

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr H
Licensee:	Hillside (Australia New Media) Pty Ltd - Bet365
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 Mr Allan McGill
Date of Decision:	15 June 2021

Background

1. On 4 December 2019, pursuant to section 85(2) of the *Racing and Betting Act 1983* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, Hillside (Australia New Media) Pty Ltd (Bet365).
2. The substance of the gambling dispute lodged by the complainant is that Bet365 failed to identify that the complainant's betting account activity was activity of sufficient nature to raise concerns that the complainant may be experiencing harm as a result of his gambling. The complainant has submitted that this activity included increased deposit frequency and amounts, failed deposits, cancelled withdrawals and numerous complaints to Bet365 at times when the balance of his betting account was almost at zero.
3. The complainant has submitted to the Commission that while using his Bet365 betting account, he placed millions of dollars' worth of bets and lost in excess of \$100,000. The complainant states that during the six month period between January 2018 and July 2018 alone, he lost approximately \$70,000 to \$80,000 and has suggested to the Commission that given that his annual salary was \$80,000, Bet365 should have made contact with him in relation to the increase in his bets and deposits during this period.
4. The complainant has further submitted that while he had used a number of the responsible gambling tools made available to him by Bet365 such as setting of deposit limits and taking a break from gambling, Bet365 did not make contact with him once he ceased to use these tools to ascertain that he was not experiencing harm from his gambling activity.
5. Additionally, the complainant has submitted to the Commission that when he did close his betting account with Bet365, he was not asked why he was closing his account with Bet365 nor was he offered any information on gambling help services that are available to support people who may be affected by their gambling activities.

6. Information was gathered from the parties involved by Licensing NT officers appointed as betting inspectors by the Commission. Subsequently, the Commission determined that there was sufficient information before it to consider the gambling dispute on the papers.

Consideration of the Issues

Code of Practice

7. 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). 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. As the complainant's betting account with Bet365 was opened in 2015 and subsequently closed on 2 July 2018, the 2016 Code applied to the activities of the complainant and Bet365 during this period.
8. 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 are at risk of harm, attempts should be made by all sports bookmakers to reduce harm at the earliest opportunity.
9. 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. In relation to identifying red flag behaviour, 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.
10. It is clearly apparent that a sports bookmaker customer who is experiencing or at risk of harm associated with gambling will not necessarily 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 are at risk of harm associated with gambling so as to be able to intervene at the earliest opportunity.

Increased Deposit Frequency and Amounts

11. The Commission has reviewed the betting activity of the complainant during the life of his betting account with Bet365 as well as a number of telephone conversations between the complainant and Bet365 representatives and notes that at least for a period of time during which the complainant was a customer of Bet365 he was at the very minimum, a prolific gambler given that he placed bets to the value of just over \$4.9 million during that time.
12. However, it also relevant to note that from those bets, the complainant also won just over \$4.8 million during that same period of time. It is clearly evident from the complainant's betting records that he actively chose to continue to bet with these winnings rather than electing to realise the profits made at various times by withdrawing those winnings from the account (the complainant withdrew just over \$45,000 from the account during the life of the account). Taking into account those winnings, the overall outcome of the complainant's betting activity with Bet365 from the time the account was opened until it was closed some three years later, resulted in losses to the complainant of just under \$85,000.
13. The complainant has submitted that during the six month period between January 2018 and July 2018 alone, he lost approximately \$70,000 to \$80,000 and has suggested to the Commission that given that his annual salary was \$80,000, Bet365 should have made contact with him in relation to the increase in his bets and deposits during this period. In this respect it is relevant to note that the complainant's betting records show that he deposited nearly \$130,000 into his Bet365 betting account during the three year life of the betting account.
14. Having reviewed the complainant's betting records, the Commission notes that the following deposit and withdrawal activity occurred during the six month period between January 2018 and July 2018:

Month	Deposits *	Withdrawals
January 2018	11 Deposits = \$5,150 (\$100, \$250, \$250, (\$100, \$150), (\$850, \$1000)(\$1,000, \$800), \$500, \$150	Nil
February 2018	8 Deposits = \$9,511 \$1000, \$1000, \$1000, \$1,000, (\$800, \$311, \$400), \$4,000,	Nil
March 2018	8 Deposits = \$3,715 (\$50, \$15), \$500, \$1500, \$500, \$100, \$50, \$1000	3 withdrawals = \$840 \$240, \$450, \$150
April 2018	3 Deposits = \$15,000 \$5000, (\$5000, \$5000)	20 Withdrawals = \$15,700 \$1400, \$500, \$600, \$300, \$300, \$600, \$1900, \$1100, \$300, \$600, \$500, \$900, \$700, \$600, \$500, \$500, \$900, \$700, \$2000, \$800

