

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr R
Licensee:	Betchoice Corporation Pty Ltd - Unibet
Proceedings:	Gambling Dispute for determination by Racing Commission - pursuant to section 85(2) of the <i>Racing and Betting Act 1983</i>
Heard Before: (on papers)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran
Date of Decision:	11 March 2021

Background

1. On 6 June 2019, the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) pursuant to section 85(2) of the *Racing and Betting Act 1983* (the Act) against the licensed sports bookmaker Betchoice Corporation Pty Ltd which operates the sports betting platform Unibet. For ease of reference, the licensee will be referred to as Unibet throughout this decision notice.
2. The substance of the gambling dispute is that following the complainant having his betting account permanently closed at his request on 28 May 2019, he was able to have the account re-opened and deposit monies into it which he then ultimately lost through a series of losing bets. The complainant states that he requested for the account to be re-opened as he saw an email that had been sent to him by Unibet before the betting account had been closed that contained an offer of bonus bets.
3. The complainant further alleges that Unibet failed to meet its responsible gambling obligations to identify red flag behaviours indicative of problem gambling. The complainant submits that these red flag behaviours included increases in bet size and deposit amounts, repeated withdrawal request reversals and repeated requests for bonus bets.
4. Additionally, the complainant has submitted to the Commission that deposit messages he received while logged into his betting account that suggested he should top up his account did not conform with responsible gambling behaviours.
5. The complainant is seeking a refund from Unibet of \$5,678, being all monies that he deposited into the betting account once it was re-opened. In lodging his gambling dispute with the Commission, the complainant has openly admitted that he has difficulty controlling his gambling behaviours and stated that he had originally intended to use the money he had deposited with Unibet for treatment of his gambling addiction and that he hoped Unibet would “...*be compassionate enough to return the funds that were deposited.*”

6. The complainant has also submitted to the Commission that as the Commission (through its betting inspectors' investigations of other gambling disputes lodged by the complainant against a number of other sports bookmakers licensed by the Commission) were aware that the complainant intended to self-exclude from all sports bookmakers, that it should have done more to prevent the financial losses he incurred with Unibet.
7. Information was gathered from each of 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 disputes on the papers.

Consideration of the Issues

Re-opening of Closed Betting Account

8. For many people, gambling is a harmless entertainment. The Commission however, recognises that this is not the case for all people who engage in gambling activity and that in some circumstances, some people are unable to control the urge to gamble despite knowing that it is having a negative impact on their lives. With this in mind and in order to minimise the harm that may be caused by online gambling, the Commission introduced the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (the 2019 Code) which came into effect on 26 May 2019, having replaced the Northern Territory Code of Practice for Responsible Gambling 2016. All Northern Territory sports bookmakers and betting exchanges licensed by the Commission are required to comply with the 2019 Code and are also currently encouraged by the Commission to implement additional harm minimisation strategies not currently contained in the 2019 Code.
9. With respect to the obligation that is imposed on all licensees regarding self-exclusion, the 2019 Code states among other things:

4. Self-Exclusion

Online gambling providers are to make available to any person the option of excluding themselves temporarily or permanently from the provider's gambling service and ensure information on how to self-exclude is available on their website and other platforms utilised by their customers.

10. The complainant has submitted to the Commission that as he requested that his account be permanently closed, Unibet should not have allowed him to re-open it given its obligations to comply with the 2019 Code.
11. The Commission has examined a number of emails and Live Chat records that took place between the complainant and Unibet, as well as listened to a number of phone call recordings that relate to the closing and re-opening of the complainant's betting account with Unibet and notes that on 5 June 2019:
 - The complainant contacted Unibet via Live Chat and requested that his account be permanently closed as he had not received any additional bonus bets that he had requested. The complainant stated that it was "...a shame though because I do like your platform best";

