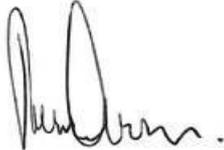


## Decision and reasons for decision

Disciplinary action against the bookmaker registration holders Mark Anthony Sampieri and Christopher John Lester, trading as bookmaking partnership Realbookie.com.au, under s 4.5A.14(4) of the *Gambling Regulation Act 2003*.

<b>Delegate</b>	<b>Jason Cremona</b> <b>Director, Regulatory Services Division, Victorian Gambling and Casino Control Commission</b>
<b>Date of decision</b>	24 June 2024
<b>Date of reasons</b>	24 June 2024
<b>Decision</b>	<p>Pursuant to the Instrument of Revocation and Delegation dated 1 November 2023 and effective 13 November 2023, I, Jason Cremona, Director, Regulatory Services Division of the Victorian Gambling and Casino Control Commission, make this decision under s 4.5A.14(4) of the <i>Gambling Regulation Act 2003</i>.</p> <p>For the reasons attached to this decision, I have found there is a ground for disciplinary action and have decided to take disciplinary action against the bookmaker registration holders Mark Anthony Sampieri and Christopher John Lester, trading as bookmaking partnership Realbookie.com.au, by imposing a fine of \$50,000 to be paid within 28 days or another period as agreed by the VGCCC.</p>
<b>Signed</b>	
	<p>Jason Cremona Director, Regulatory Services Division Victorian Gambling and Casino Control Commission (VGCCC)</p>

## Introduction

15. This is the Victorian Gambling and Casino Control Commission's (**VGCCC**) decision and reasons for decision regarding disciplinary action taken against the bookmaker registration holders Mark Anthony Sampieri and Christopher John Lester, trading as bookmaking partnership Realbookie.com.au (**Realbookie**), under ss 4.5A.14(4) of the *Gambling Regulation Act 2003* (Vic) (**the Act**).
16. Pursuant to the Instrument of Revocation and Delegation dated 1 November 2023 and effective 13 November 2023, I, Jason Cremona, Director of Regulatory Services Division of the Victorian Gambling and Casino Control Commission, make this decision under ss 4.5A.14(4) of the Act.
17. On 9 January 2024, the VGCCC issued a notice to Realbookie pursuant to ss 4.5A.14(2) of the Act to show cause why disciplinary action should not be taken on the grounds specified in the notice (**Notice**).
18. By letter dated 9 February 2024, Realbookie, through their lawyers, Pat Brown Legal, responded to the Notice (**Realbookie response**), and has also responded, by way of provision of information and production of documents, to separate requests for information made by the VGCCC.
19. The VGCCC has considered in detail the Realbookie response and other relevant material provided by Realbookie in determining whether there are grounds for disciplinary action.

## Decision

20. I am satisfied that there exist sufficient grounds to take disciplinary action against the bookmaker registration holders Mark Anthony Sampieri and Christopher John Lester, trading as Realbookie, and have decided to take disciplinary action by imposing a fine of \$50,000 payable within 28 days of the date of this decision or another period as agreed by the VGCCC.

## Background

21. Mark Anthony Sampieri and Christopher John Lester were approved by the VGCCC as parties to the registered bookmaking partnership Realbookie on 19 June 2020.
22. On 9 October 2023, the VGCCC received a complaint from Mr Brent Guerra (**the Complainant**) in which it was alleged that following his permanent self-exclusion with Realbookie on 14 September 2023 due to problem gambling, the Complainant was sent gambling correspondence or promotional material from Realbookie via text and/or email on seven separate occasions after this date.

## Basis for disciplinary action

23. In accordance with s 4.5A.10A of the Act, it is a condition of registration as a bookmaker that the bookmaker implement, and therefore comply with, a Responsible Gambling Code of Conduct.
24. Pursuant to s 4.5A.14(1)(ea) of the Act, "*repeated breaches by the registered bookmaker of the bookmaker's Responsible Gambling Code of Conduct*", establishes grounds for disciplinary action.
25. Realbookie has adopted the Victorian Bookmakers' Association Code of Conduct (**VBA Code**) as its Responsible Gambling Code of Conduct pursuant to ss 4.5A.10A of the Act. All VBA members adopting the VBA Code are required as a condition of their membership to VBA to strictly implement and adhere to it.
26. The sections of the VBA Code that are relevant to the grounds for disciplinary action are:
  - a) Glossary, definition of Problem Gambling:

**Problem Gambling** occurs when a customer has difficulties in managing their gambling activities, particularly the scope and frequency of gambling and the amount of time spent gambling, with negative impacts potentially including:

