

NORTHERN TERRITORY RACING COMMISSION

Reasons for Decision

Complainant:	Mr G
Licensees:	Mad Bookie Pty Ltd (licence cancelled April 2017); TopBetta Pty Ltd; and PlayUp Interactive Pty Ltd.
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)	Mr Alastair Shields (Presiding Member) Ms Cindy Bravos Ms Amy Corcoran
Date of Decision:	10 March 2020

Background

1. On 20 February 2019, pursuant to section 85(2) of the *Racing and Betting Act* (the Act), the complainant lodged a gambling dispute with the Northern Territory Racing Commission (the Commission) against the licensed sports bookmaker, PlayUp Interactive Pty Ltd (PlayUp Interactive).
2. The complainant submitted that he had self excluded from the betting platform, Mad Bookie in 2016. Subsequently, he opened betting accounts with ClassicBet, TopBetta and PlayUp. The complainant submitted that he should not have been able to open these further betting accounts as he believes that these betting platforms are part of the group associated with operating the Mad Bookie betting platform. The complainant seeks to have all bets struck during the life of his ClassicBet, TopBetta and PlayUp accounts deemed not to be lawful and for all deposits into these accounts to be refunded to him.
3. During the course of inquires undertaken by a Licensing NT officer appointed as a betting inspector by the Commission, the complainant further advised that it was not until July 2017 that he actually self excluded from the Mad Bookie betting platform although he had closed his account with Mad Bookie on two occasions prior to this. The complainant submitted that upon reflection, he is of the view that the activity on his Mad Bookie betting account should have been identified by Mad Bookie as indicators that he was experiencing problems associated with his gambling activities.
4. The complainant also submitted at this time that he had also self excluded from the betting platform Draftstars in 2017 and he is of the view that when Draftstars was acquired by the PlayUp group, this self-exclusion should have applied across all of the betting brands operated by the group. Additionally, the complainant submitted that when he did self exclude he was not provided with any information on how to exclude from other gambling operators licensed in the Northern Territory.

5. Information was gathered from both parties by the Commission's betting inspector and provided to the Commission which determined there was sufficient information before it, to consider the gambling dispute on the papers.
6. While the complainant lodged the gambling dispute against the licensed sports bookmaker PlayUp Interactive, the gambling dispute actually involves multiple past and present licensees and as the issues involved are inextricably linked, the Commission has determined to issue one decision notice only in order to avoid unnecessary duplication.

Consideration of the Issues

Self-Exclusion

7. All Northern Territory licensed sports bookmakers' licence conditions and the Act currently require licensees to comply with the *Northern Territory Code of Practice for Responsible Service of Online Gambling 2019* (the 2019 Code).
8. 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), with both Codes providing 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 encouraged by the Commission to implement additional strategies to further minimise harm.
9. As the betting activity subject of this gambling dispute occurred prior to 2019, the 2016 Code was in force at that time. The 2016 Code amongst other things, required a licensed sports bookmaker to provide self-exclusion features on its betting platforms to enable its customers the opportunity to exclude themselves from accessing the licensee's gambling products. Licensees were further required to have an option to exclude from all Northern Territory licensees and have processes in place that ensured that any request for self-exclusion was dealt with immediately. The licensee was further required to have procedures in place that would allow it to process a self-exclusion request lodged directly with Licensing NT.

Sports Bookmaker Licences

10. PlayUp Australia Ltd (PlayUp Australia) is the parent company of two entities currently licensed by the Commission to conduct the business of a sports bookmaker being PlayUp Interactive and TopBetta Pty Ltd (TopBetta). At the time of this decision notice, two betting platforms being PlayUp and Draftstars are authorised by the Commission to be operated under the PlayUp Interactive sports bookmaker licence while there are currently no betting platforms currently authorised to be operated under the TopBetta licence.
11. As detailed in a recent decision of the Commission (*Brown v PlayUp Interactive* dated 17 January 2020), the Commission has not issued a sports bookmaker licence to PlayUp Australia. The Commission is of the view that it is the individual licensee who is responsible for compliance with the Act, its licence conditions and any Codes issued by the Commission and that it is the licensee which falls under the Commission's regulatory jurisdiction and not the parent company.