- Unibet immediately closed the account;
 - The complainant expressed surprise at the closure of his account and indicated that he thought that his request for bonus bets would be followed up rather than his account being immediately closed on a permanent basis;
 - The complainant then stated that he had just meant to close his account to which Unibet advised that it takes responsible gambling seriously and it had closed his account permanently at the complainant's request;
 - The complainant then stated that *"it has nothing to do with responsible gambling though"; "I didn't ask to be self excluded"; and "I'm sure you can appreciate i never requested for self exclusion"*;
 - The Unibet representative advised that he could not re-open the account but that he would escalate the complainant's request to do so to the Unit's Responsible Gambling manager.
12. The above Live Chat conversation followed an email exchange between the complainant and Unibet in which the complainant was advised, following a request for bonus bets, that Unibet would not offer him any further bonus bets at that time. In response, the complainant advised Unibet to close his account as he would deposit monies elsewhere if Unibet was not prepared to offer reasonable bonuses for his deposit history. The complainant was advised that his request had been escalated within Unibet however, prior to the complainant receiving an email in which he was offered \$200 in bonus bets, the complainant made contact with Unibet via Live Chat as detailed at paragraph 11 above and requested that his betting account be closed.
13. It is after the complainant received the offer of the \$200 in bonus bets that he made contact with Unibet to request that his account be re-opened. The betting account was eventually re-opened following a number of telephone calls initiated by Unibet in which the reason for the initial closure of the account was discussed. The complainant again reiterated that his request for the account to be closed was based on wanting bonus bets and not due to any responsible gambling concerns.
14. Having reviewed the various interactions between the complainant and Unibet, it is clear to the Commission that the complainant did not make a request to be self-excluded from the Unibet betting platform as claimed when lodging his gambling dispute with the Commission. Rather, the complainant attempted to coerce Unibet simultaneously via Live Chat and email to provide him with bonus bets and in doing so, had his account closed prior to the offer of bonus bets being provided. Upon providing advice that he had never wished for his account to be closed on the basis that he was problem gambler, the complainant's account was re-opened.

15. The Commission also notes that contrary to the complainant's original submission to the Commission, the account was closed and re-opened on 5 June 2019 and not 28 May 2019 as claimed. This is an important factor, given that the complainant submitted that he had deposited \$5,678 into his betting account between the time that he had first requested the account to be closed and the time that Unibet closed the account permanently following the receipt of an email from the complainant dated 6 June 2019 in which he stated he was a problem gambler. Having reviewed the complainant's betting account records, the Commission notes that \$75 was deposited into the account during this period and not \$5,678 as claimed by the complainant.

Red Flag Behaviours

16. The complainant has submitted to the Commission that Unibet failed to identify that he was a problem gambler despite the fact that there was an increase in the size of bets he placed, an increase in the amounts of monies he deposited into his betting account, repeated withdrawal request reversals and repeated requests for bonus bets.
17. With respect to the obligation that is imposed on all licensees regarding identifying red flag behaviours, 2019 Code states among other things:

3.2 Recognising potential problem gamblers

Where appropriate, a customer who displays some, or a number, or a repetition of red flag behaviours should be monitored by an online gambling provider and appropriate customer interaction should take place to assist or protect that customer which reasonably corresponds to the circumstances. Online gambling providers should ensure responsible gambling policies and procedures are in place to allow staff to detect and assist customers who may be experiencing problems with gambling.

18. The Commission has detailed in the 2019 Code that problem gambling red flag behaviours may include, but are not limited to gambling for an extended period; changing gambling patterns; increase in deposit frequency; escalating sums of money deposited; thinking they can control outcomes or believes myths; accusing an online gambling provider of changing payouts or rigging systems; admissions of being drunk or under the influence of other drugs; exhibiting signs of distress such as crying or swearing; expressing guilt or remorse for gambling; verbally abusing staff; threats to property or staff; remarks that may indicate serious overspending; repeatedly commenting about family problems; showing concern about losses and payouts; indicating they need a break from gambling; repeatedly self-excluding from gambling and/or disclosing problems with gambling.
19. The indicia of problem gambling tend to be heterogeneous and so are the harms a person can suffer if they are experiencing issues associated with their gambling behaviour. Given this, the Commission has mandated that all licensees should provide appropriate training so as to ensure that all staff have a reasonable understanding of problem gambling and be aware of what signs might indicate which of their customers are experiencing difficulties.

