

NORTHERN TERRITORY RACING COMMISSION

DECISION NOTICE AND REASONS FOR DECISION

LICENSEE: Betfair Pty Ltd

MATTER: Investigation by the Northern Territory Racing Commission
(Concerning Dealings with Gambler – Mr A)

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

DATE OF DECISION: 24 June 2024

DECISION

1. For the reasons set out below, the Northern Territory Racing Commission (**the Commission**) is satisfied that Betfair Pty Ltd (**Betfair**) contravened condition 15 of its licence, because it did not comply with clause 3.2 of the Northern Territory Code of Practice for Responsible Service of Online Gambling 2019 (**the Code**) when it failed to identify and take action in relation to problem gambling red flag behaviours (being a significant increase in deposits and an unusually large exposure to a single betting contingency).
2. Disciplinary action available to be taken by the Commission against a betting exchange operator licensed by it ranges from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units, or suspending or cancelling the betting exchange licence. The Commission has determined that it is appropriate in this matter to take disciplinary action against Betfair pursuant to section 109V of the *Racing and Betting Act 1983* (**the Act**) by imposing a fine equivalent to 153 penalty units, or 90% of the maximum penalty of 170 penalty units. In October 2020, the value of a penalty unit was \$158.00 and so 153 penalty units is equivalent to \$24,174.00.

REASONS

Introduction

3. The Commission first granted a licence to Betfair to conduct the business of a betting exchange operator pursuant to section 109C of the Act in September 2016, and Betfair's current licence expires on 30 June 2024.
4. The Commission provides practical guidance to the betting exchanges it licences on matters relating to the Act through the approval of Codes of Practice. The Code, which came into effect on 26 May 2019, was approved by the Commission to provide guidance on responsible gambling practices that must be implemented by betting exchanges and sports bookmakers so as to minimise the impact of any harms that may be caused by online gambling. The Act and the licence conditions attached to all betting exchange licences

granted by the Commission require betting exchanges to adhere to any Codes of Practice approved by the Commission.

5. On 28 March 2021, the Gambler lodged a dispute with the Commission under section 109Y(2) of the Act against Betfair.
6. While the Commission investigation into the dispute was underway, the Gambler and Betfair advised that they had settled the dispute between themselves on confidential terms and without admission of any liability.
7. Although the Commission was pleased that the dispute was resolved between the parties, the Commission determined that it would continue to investigate the matters the subject of the dispute using the Commission's general power of investigation, given the subject matter of the original dispute.
8. These findings are based on the material contained in the submissions to the Commission by both Betfair and the Gambler and on materials obtained by the Commission during the course of its investigation.
9. To ensure procedural fairness, the Commission provided a draft of its initial findings to Betfair, seeking any comments that it wished to make in relation to the findings. Betfair has confirmed that it has accepted the Commission's findings, that Betfair did not meet the obligations that are set out in Clause 3.2 of the Code in respect of the Gambler, and that Betfair will promptly pay the fine imposed by the Commission. Betfair has also stated that it has since made some significant changes to its responsible gambling processes and reporting. Other comments by Betfair have been taken into account when finalising these reasons for decision.

Background

10. The Gambler opened a betting account with Betfair on 23 October 2020. Although he was prompted to set a deposit limit when he opened his account, he elected not to do so.
11. In the approximately seven-week period from 23 October 2020 to 14 December 2020, the Gambler made a total of 27 deposits, with daily deposit sizes ranging in size from \$2,000.00 to \$200,000.00. These deposits totalled some \$697,000.00. He placed a total of 40 bets totalling \$693,000.00 during this period, all of which required Donald Trump to be elected as President of the United States of America in order to be winning bets.
12. On 23 October 2020, the Gambler made three deposits of \$50.00, \$200.00, and \$3,000.00, and on 24 October 2020, his four deposits were \$5.00, \$9,950.00, followed by two deposits of \$30,000.00 each. On 25 October 2020, he made three deposits of around \$30,000.00 each, totalling \$92,000.00 for the day. In the days following, other deposits were made, and on 30 October 2020, the Gambler deposited a total of \$200,000.00 in four equal deposits, the largest amount of deposits in a single day. The Gambler went on to make other deposits until his last deposit on 14 December 2020.
13. When the bets were settled by Betfair on 15 December 2020, all of his wagers totalling some \$693,000.00 were settled as losing wagers, and the Gambler withdrew the remaining \$4,000.00 in his account.