Month	Deposits *	Withdrawals
May 2018	9 Deposits = \$28,500 (\$1800, \$7500, \$1000), \$200, \$5000, \$5000, \$5000, \$2000, \$1000	3 Withdrawals = \$3,500 \$2000, \$1200, \$300
June 2018	16 Deposits = \$16,995 \$300, \$600, (\$700, \$500), (\$500, \$150, \$50), \$120, \$1000, \$900, (\$750, \$300), (\$500, \$500, \$125), \$10,000	Nil
July 2018	Nil	Nil
TOTAL	\$78,871	\$20,040

* Each set of bracketed amounts occurred on the same day

15. Over the six month period above, the Commission notes that deposits ranged widely from \$15 to \$10,000 however, it must also be noted that the last \$10,000 deposit made by the complainant occurred on 29 June 2018, being the last day that the complainant deposited monies into his Bet365 betting account.
16. The Commission, has reviewed the activity on the complainant's betting account prior to this time and notes that the complainant made the following deposits and withdrawals:

Year	Number of Deposits	Deposit Value	Withdrawal Value
2015	39	\$2,092	\$400
2016	95	\$10,345	\$3,580
2017	32	\$38,440	\$21,245
2018	55	\$78,871	\$20,040
TOTAL		\$129,748	\$45,265

17. Individual deposits ranged in value from \$10 on 21 August 2015 when the account was first opened through to an increase to \$1,000 deposits commencing on 8 September 2016 and then a wide range of deposits ranging in value from \$2,000 through to \$5,000 in September 2017. The complainant's deposit activity continued to vary significantly between each deposit from this time onwards, ranging from \$15 to \$7,500 prior to the last deposit of \$10,000 made into the account.

Increased Bet Size

18. During the six month period between January 2018 and July 2018, the complainant placed a significant number of winning and losing bets with a wide variety of stakes ranging in value from \$1 to \$10,000.

19. Having reviewed the complainant's betting account since its opening, the Commission notes that from the time that the complainant placed his first bet of \$10 on 11 August 2015, the complainant's bet size gradually increased through the life of the account. In 2015 and 2016, the complainant placed numerous bets including an occasional \$500 bet up until September 2016 where it was then not unusual for the complainant to regularly place bets up to the value of \$1,000. This pattern continued up until July 2017 during which it was not unusual for the complainant to be placing bets up to the value of \$2,000 to \$3,000. Again this pattern continued up until August 2017 where he placed a winning bet of \$6,000 that returned a payout of \$8,280. During that same month, the complainant's bet sizes continued to gradually increase up to where a bet of between \$5,000 to \$10,000 was not unusual.

Failed Deposits

20. The complainant has submitted that he made several deposits to his betting account which were declined by his bank. He has submitted that this and the fact that he used multiple cards to deposit money should have indicated to Bet365 that he was at risk of experiencing harm from his gambling.
21. Bet365 has advised the Commission that upon reviewing the complainant's deposit history, that during the lifetime of the account there were 51 failed deposits. Of these failed deposits, 34 were due to an incorrect CV2 being input or card expiry date; 5 were due to the deposit card being used being a gaming restricted card; and 12 were due to the bank declining the purchase (being the deposit into the betting account).
22. Specifically in 2018, the complainant had 32 failed deposits, of which only 4 were declined by his banking provider, all others were due to incorrect CV2, Expiry Date or attempted use of a gaming restricted card. Bet365 has expressed a view that with respect to the deposits declined due to an incorrect CV2 that the complainant was simply confusing the CV2 codes for the cards that he had recorded on his account. For example, the complainant used two different cards during 2018 and there is a very clear pattern of the deposit being declined and then authorised shortly after.
23. The Commission has reviewed the deposit records supplied to it by Bet365 and has verified that Bet365's assertions regarding a deposit being declined due to an incorrect CV2 was in most cases then followed by an authorised deposit due to a correct CV2.
24. Bet365 has also advised the Commission the bank does not specifically tell it that a customer's deposit has been declined for lack of funds, although Bet365 has admitted that where CV2/Expiry Date has been matched and the card is eligible for gambling transactions that it is possible to speculate that the reason is lack of funds.

Cancelled Withdrawals

25. As indicated earlier, the Commission has reviewed the complainant's betting records with Bet365. Having done so it notes that the complainant reversed several withdrawal requests over the life of the betting account however, in 2018 the complainant only reversed one withdrawal request for \$500. The Commission notes that the complainant also successfully withdrew \$600 on this same day.

26. As such, the Commission is not of the view that the complainant's cancelled withdrawal history would or should have been identified by Bet365 as a red flag either by itself or when considering the cancelled withdrawals in a wider assessment of the complainant's betting activity.