Increase in Deposits

20. The complainant has submitted to the Commission that during the period from 6 March 2019 when the betting account was opened until 1 May 2019, he made a total of 12 deposits totalling \$670, with the largest of these deposits being \$200. The complainant further submitted that his deposit activity then significantly changed and during the period from 28 May 2019 through to 5 June 2019, he made 13 deposits totalling \$5,698.87, with the largest of these deposits being \$2,000.
21. Having reviewed the complainant's Unibet betting account records, the Commission notes that they accord with the complainant's submissions. It is clear from these records that on 28 May 2019, the complainant's deposit activity changed in that on this day alone he made eight separate deposits totalling \$5,353 with three of these deposits being \$2,000, \$1,100 and \$1,000 respectively. While multiple deposits on the same day was not unusual activity for the betting account, the size of the deposits was. The Commission notes that the deposit activity on the account after 28 May 2019 then reverted to a similar pattern as to the earlier activity on the account.

Increase in Bet Size

22. The complainant has submitted to the Commission that there was a significant "...spike in betting..." in the weeks prior to the Unibet account being closed permanently. The complainant has submitted that the types of bets that he was placing were "...\$800 exactas, \$1000 bets etc are very exotic and extravagant bets based on their nature of being an exotic bet meaning the probability of hitting them is much lower...Based on some of my bets being manually reviewed I find it hard for them to argue that such bets weren't significantly larger than my history with them suggests."
23. Having reviewed the complainant's betting records, the Commission notes that between 6 March 2019 and 27 May 2019, the complainant placed numerous bets with stakes ranging widely from \$1 to \$600 and that between 28 May 2019 through to 6 June 2019, the bets stakes ranged between 37 cents and \$1,380. The type of bets placed during these two periods also ranged widely from Win and Place bets through to multi bets, Quadrella, Exacta and Exotic bets.
24. On 28 May 2019 being the day on which the complainant had made deposits into his betting account to the value of \$5,353, the Commission notes that the complainant placed 12 bets on sports to the value of \$5,200, all of which were losing bets. On this same day, the complainant placed a mixture of 42 winning and losing bets on racing to the value of \$20,709.92 which resulted in winnings of \$21,213.34, making an overall profit on his racing bets of \$503.42 but an overall loss of \$4849.58 for his combined betting for the day.
25. Unibet has advised the Commission that up until the complainant's increase in deposits on 28 May 2019, the turnover of the betting account was \$15,000 and that between 28 May 2019 until the permanent closure of the account on 6 June 2019, the turnover of the betting account was some \$61,000.

Repeated Withdrawal Request Reversals

26. The complainant has submitted that he reversed withdrawal requests repeatedly and that on 3 and 4 June 2019 he reversed 10 withdrawal requests due to losing the remainder of his balance.
27. Having reviewed the complainant's betting account, the Commission notes that prior to 3 June 2019, the complainant had made no withdrawal requests on his account, rather any winnings made were re-bet. On 3 June 2019, the complainant made four withdrawal requests valued at \$420 of which he on the same day, later reversed three of the withdrawal requests to the value of \$400. On 4 June 2019, the complainant made six withdrawal requests with a total value of \$4,312, all six of which he later cancelled on the same day.
28. As the complainant has submitted, each of these cancelled withdrawals appears to have occurred when the complainant's balance had been depleted through the placement of losing bets. Once the withdrawal reversal was credited back into the complainant's account, he then used these funds to place more bets. The complainant did not request any further withdrawals up until his account was closed two days later despite having at one time having had a balance of over \$400. Rather as per his previous betting patterns, the complainant used any winnings to place further bets.