12. Given the above, it is necessary to understand which betting platform was operating under what licence at the relevant times of the complainant's activity that is subject of this gambling dispute.

Mad Bookie Pty Ltd

13. The complainant opened a betting account with Mad Bookie Pty Ltd (Mad Bookie) on 23 September 2016. At that time, Mad Bookie was licensed in Norfolk Island by the Norfolk Island Gaming Authority.
14. On 31 March 2017, the Commission issued a sports bookmaker's licence to Mad Bookie and as a result, Mad Bookie then fell under the jurisdiction of the Commission from that date. It is not open to the Commission to review any of the activity that occurred between the complainant and Mad Bookie before 31 March 2017.
15. On 28 April 2017, the Commission approved the sale of Mad Bookie to TopBetta. This approval resulted in the Mad Bookie licence being cancelled and the Mad Bookie betting platform then commenced operating under the TopBetta licence. As such, the Mad Bookie betting platform only operated under the Northern Territory Mad Bookie sports bookmaker's licence for a short period of time, being 31 March 2017 through to 28 April 2017.
16. Having reviewed the complainant's Mad Bookie betting account records, activity on this account temporarily ceased on 22 December 2016 at which time the complainant's betting account balance was 18 cents. Activity on this betting account did not recommence until 2 July 2017 (at which time the Mad Bookie betting platform was already authorised to operate under the TopBetta licence).
17. While the complainant initially submitted that he had self-excluded from the Mad Bookie betting platform in 2016, he later revised this to July 2017. In responding to this aspect of the gambling dispute, PlayUp Interactive has advised that it is unable to locate any communication from the complainant requesting that he be self-excluded from the Mad Bookie betting platform. The complainant has also not been able to provide any evidence of his request for self-exclusion from the Mad Bookie betting platform.
18. The Commission has however, reviewed a live chat conversation between the complainant and Mad Bookie which occurred on 7 July 2017 in which the complainant requested that his account be closed due to, in the complainant's view, Mad Bookie not offering sufficient loyalty bonuses to him.
19. In this respect, it must be noted that the closure of the Mad Bookie betting account on 7 July 2017 was not as a result of a request to be self-excluded from the Mad Bookie betting platform. However, it would appear that the complainant had closed his betting account with Mad Bookie on two previous occasions and that when he requested that his account be re-opened a third time, live chat records show that he was advised by Mad Bookie that if he was to close the account a third time, that Mad Bookie would "...*permanently enforce a third closure...*" The live chat records of 7 July 2017 show that the complainant was clearly aware that if he closed his betting account with Mad Bookie a third time, that he understood that this would result in him not being able to re-open the betting account a fourth time.

20. As detailed earlier in this decision notice, the complainant submitted that upon reflection, he is of the view that the activity on his Mad Bookie betting account should have been identified by Mad Bookie as indicators that he was experiencing problems associated with his gambling activities. In this respect, the Commission notes that with respect to the Mad Bookie licence, no betting activity occurred under the Northern Territory issued sports bookmaker licence between the date Mad Bookie was granted a licence on 31 March 2017 through to 28 April 2017 when the Mad Bookie licence was cancelled and the Mad Bookie betting platform was authorised by the Commission to operate under the TopBetta licence.

