that:

First Account Activation

- a. the betting account was opened on 1 December 2017 with a deposit of \$100
- b. numerous bets were placed between 1 December 2017 and 16 December 2017
- c. the betting account was closed on 17 December 2017 at the complainant's request who gave the reason for requesting the closure when asked as, "*bad service from you guys on [F]riday and generally don't want to punt anymore.*" The complainant also requested that he be unsubscribed from any marketing material and at the time, was advised by Sportsbet that his account was closed and that he had been, "*unsubscribed from us contacting you.*"
- d. on 20 December 2017, Sportsbet sent an email to the complainant stating that they had noticed that the complainant had closed his account and offered a \$50 bonus bet if he re-activated his account
- e. the complainant responded saying that reason he closed his account was, "*...as the service was less than ordinary in crediting my account with winnings. I get a bit worried when I have a win on race 3 and the winnings aren't credited as race 5 is about to jump.*" The complainant then advised he would consider re-opening his account if the value of the bonus bet was increased to \$250
- f. Sportsbet did not increase the value of the bonus bet and the complainant advised it that he would not be returning for \$50

Second Account Activation

- g. on 7 January 2018 (some 21 days after the betting account was first closed), the complainant contacted Sportsbet and requested that his account be re-activated and that the \$50 bonus bet previously offered be applied to his account
- h. on the same day, Sportsbet re-opened the betting account and applied a \$50 bonus bet to it
- i. on 12 February 2018, the complainant requested that his account be closed, *“effective immediately”*
- j. In response, Sportsbet closed the account and sought some security information as well as feedback as to the reason for requesting the account be closed. In addition, Sportsbet stated that, *‘Should you be closing your account due to responsible gambling considerations, sportsbet.com offers members the option of Self Excluding themselves from betting.’*
- k. on 15 February 2018, Sportsbet confirmed that the account was closed and invited the complainant to contact Sportsbet should he wish to re-open the account

Third Account Activation

- l. on 21 February 2018 (9 days after the betting account had been closed for the third time in two months), the complainant requested that his account be reopened
- m. within 5 minutes, Sportsbet advised the complainant that his account had been re-opened
- n. on 3 April 2018, the complainant requested that his account be cancelled and the balance of 48 cents and the \$2 held on his Sportsbet Cash Card be returned to his nominated bank account
- o. on 4 April 2018, Sportsbet advised the complainant that his account was closed and that the balance of his account and Sportsbet Cash Card was being returned to his nominated bank account
- p. on 12 April 2018, Sportsbet sent an email to the complainant stating that they had noticed that the complainant had closed his account and offered a \$50 bonus bet if he re-activated his account

Fourth Account Activation

- q. on 13 April 2018, following the offer of the \$50 bonus bet to re-open his account, the complainant requested Sportsbet to re-open the account apply the \$50 bonus bet to it
- r. less than 30 minutes later, Sportsbet advised the complainant that his account had been re-opened and the \$50 bonus bet had been applied

- s. on 6 October 2018, the complainant requested that his account be closed due to his dissatisfaction with Sportsbet's customer service and the balance returned to his nominated bank account
- t. according to the complainant, the complainant received an apology from Sportsbet on 9 October 2020 and an offer of two \$100 bonus bets if he re-opened his account

Fifth Account Activation

- u. on 10 October 2018, following the complainant accepting the apology, the complainant requested that his account be re-opened
- v. on 17 November 2018, the complainant requested that his account be closed effective immediately. The complainant stated, *"It's been fun but I said that after the last day of the spring carnival today, enough was enough and I will stop punting ...The service hasn't always been crash hot and we have had our problems but I am walking away. Good luck to you but please close my account and we can go our separate ways."*
- w. In response, Sportsbet closed the account and sought some security information as well as feedback as to the reason for requesting the account be closed. In addition, Sportsbet stated that, *'Should you be closing your account due to responsible gambling considerations, sportsbet.com offers members the option of Self Excluding themselves from betting.'*

Sixth Account Activation

- x. on 8 December 2018, the complainant requested Sportsbet to reopen his account
- y. less than 5 minutes later, Sportsbet advised the complainant that his account had been re-opened. Sportsbet asked the complainant whether he wished to place a deposit limit on the account to which the complainant advised that he did not
- z. on 3 January 2019, the complainant requested that his account be closed effective immediately
- aa. a short time later, Sportsbet advised the complainant that his account had been closed

Seventh Account Activation

- bb. on 12 January 2019, the complainant requested Sportsbet to reopen his account
- cc. a short time later, Sportsbet advised the complainant that his account had been re-opened
- dd. on 17 February 2019, the complainant requested that Sportsbet deactivate his account effective immediately with a life time exclusion
- ee. on 18 February 2019, Sportsbet advised the complainant the his account had been 'lifetime excluded'