Complaints to Bet365 when balance was almost zero

27. The complainant has submitted that his complaint history with Bet365, alongside his betting and deposit activity should have caused Bet365 to intervene and "...help me identify I had a gambling addiction and in the process save me a significant amount of the money I lost." The complainant has submitted that in his view, the complaints that he made were a sign of distress and concern about his losses especially as he was very particular about wanting a cash refund as opposed to a bonus bet.
28. The complainant has submitted that he made several complaints to Bet365 about the bets he had made including about the price offered, time of live bets being placed, cash out facilities not providing correct payouts and lack of information provided by the Bet365 App prior to placing bets. The complainant submits that most of these complaints were made off the back of losing bets and when his account balance was nearly at zero. The complainant states that Bet365 did not make any inquiries at these times to ascertain whether he was having any issues with his gambling.
29. Bet365 has advised the Commission that the complainant made eight customer service contacts with Bet365 over a 13 month period, of which seven of these contacts were complaint related. Of these seven complaints, there were three occasions where the complainant's balance was less than \$10 while the other four occasions were when the complaint had a balance ranging from \$158 through to \$2,678.
30. The Commission notes that the complainant has betting history where he places bets at very short odds. Bet365 has submitted that it is for this reason that Bet365 offered account credits rather than bonus bets when resolving the complaints. In this respect, Bet365 has advised that this is because returns from a bonus bets do not include the initial stake so if the complainant was offered a \$100 bonus bet and used the bonus bet in the same manner as his normal betting behaviour, due to the short odds he would only receive \$1-\$5 if the bonus bet was a winning bet. Bet365 therefore decided to credit a cash sum to the betting account so that the resolution of the complaint reflected the value of the amount in dispute.

Cessation of Use of Responsible Gambling Tools (no contact made)

Self-Exclusion

31. The complainant has submitted to the Commission that that while he had used a number of the responsible gambling tools made available to him by Bet365 such as setting of deposit limits and taking a break from gambling, Bet365 did not make contact with him once he ceased to use these tools to ascertain that he was not experiencing harms from his gambling activity.

32. With respect to taking a break from gambling, the complainant initially submitted that he had self-excluded from Bet365 however, this was later clarified to be that the complainant had taken a break from gambling with Bet365 for various periods in 2015, 2016 and 2017 by deleting the Bet365 betting App from his mobile phone and not contacting Bet365 by phone to place a bet.
33. Bet365 has confirmed that while there were periods of inactivity on the complainant's betting account, the complainant did not formally self-exclude himself from betting with Bet365.
34. Given this, while the complainant's actions to stop gambling for periods of time with Bet365 through deleting its betting App demonstrate to the Commission that the complainant was showing initiative to control his betting activity, the Commission cannot form the view that there is any substance to the complainant's claim that Bet365 should have made contact with him after his periods of not betting with Bet365 given that it would not have been aware that the complainant had determined to actually take a break from gambling with it.

Deposit Limits

35. Bet365 records show that on 16 October 2017, the complainant set a 30 day deposit limit of \$100 on his Bet365 betting account. On 1 November 2017, the complainant sought to have this deposit limit increased to \$5,000. As there is a 7 day cooling off period before deposit limit changes become effective, this change did not come into effect until 8 November 2017 following the complainant confirming that he wished to increase his deposit limit.
36. On 18 January 2018, the complainant again requested to increase his deposit limit from \$5,000 to \$1,000,000. This change came into effect on 25 January 2018 after the complainant again confirmed that he wished to increase his deposit limit after the 7 day cooling off period expired.
37. The complainant has submitted to the Commission that he "*... lifted this limit at a time after placing it that I had run out of money in my account. In my opinion if a company is acting responsibly any client that has imposed limits should raise some sort of concern especially in my case where spending significantly increased after this period had ended. [T]his was not the case.*"
38. In response to this gambling dispute, Bet365 has advised the Commission that the use of deposit limits is monitored through its responsible gambling measures however, three deposit limit changes over a three month period would not be considered excessive and would not trigger an alert. Bet365 advised that this is due to Bet365 monitoring the number of changes rather than a change in the value of the deposit limits.

Analysis

39. It is not a matter for the Commission to comment on the size of the bets placed by the complainant nor on his betting activities in totality. The complainant is responsible for his own betting activity albeit that in this case, the resultant overall betting wins and losses to many would seem excessively large given that over a three year period the complainant placed some \$4.9 million in bets (and won

\$4.8 million during this same time). While the complainant was at times quite successful in his betting activities, he did not elect to withdraw many of the winnings realised, but rather chose to utilise these winnings to undertake further betting activity which was ultimately unsuccessful.