TopBetta Pty Ltd

21. As outlined above, the Mad Bookie betting platform commenced operating under the TopBetta licence from 28 April 2018. At that time, two betting platforms were approved by the Commission to operate under the TopBetta sports bookmaker licence, being TopBetta and Mad Bookie.
22. The complainant's betting activity with the Mad Bookie betting platform recommenced on 2 July 2017. All activity on the betting account between this date and 7 July 2017 when the complainant requested his account to be closed due to not being satisfied with the loyalty bonuses on offer was conducted under the authority of the TopBetta sports bookmaker's licence.
23. The Commission has reviewed the complainant's Mad Bookie betting account records during this period and notes that following the complainant making a \$700 deposit in the betting account on 2 July 2017, he made a number of successful and unsuccessful bets on the same day which resulted in an account balance of 13 cents. There was no further betting activity from this time until the complainant requested that his betting account with Mad Bookie be closed on 7 July 2017.
24. In the Commission's view, the complainant's Mad Bookie betting records for this day do not provide any indicators that the complainant was experiencing problems associated with his gambling. The complainant made one deposit of \$700 on a Sunday afternoon and spent the rest of that afternoon placing a variety of winning and losing bets. At one period during the afternoon, the complainant had an account balance of just over \$2,940 however, rather than withdrawing any of his winnings, the complainant decided to continue betting until his losing bets were greater than his winning bets, with the result being an account balance of 13 cents.
25. The complainant stated in the lodgement of his gambling dispute that he was aggrieved that he was able to open a betting account with TopBetta despite having self-excluded from the Mad Bookie betting platform.
26. As discussed at paragraph 16 above, the Commission notes that there is no evidence before it that the complainant requested to be self-excluded from the Mad Bookie betting platform at any time. The Commission has also reviewed the complainant's TopBetta betting account records and notes that the complainant opened the TopBetta betting account on 22 Dec 2016, being the same day that he opened his Mad Bookie betting account. It is also important to note that on that date, both Mad Bookie and TopBetta held licences issued by the Norfolk Island Gaming Authority and as such, were not under the regulatory jurisdiction of the Commission at that time.

27. As the two accounts were opened on the same day, the complainant's assertions that he was able to open the TopBetta account after having self-excluded from the Mad Bookie betting platform have no substance.

Draftstars

28. The complainant has stated that he self-excluded from the betting platform Draftstars in 2017. In support of this assertion, the complainant has provided an excerpt of a live chat record between Draftstars and himself which would appear to indicate that the complainant had sought a self-exclusion from Draftstars due to issues associated with his gambling given that Draftstars provided the complainant with the contact details for Gambler's Help and another support service. Whilst the live chat is dated 29 May, there is no year noted on the chat record.
29. It is relevant to note that Draftstars Pty Ltd previously held a sports bookmaker licence granted by the Commission, however this licence was cancelled on 13 April 2018. On the same date, the Commission approved for the Draftstars betting platform to operate under the PlayUp Interactive licence.
30. PlayUp Interactive were requested to review Draftstars' betting records to ascertain whether it held a self-exclusion record for the complainant from Draftstars. PlayUp Interactive advised that records show that the complainant had self-excluded from the Draftstars betting platform on 29 May 2017. PlayUp Interactive emphasised that at the time the complainant's self-exclusion from Draftstars was implemented, there was no relationship between Draftstars and Classic Bet or Best Bet.

Classic Bet

31. The complainant opened a betting account with the betting platform Classic Bet on 7 September 2017, which at the time was licensed as a sports bookmaker by the New South Wales wagering regulator. The complainant engaged in betting activity utilising this betting account until 1 December 2018 at which time, he requested his account be closed due to being dissatisfied with the functionality of the betting platform.
32. The relevance of this betting account and the Draftstars betting account to this gambling dispute is that the Classic Bet betting platform was also acquired by PlayUp Australia. The Commission approved for the Classic Bet betting platform to operate under the PlayUp Interactive licence on 17 May 2018 and as detailed above as at 13 April 2018, the Draftstars betting platform also operated under the PlayUp Interactive licence
33. As detailed in previous decisions, the Commission holds the view that whilst a number of betting platforms may be approved by the Commission to operate under a sports bookmaker licence, it is the licensee and not the individual betting platform that is responsible for ensuring compliance with the Act and any Codes issued by the Commission.
34. As such, it is the view of the Commission that once the Draftstars betting platform was approved by the Commission to operate under the PlayUp Interactive licence on 13 April 2018, any persons who were self-excluded from the Draftstars betting platform should also have been excluded from each of the then current or future betting platforms operating under the PlayUp Interactive sports bookmaker licence

in order to comply with the 2016 Code in ensuring that a self-excluded person is unable to access the gambling operator's (ie the licensee's) products.