- i. *extreme financial losses relative to their sources of income;*
  - ii. *adverse personal effect on the customer, his or her family and friends; and/or*
  - iii. *adverse effect on employers and work performance;*
- b) Section 8 of the Code, Pre-Commitment Limits and Self-Exclusion:

*Each VBA Member will make available to their customers the option to make a Pre-Commitment Decision and also Self-Exclude, in accordance with applicable State and Territory legislation, and will ensure that:*

*(e) completed Self-Exclusion forms or requests are maintained in hardcopy or electronically and all employees (if any) of the VBA Member are aware of all such customers. These forms or requests (as applicable) must record the name and other relevant information of the customer, together with the stated wish of the customer to be reminded of their desire to be excluded. In the case of Permanent Self-Exclusion, the VBA Member will ensure that there is no opening or re-opening by that customer of an Account;*

*(f) ...*

*(g) they provide support and encouragement to any customer who seeks Self-Exclusion and/or expresses a concern that they have a Problem Gambling issue to also seek Self-Exclusion from other gambling providers; and*

*(h) they do not send correspondence or promotional material to customers who have Self-Excluded from the VBA Member's services or who request that this information not be sent to them.*

27. The particulars of the alleged breaches of the Code as set out within the notice are summarised as follows:
- b) Realbookie breached section 8(h) of the VBA Code by emailing and/or texting gambling correspondence or promotional material to the Complainant on 16 September 2023;
  - c) Realbookie breached section 8(h) of the VBA Code by emailing and/or texting gambling correspondence or promotional material to the Complainant on 20 September 2023;
  - d) Realbookie breached section 8(h) of the VBA Code by emailing and/or texting gambling correspondence or promotional material to the Complainant on 23 September 2023;
  - e) Realbookie breached section 8(h) of the VBA Code by emailing and/or texting gambling correspondence or promotional material to the Complainant on 27 September 2023;
  - f) Realbookie breached section 8(h) of the VBA Code by emailing gambling correspondence or promotional material to the Complainant on 30 September 2023;
  - g) Realbookie breached section 8(h) of the VBA Code by emailing gambling correspondence or promotional material to the Complainant on 4 October 2023;
  - h) Realbookie breached section 8(h) of the VBA Code by emailing and/or texting gambling correspondence or promotional material to the Complainant on 7 October 2023.
28. The VGCCC considers that the breaches above amount to a repeated contravention of the VBA Code, which therefore constitutes grounds for disciplinary action.
29. Within their response to the Notice, Realbookie, through their lawyer Pat Brown, contested any allegations of a breach or repeated breaches of the Code on the basis of the following submissions:

- a) *“The Act does not regulate operator-level self-exclusion, nor does any relevant legislation. ... As such, it cannot be said that there is a legislative nexus (under the Act or elsewhere) for our clients to offer, provide and administer an operator-level self-exclusion program. In other words, under the regulatory framework in Victoria as it currently stands, the provision of operator level self-exclusion is voluntary not mandatory”.*
30. With respect to Realbookie’s contention that the Act does not regulate operator-level self-exclusion, the VGCCC rejects this interpretation on the basis that it does not accord with the objectives of the Act; that being, to foster responsible gambling in order to minimise harm caused by problem gambling; and to accommodate those who gamble without harming themselves or others. Further, such an interpretation would have the effect of nullifying the legislative requirement for a bookmaker to implement a Responsible Gambling Code of Conduct. We note the following:
- In accordance with s 4.5A.10A of the Act, it is a condition of a bookmaker registration that the bookmaker implement a Responsible Gambling Code of Conduct. Realbookie has adopted the VBA Code. It follows that, in accordance with s 4.5A.14(1)(ea) of the Act, repeated breaches by Realbookie of the VBA Code establishes ground for disciplinary action
  - While the Act does not expressly refer to operator-level regulation of self-excluded participants, s4.5A.10A is reliant upon the implementation by a bookmaker of a Responsible Gambling Code which does impose such requirements. As section 8(h) of the VBA Code expressly imposes an obligation upon bookmakers in relation to self-excluded participants, by virtue of s4.5A.10A of the Act, Realbookie is legislatively required to comply. Any suggestion that there does not exist a legislative nexus which requires Realbookie to *‘...offer, provide and administer an operator-level self-exclusion program’* cannot be made out.
31. With respect to Realbookie’s response that a Ministerial Direction is *‘...not legislation per se,’* and *‘...does not specifically regulate operator-level self-exclusion,’* s 4.5A.10A(b) provides the relevant nexus for requiring Realbookie to comply with the Ministerial Direction of 6 July 2022. The VBA Code and Ministerial Direction of 6 July 2022 set out obligations in relation to direct marketing and self-exclusion, which do not solely apply to those self-excluded through BetStop. The obligations must be upheld for all self-excluded customers, not just those self-excluded through BetStop.
- a) *“The root cause (of the emails to Mr Guerra) was an isolated technical malfunction between the Betmakers and Intercom platforms that occurred well over a year ago. That isolated malfunction (for which fault is solely attributable to Betmakers and Intercom, not Mr Lester or Mr Sampieri) resulted in the creation of a second marketing profile for Mr Guerra in Intercom – which we again emphasise occurred well over a year ago. ... The emails received by Mr Guerra after 14 September 2023 were sent by Intercom (and specifically by the duplicate Intercom profile), and they were not sent by Realbookie, Mr Lester or Mr Sampieri”.*
- i. The VGCCC notes that section 4 of the VBA Code requires Realbookie to have *“...appropriate measures in place consistent with this Code to ensure customers can enjoy gambling and that systems are in place to help ensure that vulnerable individuals do not experience a loss of control from their gambling. This includes having policies, procedures and a culture of compliance in their business that promotes Responsible Gambling”.*
- Put simply, as a registered bookmaker, Realbookie is responsible for ensuring that appropriate systems are in place to mitigate the likelihood of non-compliance. Therefore, Realbookie are responsible for the conduct of third parties that have been engaged to deliver services to them as part of their business operations. As a regulated entity, Realbookie must