Repeat Requests for Bonus Bets

29. The complainant has submitted that a further indicator that should have caused Unibet to recognise that he was a problem gambler was his repeated requests for bonus bets. In this respect the complainant submitted that:

I started contacting the bookmaker multiple times a day via Live Chat requesting that they offer me deposit bonuses and referred them to my past history betting elsewhere as a V.I.P member where I showed them statements of me depositing up to \$40,000 a month with one bookmaker and \$123,000 over the course of 2 years with another. They were quick to offer me some bonus bets and deposit bonus offers due to my huge increase in deposits around \$6000 in just one week.

After I had lost these bonuses I then requested more bonuses multiple times again, contacting them multiple times a day, in which they gave me more bonuses.

30. Having reviewed Live Chats and emails between the complainant and Unibet, the Commission notes that the complainant either made a request for bonus bets or queried the rules that applied for various bonus bets on offer on:
- (i) 6 March 2019;
 - (ii) 14 April 2019;
 - (iii) 1 May 2019;
 - (iv) 4 May 2019;
 - (v) 29 May 2019 (several times);
 - (vi) 4 June 2019 (several times); and

(vii) 5 June 2019 (several times).

31. Unibet has submitted to the Commission that in this respect of the complainant's submissions regarding requests for bonus bets that, "...the level of bonuses being sought in relation to the level of deposits is not unreasonable and in line with those offered to other similar depositing customers."

Analysis

32. The Commission's role in dealing with a gambling dispute 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.
33. It is clear to the Commission having reviewed the complainant's betting account with Unibet, that he was an experienced and sophisticated gambler who at times was quite successful, having won close to \$70,000 during the life of the betting account.
34. It is also apparent however that it was not clear to the complainant when enough was enough and that he was unable to recognise when he should have withdrawn his winnings (or accepted his losses) and walked away. It is important to note however, that the Commission's assessment in this regard is with the benefit of hindsight and the ability to critically and objectively examine all available records as a whole.
35. The Commission is of the view that up until 28 May 2019, there was nothing significant about the complainant's betting activities that would have required Unibet to examine his activities in more detail to ascertain if he was suffering from any harms caused by his betting activity.
36. The Commission is minded however, to consider that the complainant's activities on 28 May 2019 should have prompted some inquiry to be undertaken by Unibet to ascertain whether the complainant was betting within his means. Having said that though, it is apparent to the Commission having viewed various Live Chat and email conversations between the complainant and Unibet in which the complainant has stated that he had deposited up to \$40,000 a month with other sports bookmakers and provided Unibet with bank statements to verify his claims as well as his statements detailed at paragraph 11 above regarding his request to close his account with Unibet having nothing to do with responsible gambling, that had Unibet undertaken any inquiries with the complainant, it is highly likely that the complainant would have disputed that he was experiencing any harms from his betting activity.

37. It is well established that the Courts have set a very high threshold of responsibility for the gambler as to their own actions. It is suggested that only in the most extreme cases of deliberate and gross conduct by the operator who has knowledge of the vulnerability of the problem gambler, that there would be any duty owed to prevent loss. With this in mind, the Commission has formed the view that while the lack of contact being made with the complainant by Unibet as a result of his increased deposit and betting activity on 28 May 2019 may warrant a warning from the Commission to Unibet to review its red-flag trigger alerts so that activity such as this would prompt an interaction between Unibet and its clients in the future, the Commission is not minded to find that Unibet was in breach of the 2019 Code nor that the bets struck from 28 May 2019 until the complainant's betting account was closed were not lawful.