31. It is the view of the Commission having reviewed the activity above, that Sportsbet should have identified some red flag behaviours and taken steps to make inquiries with the complainant as to whether he was experiencing or at risk of experiencing harms associated with gambling.
32. While Sportsbet advised the Commission that when the complainant closed his account on multiple occasions, the reasoning given was that it was due to a lack of service or lack of generosity, it is the view of the Commission that the continuing opening and closure of the betting account should have served as a warning indicator to Sportsbet that gambling for the complainant may be or had become problematic.
33. On the very first closure of the account, the Commission notes that in addition to a comment about bad service, the complainant also stated that he, "...*generally [did]n't want to punt anymore.*" The complainant then went on to open and close his betting account several more times and on the 17 November 2018, the fifth time the complainant had closed his account since it was opened, the complainant stated, "*It's been fun but I said that after the last day of the spring carnival today, enough was enough and I will stop punting ...The service hasn't always been crash hot and we have had our problems but I am walking away. Good luck to you but please close my account and we can go our separate ways.*"
34. When the complainant contacted Sportsbet some three weeks later and for the sixth time to reactive his account, it took Sportsbet less than 5 minutes to re-open his account. The Commission does note that on this occasion, Sportsbet did ask the complainant as to whether he wished to place a deposit limit on the account, to which he responded that he did not. This proactive action, at least demonstrates that Sportsbet may have at this point, become concerned as to the complainant's betting activity.
35. On 3 January 2019, the complainant again closed his account and just over a week later, again contacted Sportsbet to have his account re-opened. At this time, there is no record of Sportsbet making any inquiries with the complainant as to whether he was experiencing problems associated with his gambling. The complainant used the betting account to place numerous bets between the period of 12 January 2019 to 17 February 2019, at which time the complainant requested that his betting account be closed permanently.

Additional Red Flag Behaviours

36. The complainant asserts that throughout the life of his betting account with Sportsbet, his interaction with Sportsbet and his betting behaviour should have alerted Sportsbet to the fact that he was experiencing harm from his gambling activities. Specifically, the complainant stated that the following behaviours should have caused Sportsbet to intervene:
 - I communicated on several occasions through the online chat facility and by telephone about my concerns regarding the acceptance of wagers through the app, timing off (sic) cut off by traders to accept wagers on events and the timing of settling of wagers by Sportsbet
 - I have had many conflicts with Sportsbet staff in regards to customer service and the reliability of the "app"

- During the operation of my account with Sportsbet I used five (5) different cards
- My betting behaviour that incurred the most losses were recorded on a Monday night on a fortnightly basis. Although Sportsbet do not know this fact, fortnight on a Monday is my pay day but no questions were asked why a sudden increase in turnover on this day

37. Sportsbet submitted to the Commission that:

- all actions taken and the handling of the complainant's betting account were compliant with the 2016 Code;
- the complainant did not exhibit and red flag behaviours in betting or his contact with the Sportsbet team;
- the complainant did not have any increase or changes in betting on the account which were significant enough to trigger any of Sportsbet's many proactive responsible gambling monitoring alerts;
- the complainant never mentioned that he was struggling with his gambling;
- the complainant did not access any of the Sportsbet responsible gambling products;
- it monitors the number of active cards on accounts as well as failed deposits. The complainant did not hit these triggers and therefore did not trigger a call from the Sportsbet responsible gambling team;
- there was a total of 3 cards registered in 2018/2019, this would not trigger as a concern as it is not uncommon if customers get issued new cards or have a few cards in their name.

Inducements to Re-Open Closed Betting Account

38. As detailed above at paragraph 30, three days after the complainant first closed his betting account with Sportsbet, he received an email from Sportsbet stating that they had noticed that the complainant had closed his account and offered a \$50 bonus bet if he re-activated his account. This is despite the complainant having requested that he be unsubscribed from any marketing material and Sportsbet's response that the complainant's account was closed and that he had been, "*...unsubscribed from us contacting you.*"
39. The complainant responded to the marketing email of 20 December 2017, requesting an increase in the value of the bonus bets on offer which was declined by Sportsbet. However a little over 2 weeks later, the complainant contacted Sportsbet requesting that his account be reopened and that the \$50 value of bonus bets be applied to his account, which Sportsbet subsequently did.
40. Following the third time the complainant requested that his betting account be closed on 3 April 2018, he again received a marketing email a short time later from Sportsbet stating that they had noticed that the complainant had closed his account and offered a \$50 bonus bet if he re-activated his account.

