

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr G
Licensee:	Sportsbet Pty Ltd
Proceedings:	Pursuant to Section 85(4) of the <i>Racing And Betting Act</i> – Referral of Dispute to Racing Commission for Determination
Heard Before:	Mr John Boneham (presiding member)
(on papers)	Mr Jim McNally Mr Andrew Maloney
Date of Decision:	18 October 2016

Background

1. On 1 August 2016, Mr G lodged a gambling dispute against Sportsbet Pty Ltd (the Bookmaker).
2. It is alleged that on or around the weekend of 18 June 2016, Sportsbet allowed Mr G to gamble and lose in excess of \$60,000 on its online betting site.
3. Further Mr G states that Sportsbet breached its statutory and legal obligation by failing to identify and act upon 'red flag' behaviour as required by the NT Code of Practice for Responsible Online Gambling 2016 (The Code) namely:
 - Gambling for an extended period
 - Increases in deposit frequency
 - Escalating sums of money deposited

4. Mr G goes on to allege the following:

"This is despite Sportsbet already becoming aware of a problem with my gambling behaviour several months earlier, on or about 29 April 2016. Around that time Sportsbet "froze/restricted" my online account to the extent that it did not allow me to withdraw funds but concerningly did allow me continue to deposit funds. In order to process a requested withdrawal I was required to speak with a Problem Gambling Consultant. From that point on Sportsbet owed me a Duty of Care, which it failed to provide".

5. Furthermore in an email to Sportsbet dated 19 July 2016, Mr G stated the following:

"On or around the weekend of 18 June 2016, Sportsbet allowed me to gamble and lose in excess of \$60,000 on its online betting site. During that period I was suffering from a severe depressing episode which caused me to not be in control of my gambling and in fact I have limited recollection of the gambling activity that I engaged in during that period. I have been receiving treatment for depression/anxiety for more than five years".

6. It is important to note, that in all documentation provided by Mr G and the Bookmaker, no reference is made to the depressive illness, either in a longer term context, or a severe bout around the 18 June 2016. Except to say the advice contained in the email of 19 July 2016, as outlined above.
7. Following the email of 27 April 2016, Mr G contacted Sportsbet by the telephone speaking with a Responsible Gambling Officer who offered Mr G the opportunity to place limitations (including a deposit limit) on his account. Mr G declined this offer, also expressing his gratitude for Sportsbet's enquiries.
8. On 19 July 2016, Mr G emailed Sportsbet with a letter of demand seeking loss and damages to the amount of \$60,000.
9. On 27 July 2016, Sportsbet responded to Mr G declining to pay the requested monies.

Facts of the Matter

10. In making the Determination the Commission has taken into account the substance of Mr G's complaint, detailed documentation provided by the Bookmaker and the requirement of the NT Code of Practice for Responsible Online Gambling 2016.
11. The Commission have also had the opportunity to listen to recordings of the phone conversations of 22 April 2016, and two separate calls on 28 April 2016, between Mr G and Sportsbet's consultants. The content of these calls confirm the written accounts provided by the Bookmaker.
12. There was no 'freeze' ever put in place on Mr G's account. On 27 April 2016, he withdrew \$20,000 through the online system. Mr G was unable to withdraw the balance, about \$54,000, on that day as Sportsbet's electronic system will not permit withdrawals in excess of \$50,000 per day, this being a security protection measure.
13. The following day (28 April 2016), Mr G telephoned Sportsbet's telephone operator, who arranged the withdrawal of \$53,000.
14. On the same day Mr G spoke with a Responsible Gambling Officer who had emailed him on 22 April 2016, but was unable to establish contact with Mr G on that day.
15. When queried regarding his gambling patterns, Mr G assured Sportsbet in very plain terms that he was betting within his means and could afford to lose the amounts he was betting.
16. At the time, his net wagering position was slightly on the positive side of the ledger.
17. Despite previous assurances, Sportsbet's Responsible Gambling Officer, again offered Mr G the opportunity to place limitations (including a deposit limit) on his account. This offer was declined, however Mr G expressed his gratitude for Sportsbet's enquiries.

18. The Commission has requested, and been provided by Sportsbet, complete wagering records on Mr G's account from November 2015 until 19 June 2016, when the account was closed.
19. These records confirm a regular pattern of large wagers, (ranging from \$1,000 up to and including \$10,000), at a time, mainly on tennis match outcomes.
20. Deposit patterns over this period would seem to be consistent with the volumes being wagered.
21. As previously mentioned at paragraph 6, no mention of any mental health issues were advised to the Bookmaker until Mr G's email advices dated 19 July 2016.

Consideration of the Issues

22. There would appear to be three main areas for concern and consideration in this dispute. Each will be detailed in this section and determined according to the Bookmaker's Terms and Conditions and taking into account Common Law.
23. Firstly, did Sportsbet's actions result in it breaching the NT Code of Practice for Responsible Online Gambling 2016, namely in respect of the three main 'red flag' criteria:
 - Gambling for an extended period
 - Increases in deposit frequency
 - Escalating sums of money deposited
24. Secondly, given Sportsbet's actions following the phone conversation with Mr G (28 April 2016), did it breach its Duty of Care to its client at any time, given the care was conducted by a Problem Gambling Consultant.
25. Thirdly, did the fact that Mr G claims to have been suffering from a chronic depressive illness, place additional obligations on Sportsbet as a licensed entity conducting wagering operations.
26. The Commission extends its sympathy to Mr G with regard to his battle with depressive illness. Despite the fact that no evidence of such is available to the Commission, it is an issue the Commission always treats with utmost seriousness when it comes to making a Determination.