40. For many people, gambling is a form of entertainment which is fun and exciting as there is a chance to win big money however as previously noted by the Commission, an inherent risk that cannot be avoided in the activity of gambling, is a loss of money. In previous decisions, the Commission has also noted 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.
41. With this in mind, the Commission also notes that betting activity is rarely linear or metronomic. As a result, there can be significant deviations in the amount deposited and wagered by the same customer from one day, month or year to the next. It is clear from a review of the complainant's betting activity with Bet365 that that the complainant's betting activity, both in value and volume did increase over the lifetime of his betting account. These increases in deposits and bet sizes as well as wins and losses, occurred relatively gradually and as such did not trigger any of Bet365's responsible gambling alerts.
42. With respect to the complainant's assertions relating to a significant number of failed deposits the Commission notes that as discussed at paragraph 24 above, that of these failed deposits only 4 were declined by the complainant's banking provider in 2018, presumably due to a lack of funds. Given this, the Commission is not minded to consider this a behaviour that identified the complainant to be at risk.
43. The same can be said with respect to the complainant's cancelled withdrawal history in that the Commission does not consider that it would or should have been identified by Bet365 as a red flag either by itself or when considering the cancelled withdrawals in a wider assessment of the complainant's betting activity.
44. In considering the complainant's complaint history with Bet365, the Commission notes that it is only in very rare circumstances where a customer of a gambling service will complain about having had a successful winning bet or bets. As such, it is not at all surprising that the complainant's complaints to bet365 were as a result of losing bets that he had placed. The Commission also accepts the submission by Bet365 as to why some of the outcomes of these complaints resulted in crediting the complainant's account rather than providing bonus bets.
45. With respect to the complainant's assertion that Bet365 should have intervened when he stopped using the responsible gambling tools available to him, as discussed at paragraph 36 above while the complainant's actions to stop gambling for periods of time with Bet365 through deleting its betting App demonstrate to the Commission that the complainant was showing initiative to control his betting activity, the Commission cannot form the view that there is any substance to the complainant's claim that Bet365 should have made contact with him after his periods of not betting with Bet365 given that it would not have been aware that the complainant had determined to actually take a break from gambling with it.

46. The Commission also accepts Bet365's submission that while the use of deposit limits is monitored through its responsible gambling measures, three deposit limit changes over a three month period would not be considered excessive and would not trigger an alert.
47. The Commission's role in dealing with gambling disputes 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. With this in mind, the Commission is unable to come to the view, even with the benefit of hindsight, that the complainant's betting activity should have triggered as red flag behaviours that should have resulted in Bet365 intervening in the complainant's gambling activity to ascertain whether the complainant was experiencing harm from his gambling.
48. The Commission also recognises that the complainant's betting activity occurred between 2015-2018. Since this time, the Commission is aware that the sports bookmakers licensed by it have significantly extended the behavioural indicators used to identify customers who are potentially at risk and as a result, identifying red flag behaviour is becoming more personalised and proactive through more advanced technology driven player protections.
49. The complainant also submitted to the Commission that when he did close his betting account with Bet365, he was not asked why he was closing his account with Bet365 nor was he offered any information on gambling help services that are available to support people who may be affected by gambling activities.
50. Having listened to the telephone recording of the call in which the complainant sought to be permanently self-excluded from Bet365, the Commission finds no evidence to validate the complainant's assertions in this regard. The complainant acknowledged that he was closing his betting account due to his concerns about his gambling activities. The complainant was provided with the contact details of Gambling Help Online and actually stated to the Bet365 representative that he already had these details. As a result, this aspect of the complainant's dispute is unsubstantiated.

Decision

51. On the weight of evidence before it, the Commission is of the view that with respect to the betting activity participated in by the complainant with Bet365 between 2015 through to 2018, there are no indicators to the Commission that Bet365 breached the Act, its licence conditions or the 2016 Code. The duty to cease gambling rested with the complainant and not Bet365, despite the fact that the complainant ultimately suffered economic loss.
52. The Commission is of the view that the complainant has clearly suffered from a case of gambler's remorse following betting activity that resulted in an overall loss, and it would be unreasonable for the Commission to form the view that Bet365 is now responsible for those losses.

53. As a result of these findings, the Commission has determined that all bets made by the complainant through the lifetime of his betting account were lawful bets as defined under the Act and as such is not of the view that Bet365 should now reimburse the complainant for any of the bets that he made with it.
54. As detailed at paragraph 52 above, the Commission has also determined that the complainant's assertion that when he did close his betting account with Bet365, he was not asked why he was closing his account with Bet365 nor was he offered any information on gambling help services that are available to support people who may be affected by gambling activities is unsubstantiated.

Review of Decision

55. 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

15 June 2021