Deposit Messages

38. The complainant has submitted to the Commission that deposit messages he received while logged into his betting account that suggested he should top up his account did not conform with responsible gambling behaviours.
39. In support of this submission, the complainant has provided the Commission with a screen shot of a deposit message that he received while logged into Unibet. The message which is personalised through the use of the complainant's first name states that "*Your balance is running low. Would you like to top up with a deposit.*" The message then provides the option to click on a 'deposit' or 'cancel' icon. The message also has the option to click on a check box which provides the recipient with the option not to see the message again. From the screenshot, it would appear that the complainant's balance at the time the message was received was zero.
40. The 2019 Code states that all sports bookmakers and betting exchange operators licensed by the Commission must ensure that any advertising or marketing must be delivered in an honest and responsible manner with consideration given to the potential impact on people adversely affected by gambling.
41. From the evidence before it, it is unclear to the Commission as to whether the complainant was attempting to place a bet at the time that the deposit message was displayed. If this was the case, the Commission is not of the view that the deposit message was inappropriate given that receiving a message to say that you have insufficient funds to complete a transaction is not an uncommon occurrence across many industries when transacting online.
42. However, the Commission does have some concerns if the message was automatically generated as a result of the complainant's account balance reaching zero. If this was the case, the Commission is of the view that this type of approach to encourage the depositing of monies into a betting account when the balance reaches zero would not conform with the Commission's expectations in relation to licensees providing an environment that encourages responsible gambling.
43. Given the uncertainty as to the activity being undertaken by the complainant at the time when the deposit message was received, the Commission has determined not to take any further action however, it does expect that Unibet will ensure that messages of this nature are not automatically sent to its customers simply because their betting account balance has reached zero.

Commission's Role re Self-Exclusion

44. As detailed in the background to this gambling dispute, the complainant has submitted to the Commission that as the Commission (through its betting inspectors' investigations of other gambling disputes also lodged by the complainant) were aware that the complainant intended to self-exclude from all sports bookmakers, that it should have done more to prevent the financial losses that he incurred with Unibet as a result of his betting activity.
45. As outlined earlier in this decision notice, all sports bookmakers and betting exchange operators licensed by the Commission must provide both its customers and non-customers with the option to self-exclude from using their gambling services. To further assist those persons who may be at risk of harm as a result of their betting behaviours, the Commission (through the administrative support provided to it by Licensing NT officers) provides a service by way of which a person wishing to self-exclude from one or more sports bookmakers or betting exchange operators may submit a self-exclusion form directly with Licensing NT rather than making contact with each of those sports bookmakers or betting exchange operators themselves. Officers from Licensing NT will then facilitate the self-exclusion request by distributing the form directly to the nominated licensees.
46. The Commission has reviewed correspondence between officers of Licensing NT and the complainant and notes that Licensing NT officers actively and repeatedly encouraged the complainant to take up the option for Licensing NT to facilitate his self-exclusion with all sports bookmakers licensed by the Commission, starting some three months prior to the events that are subject of this gambling dispute occurring. Throughout this time, the complainant did not choose to avail himself of the self-exclusion facilitation service provided by Licensing NT.
47. The Commission notes that it was not until 8 June 2019 that the complainant finally signed a self-exclusion form that allowed officers from Licensing NT to facilitate the complainant being self-excluded from all sports bookmakers licensed by the Commission and as such, cannot agree with the complainant's submission that more should have been done by the Commission and/or officers of Licensing NT to prevent the losses occasioned as a result of the complainant's betting activity with Unibet.

Decision

48. Section 85 of the Act provides the Commission with the jurisdiction to determine all gambling disputes between a sports bookmaker and its customer regarding lawful betting. In this respect, section 85 sets out the decision making regime for the making of a determination by the Commission as to whether the disputed bet is lawful and provides that a person may take legal proceedings to recover monies payable on a winning lawful bet or for the recovery of monies owed by a bettor on account of a lawful bet made and accepted.
49. On the evidence before it, the Commission is satisfied that during the betting activity participated in by the complainant between 28 May 2019 until 6 June 2019 when the betting account was closed, there are no indicators to the Commission that Unibet was in breach of the Act, its licence conditions or the 2019 Code. As a result, the Commission has determined that all bets struck during the life of the complainant's betting account with Unibet are lawful and that all of the complainant's resulted bets win or lose, should stand. Given this, the Commission is not of the view that the complainant is entitled to receive a refund of the deposits he made into the account from 28 May 2019 onwards.
50. While making this determination and as detailed at paragraph 37 above, the Commission does recommend to Unibet that it should examine its red-flag detection algorithm processes with a view to improving them so as to be also able to detect increases in deposit and betting behaviours such as has been discussed in this decision notice.

Review of Decision

51. 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

11 March 2021