Alleged Breach of the Gambling Code

27. On 22 April 2016, following increased deposit activity, Sportsbet's Responsible Gambling Team phoned Mr G to check if he was comfortable with his betting activity and betting within his means, however they were unable to contact the client at this point.
28. Eventually contact was made on 28 April 2016, at which time Mr G made it abundantly clear that he was betting within his means and that he could afford to lose the amounts he was wagering. He declined the offer of any limitations being

placed on his account, including deposit limits. During this call he expressed his gratitude to the Sportsbet Officer for their enquiries.

29. Turning our attention to the weekend of 17 and 18 June 2016, the following wagering patterns emerged.
30. A total of six deposits totalling \$55,000 were made and nine large wagers placed which resulted in losses of a similar amount.
31. Following this wagering activity the account was closed.
32. At first glance this level of activity might seem excessive, giving rise to concern by the Bookmaker, however looking at it in context with betting patterns over the previous nine months, it is in line with normal activity for this account. That is, regular large wagers, many of which were on the outcome of tennis matches.
33. It should also be noted that Mr G's net gambling outcomes were in the neutral range, with only a (0.5%) loss situation evident.
34. The Commission draws the following conclusions from the betting records. That Mr G was a regular punter who wagered large amounts, with some success over a long period of time. When queried on 28 April 2016, he made it quite clear that he was betting within his means.
35. To clarify the misconception that Mr G put forward, that he was the subject of a withdrawal freeze, there is no evidence to suggest this is the case. The only withdrawal issue was on 27 April 2016, when he sought to withdraw more than the \$50,000 daily limit.

Alleged Breach of Duty of Care by Sportsbet

36. Given the preceding information around Sportsbet's proactive phone call on 28 April 2016, Mr G's statement that he was betting within his means and the overall pattern of consistent large wagering, not to mention a degree of successful punting over a period of time, we make the following observations.
37. Sportsbet are considered to have discharged their Duty of Care towards Mr G, in a timely and responsible manner.
38. Furthermore, we are confident of Sportsbet's robust and workable responsible betting protocols, as evidenced in this matter. We also note that Sportsbet's website provides a very comprehensive and user friendly portal around responsible gambling.

Issues Around Reported Mental Health Illness

39. As has been previously mentioned in this Determination, Mr G has not presented any medical documentation confirming such a diagnosis.
40. However, that does not mean the Commission has not given this information due weight and consideration.

41. In looking at circumstances involving clients with mental health issues, we must rely on the relevant clauses in a Bookmaker's Terms and Conditions and the application of Common Law.

42. As highlighted in the Commission's Determination, *Steve McDowell vs Sportsbet Pty Ltd* of 26 June 2014, Clause 10 of Sportsbet's Terms and Conditions reads as follows:

"A member must immediately notify Sportsbet of any matter (including any potential mental impairment) which may lead us to reasonably infer that your ability to make sound judgements about betting or the utilisation of credit (if credit has been provided by Sportsbet) in respect of your account, may be impaired".

43. Mr G advised Sportsbet of his mental health issues on 20 June 2016. As a result, Sportsbet suspended his account and after further discussions with him closed his account on 28 June 2016. Given that this was the first indication Sportsbet had of any mental health issues they acted entirely appropriately.

44. The Commission takes some guidance in this respect from the case of *Louth vs Diprose* in which it was held by Deane J that the clear requirement was the establishment of the extent of knowledge of the appellant's disability and whether victimisation resulted from it. His Honour stated the special disability must be:

"Sufficiently evident to the other party to make it prima facie unfair or unconscionable that the other party procure, accept or retain the benefit of the disadvantaged party's assent to the impugned transaction in the circumstances which he or she procured or accepted it".

High Court of Australia (1992) 175 CLR 621

Decision

45. In summary we make the following findings:

- a) That the Commission is satisfied Sportsbet Pty Ltd was not in breach of the NT Code of Practice for Responsible Online Gambling 2016, in dealing with Mr G's account.
- b) That the Commission is satisfied on the evidence provided that Sportsbet Pty Ltd discharged its Duty of Care to Mr G in an appropriate manner.
- c) Given the evidence of Clause 10 of Sportsbet's Terms and Conditions and the judgement handed down by the High Court of Australia (1992) in the case of *Louth vs Diprose*, we find that Sportsbet Pty Ltd, not being aware of Mr G's mental health illness, cannot be held responsible for the outcomes in this matter.

46. We therefore find that the Bookmaker has no case to answer in relation to any breach of the NT Code of Practice for Responsible Online Gambling 2016 (The Code).

47. We have no jurisdiction in relation to ruling on matters of recompense.

A handwritten signature in black ink, appearing to read 'John Boneham', with a large, sweeping initial 'J'.

John Boneham
Presiding Member

18 October 2016