14. The essence of the Gambler's dispute lodged with the Commission is that Betfair provided misleading information concerning when the market on the US Presidential election would be settled, thus depriving him of the opportunity to cash out his bets prior to market settlement, and that Betfair allowed him to bet \$693,000.00 on a single contingency without any questions concerning his ability to wager such large amounts.
15. Betfair's response to the dispute stated that there was no misleading information provided, and that the gambler's account had not been opened for a long enough period of time to establish a baseline of deposits and wagering behaviour, and because none of his wagers were settled until the outcome of the US Presidential Election was known, there were no actual losses or ways to know if the Gambler would suffer financially until the relevant markets were settled on 15 December 2020.
16. Betfair also included the following commentary in its submission to the Commission: "Betfair offers a peer-to-peer betting exchange platform where customers anonymously match bets with other customers – who can either "back" or "lay" a particular selection. Betfair does not "take" bets – we simply provide a technology platform for customers to exchange bets and subsequent winning or losing monies. We note it would have been inappropriate to void the bets in the present case, as legitimate bets were matched against the [Gambler's] bets. If the bets were voided, the customers on the other side of the bets would have raised disputes to recover losses from their fairly struck bets".

Consideration of the Issues

17. Clause 3.2 of the Code provides:

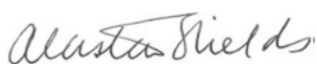
"Recognising potential problem gamblers

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 does not agree with the submission by Betfair that there was no sufficient pattern of depositing behaviour by the Gambler to detect red flag behaviour. In the Commission's view, the sharp spike in daily deposits from his first daily deposit of \$3,250.00 on 23 October 2020 to \$69,955.00 the next day, and rising to \$200,000.00 on 31 October 2020 should have prompted Betfair to consider whether an appropriate customer interaction should have taken place.
19. The consideration as to whether a customer interaction was required should have triggered a review of the wagering history of the Gambler and identified that the vast majority of the Gambler's wagering activity hinged upon a particular outcome of a single contingency, namely the US Presidential Election.
20. It follows from the Commission's finding in the above paragraph that the Commission does not accept that a pattern of gambling behaviour is not capable of being assessed as exhibiting red flag behaviours simply because none of the wagers have been settled – a

pattern of wagering activity that has an unusually large number of wagers on the outcome of a single contingency may give rise to the requirement for an appropriate customer interaction, particularly when there is also a sharp increase in deposit size at the same time.

21. The failure of Betfair to have considered the large exposure of the Gambler to a single contingency is exacerbated by the fact that, in order to make these wagers on a single contingency, the Gambler telephoned Betfair on six separate occasions in the period from 24 October 2020 to 20 November 2020 in order to request that his exposure limit on this contingency be increased from the original limit of \$15,000.00 to \$250,000.00, then \$500,000.00, and followed by \$700,000.00. Each occasion afforded the opportunity for Betfair to confirm with the Gambler that he was betting within his means, noting the large exposure to a single contingency.
22. Of course, the Commission recognises that even if Betfair had undertaken an appropriate interaction with the Gambler, the Gambler may have been able to satisfy Betfair that the Gambler was betting within his means and that he understood the exposure that he had with a single contingency.
23. However, had such an appropriate interaction occurred, there would be no question as to whether Betfair had complied with the Code on that occasion.
24. The Commission has noted that the Gambler has stated that he raised the issue about whether Betfair provided misleading information prior to Betfair's settlement of the US Presidential Election market because he had expected to be able to 'cash out' his wagers at any time prior to market settlement, and that he was precluded from doing so when the market was settled on 15 December 2020, rather than on 5 January 2021, which was the latest date for Electoral College votes to be cast.
25. The Gambler's argument in this respect is somewhat flawed, in that it is clear from Betfair's espoused terms and conditions that whether a cash out is available is at the discretion of Betfair, and so even if Betfair had delayed settlement of the market until 5 January 2021, the Gambler may not have been able to cash out his wagers in any event.
26. That said, a Licensing NT betting inspector has listened to the calls made by the Gambler to Betfair concerning this issue, and notes that, although the information provided on when the contingency would be settled was confusing, it falls short of being able to be described as misleading.
27. In the circumstances, and noting that the 2020 US Presidential Elections prompted an extravagant number of disputes to the Commission, the Commission recommends that each Licensee ensure that all of their staff are properly briefed on the terms and conditions for any wagers on the US election, to minimise the prospect of disputes being lodged due to confusing information being provided to customers.



Alastair Shields

Chairperson, Northern Territory Racing Commission

On behalf of Commissioners Shields, Bravos, and Kirkman