35. As such, the Commission is of the view that as at 17 May 2018 which is when the Classic Bet betting platform commenced operation under the PlayUp Interactive sports bookmaker licence, PlayUp Interactive were required by the 2016 Code to ensure that the self-exclusion for the complainant that existed under the Draftstars betting platform was also applied to the complainant's Classic Bet betting account.
36. This was clearly not the case given that the complainant continued to use the Classic Bet betting account until its closure on 1 December 2018. The Commission has reviewed the complainant's Classic Bet betting records and notes that during the period between June 2018 and December 2018, the complainant made a total of \$407 in deposits into the account and one withdrawal of \$50.

Best Bet

37. The Commission has also reviewed the betting records of the complainant in relation to the Best Bet betting platform and notes that account was opened on 19 December 2018. The complainant only utilised this account on that day after which he sought to be self-excluded from the betting platform. During this period the complainant made a total of \$731 in deposits and no withdrawals.
38. Similar to the Classic Bet betting platform, the Best Bet betting platform was also acquired by PlayUp Australia and on 17 May 2018 the Commission approved for the Best Bet betting platform to operate under the PlayUp Interactive licence. The Commission is of the view that once the Best Bet betting platform commenced operation under the PlayUp Interactive sports bookmaker licence, PlayUp Interactive were required by the 2016 Code to ensure that the self-exclusion for the complainant that existed under the Draftstars betting platform was also applied to the complainant's Best Bet betting account. Had this occurred, the complainant would not have been able to open a betting account with the Best Bet betting platform.
39. PlayUp Interactive has advised that once the complainant self-excluded from the Best Bet betting platform, this self-exclusion was carried across to all PlayUp brands and confirmed this in a live chat with the complainant on 20 February 2019.
40. There is no evidence before the Commission as to whether the complainant was or was not provided with an option to exclude from all Northern Territory licensees as was required by the 2016 Code at the time.

Decision

Licensee - Mad Bookie Pty Ltd (cancelled 28 April 2017)

41. The Mad Bookie Pty Ltd sports bookmaker licence was under the regulatory control of the Commission between 31 March 2017 to 28 April 2017. During this period, there is no evidence before the Commission that the complainant requested to be self-excluded from the Mad Bookie betting platform.
42. The Commission also notes that as there was no activity on the betting account during this same period, there is no evidence before the Commission to indicate that

Mad Bookie should have identified any red flag behaviours that may have been potentially associated with harms caused by gambling.

Licensee - TopBetta Pty Ltd

43. The evidence before the Commission is that the complainant sought to close his betting account with the Mad Bookie betting platform on 7 July 2017 due to being dissatisfied with the lack of loyalty bonuses being provided to him through the Mad Bookie betting platform. At this time, the Mad Bookie betting platform was authorised by the Commission to operate under the TopBetta Pty Ltd sports bookmaker licence.
44. There is no evidence before the Commission that the complainant requested to be self-excluded from the Mad Bookie betting platform.
45. The complainant's TopBetta betting account records detail that the complainant opened the TopBetta betting account on 22 December 2016, being the same day that he opened his Mad Bookie betting account. As the two accounts were opened on the same day, the complainant's assertion that he was able to open the TopBetta account after claiming to have self-excluded from the Mad Bookie betting platform has no substance.
46. The Commission also notes that the activity on the TopBetta betting account that occurred over one Sunday afternoon on 2 July 2017 during which the complainant deposited \$700 and made a number of winning and losing bets was not of a nature that should cause the licensee TopBetta Pty Ltd to have identified red flag behaviours that may have been potentially associated with harms caused by gambling.