41. The complainant responded to this email the following day requesting that his account be reopened and that the bonus bets be applied to his account.
42. Bonus bets and other promotional offers are designed to attract and persuade individuals to participate in gambling. The offering by Sportsbet of bonus bets to the complainant on two occasions following the complainant closing his betting account clearly had the desired outcome for Sportsbet, of the complainant reopening his betting account on two separate occasions.
43. Clause 4.6 of the 2016 Code sets out that promotional material is not to be sent to customers who are excluded from using their services or who requested that this information not to be sent to them while clause 8.6 of the Code clearly sets out that sports bookmakers were not to call or otherwise urge non-gambling clients to use their gambling services.
44. It is clear that despite the complainant advising that he did not wish to receive any marketing material from Sportsbet and Sportsbet advising the complainant in December 2017, that he would not be contacted by them, this did in fact occur and a short time later the complainant re-opened his account.
45. In April 2018, a similar email offering bonus bets to reopen the account was sent to the complainant which again resulted in the complainant having an active betting account with Sportsbet. In this respect, it may be arguable that that the complainant was not classified as having 'excluded from using' Sportsbet's services on a permanent basis, however even if this were to be the case it is difficult to then argue that the complainant would not have been captured by clause 8.6 of the 2016 Code, in that he was now a non-gambling client.

Non-recording of telephone calls

46. The complainant has advised the Commission in support of his gambling dispute that he had raised concerns about losses and payouts during various online chats and telephone calls with Sportsbet. The Commission's betting inspector sought recordings of the telephone calls made by the complainant, however, Sportsbet were unable to provide these.
47. Sportsbet did provide its list of notes recorded against the complainant which the Commission notes record that telephone conversations between the complainant and Sportsbet occurred on at least five occasions, being:
 - 1 December 2017 - Call - Adv how to verify, Needs to deposit
 - 30 April 2018 - just hung up on hold awaiting response for TL - ph
 - 5 May 2018 - phone: transferred to (deleted)
 - 5 May 2018 - not happy with service \$50bb
 - 15 October 2018 - ph; adv cash card should be delivered by end of week
48. During the period of time to which this gambling dispute relates, Sportsbet in accordance with then condition 19 of its licence were required to ensure that all conversations with customers involving discussions relating to wagers, complaints or disputes, regardless of medium, are recorded on approved recording equipment.

49. It is clear to the Commission that at a minimum, the telephone conversation of 5 May 2018 should have been recorded in accordance with the licence conditions that applied to Sportsbet's sports bookmaker's licence at the time.

Decision

50. The Commission has determined that no legal or policy obligation rested with Sportsbet to undertake any further research or conduct any further checks on the complainant's appropriateness to operate a betting account, other than the initial verification of the complainant's identity and age at the time of the opening of the betting account.
51. It is the view of the Commission however, that it is reasonable in the circumstances, particularly given full knowledge of the complainant's repetitive opening and closing of the betting account and from the inquiries that had been made by Sportsbet, albeit minimal at the time of the sixth reactivation of the betting account as to whether the complainant wished to avail himself of available harm minimisation tools, that a review of the complainant's betting activity should have occurred at the very minimum, prior to the seventh reactivation of the betting account on 12 January 2019.
52. The Commission is also of the view that the sending of marketing material to the complainant with the offer of bonus bets on two occasions shortly after he had requested his account to be closed was not in accordance with the 2016 Code.
53. This being the case, the Commission has determined that Sportsbet did not comply with the 2016 Code (specifically clauses 2.1, 2.3, 3.1, 4.6 and 8.6) and as a result, pursuant to section 80(1)(d) of the Act, failed to comply with then condition 15 of its licence.
54. The Commission is also satisfied on the weight of the evidence before it pursuant to section 80(1)(d) of the Act, that Sportsbet has failed to comply with condition 19 of its licence at the time in that it failed to record at a minimum, the telephone conversation of 5 May 2018.
55. Disciplinary action available to be taken by the Commission for non-compliance with a condition of licence ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.
56. Given that this is the second matter determined by the Commission this year in relation to Sportsbet's non-compliance with the 2016 Code and the number of breaches of the 2016 Code that have occurred in this particular matter, coupled with the separate breach in relation to the non-recording of the telephone conversation of 5 May 2018, the Commission has determined to impose a fine of 85 penalty units, being 50% of the maximum penalty units. As at 1 July 2019, the value of a penalty unit in the Northern Territory is \$157, therefore the fine imposed is in the amount of \$13,345.
57. It also follows that had Sportsbet complied with the Code and observed the red flag behaviours from at least the time of the complainant's request to re-open the betting account for the seventh time on 12 January 2019, it would have necessarily

undertaken a review of the complainant's betting account at that time and not reopened the betting account.

58. The Commission finds that all bets placed by the complainant from 12 January 2019 onwards were in contravention of the Act and Sportsbet's licence condition that required it to comply with the 2016 Code and as such, are therefore not lawful bets pursuant to section 85(1A) of the Act. As a result, the Commission has formed the view that \$1,349.80 should be refunded to the complainant, being the total of monies deposited into the account minus withdrawals made between 12 January 2019 and 17 February 2019.

Review of Decision

59. 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.



Cindy Bravos
Presiding Member
Northern Territory Racing Commission

5 June 2020