Licensee - PlayUp Interactive Pty Ltd

47. On the weight of evidence provided, the Commission is satisfied that the complainant did self-exclude from the betting platform Draftstars on 29 May 2017.
48. The Commission is of the view that once the Draftstars betting platform was approved by the Commission to operate under the PlayUp Interactive licence on 13 April 2018, any persons who were already self-excluded from the Draftstars betting platform should also have been excluded from each of the then current or future betting platforms operating under the PlayUp Interactive sports bookmaker licence in order to comply with the 2016 Code in ensuring that a self-excluded person is unable to access the gambling operator's products.
49. As such, the Commission is of the view that as at 17 May 2018 which is when the Classic Bet betting platform commenced operation under the PlayUp Interactive sports bookmaker licence, PlayUp Interactive were required by the 2016 Code to ensure that the self-exclusion for the complainant that existed under the Draftstars betting platform was also applied to the complainant's Classic Bet betting account. Had this occurred, the complainant's Classic Bet betting account would have been immediately closed.
50. As a result, the Commission has determined that the bets struck through the Classic Bet betting account from 17 May 2018 until the betting account's closure were not lawful bets. Given this, the Commission is of the view that the full amount of deposits made by the complainant during the period between June 2018 and December 2018 of \$407 minus the withdrawal of \$50 should be returned to the complainant.

51. Similarly, the Commission is of the view that once the Best Bet betting platform was also acquired by PlayUp Interactive and commenced operation under the PlayUp Interactive sports bookmaker licence on 17 May 2018, PlayUp Interactive were required by the 2016 Code to ensure that the self-exclusion for the complainant that existed under the Draftstars betting platform was also applied to the complainant's Best Bet betting account.
52. Had this occurred, the complainant would not have been able to open a betting account with the Best Bet betting platform. As a result, the Commission has determined that all bets struck during the life of the complainant's Best Bet betting account were not lawful and that the total of deposits being \$731 should be returned to the complainant.
53. The Commission is satisfied that once the complainant self-excluded from the Best Bet betting platform, this self-exclusion was carried across to all PlayUp however, there is no evidence before the Commission as to whether the complainant was or was not provided with an option to exclude from all Northern Territory licensees as was required by the 2016 Code at the time. As such, the Commission makes no findings on this aspect of the gambling dispute.
54. On the weight of evidence before it, the Commission is satisfied that pursuant to section 80(1)(d) of the *Racing and Betting Act*, PlayUp Interactive Pty Ltd has failed to comply with a condition of its licence through the failure of it to identify that the complainant was a self-excluded person under the Draftstars betting platform and its then subsequent failure to prevent the complainant from accessing several of its gambling products once it acquired the betting platforms of Classic Bet and Best Bet, which was in breach of the Northern Territory Code of Practice for Responsible Gambling 2016.
55. Disciplinary action available to be taken by the Commission in these circumstances range from the issuing of a reprimand, imposing a fine not exceeding 170 penalty units or suspending or cancelling the sports bookmakers licence.
56. The Northern Territory community expects gambling services to be provided in a responsible manner and in harmony with community expectations. With that in mind, the Commission considers that regardless of the complex nature of the business structures and various betting platforms that have operated under the PlayUp Interactive Pty Ltd sports bookmaker licence, the failure to prevent the complainant from accessing its gambling products is a serious breach of the *Northern Territory Code of Practice for Responsible Gambling 2016* which was approved by the Commission in part, so as to minimise the harm that may be caused by online gambling.
57. However, the Commission does also note that the self-exclusion from Draftstars occurred prior to the acquisition of it by PlayUp Interactive, as was the account opening with Classic Bet. Given this, the Commission has determined to take disciplinary action and impose a fine equivalent to 30% of the maximum penalty of 170 penalty units, being a total of \$8,007.

Review of Decision

58. 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.

A handwritten signature in cursive script that reads "Alastair Shields".

Alastair Shields
Chairman
Northern Territory Racing Commission

10 March 2020