comply with all obligations in accordance with Part 5A of the Act, at all times. Realbookie cannot abrogate their responsibility under the Act to comply with the VBA Code. Any allegation of third-party liability is not relevant to the VGCCC's assessment of a breach or contravention of a condition of Realbookies' bookmaker registration.

- c) *"The concept of repeated breaches (that justifies disciplinary action) includes an element of intentional action or willful disregard by the Registered Bookmaker. Even if there was a breach of the VBA RG Code (which there was not), there is no element of intentional action or willful disregard by Mr Lester or Mr Sampieri".*
- i. The VGCCC is of the view that there is no such mental element required within the Act. Pursuant to s 4.5A.14(1)(ea) of the Act, a ground of disciplinary action is enlivened simply where there exist repeated breaches of the VBA Code. The extent to which the breach involved some intention or willful act is considered when determining the *type or quantum* of disciplinary action that is appropriate.

The VGCCC note that, irrespective of the *cause* of the breach, here being an alleged *technical* malfunction, the outcome resulted in gambling correspondence and promotional material being sent to a self-excluded customer who self-excluded because they lost control of their gambling and were suffering harm. Further, the breach was not an isolated incident, as it occurred on seven separate occasions, thereby amounting to repeated breaches of the VBA Code. Importantly, the VGCCC highlights that this has the potential to cause great harm as Mr Guerra went to the extent of self-excluding and was provided with materials from Realbookie that could have enticed him to gamble.

Whilst Realbookie submit that the breaches occurred *"over a year ago"* and that *"Mr Lester and Mr Sampieri had no way of knowing that there was a duplicate Intercom profile that was sending Mr Guerra a second email until Mr Guerra told them"*, the failure on the part of Realbookie to detect this issue suggests that it is possible other self-excluded customers may have also been affected. Systems, processes, and procedures must be maintained and checked to avoid these situations, particularly where third parties are involved. Where third parties are engaged, further oversight is required to ensure obligations of registered bookmakers are being discharged in accordance with their obligations under the legislation.

### Disciplinary action

32. In light of the above, I am satisfied that the seven breaches of the VBA Code identified in paragraph 12 above gives rise to a ground for disciplinary action within the meaning of ss 4.5A.14(1)(ea) of the Act. On the basis that repeated breaches have been found, I have decided to take disciplinary action against Realbookie pursuant to ss 4.5A.14(4) of the Act.

### Appropriateness of a fine

33. Subsection 4.5A.14(1) provides that the disciplinary action that the VGCCC may take is any of the following:
- ii. *The cancellation or suspension of the bookmaker's registration;*
  - iii. *The variation of the conditions of the bookmaker's registration;*
  - iv. *The issuing of a letter of censure; and*
  - v. *The imposition of a fine not exceeding an amount that is 50,000 the value of a penalty unit fixed by the Treasurer under s 5(3) of the Monetary Units Act 2004 (Vic).*

34. Subsection 4.5A.14(5) allows the VGCCC to take disciplinary action against Realbookie as it sees fit.
35. The VGCCC considers that a letter of censure would not be a sufficient and proportionate action in the circumstances and would not achieve the objectives of general and specific deterrence.
36. Ultimately, the VGCCC has concluded that disciplinary action in the form of a fine is warranted for the following reasons:
37. Firstly, general deterrence would not be achieved by anything less than a fine. The penalty should be set at an amount that serves as a measurable and effective deterrent, rather than being perceived as merely a “cost of doing business”<sup>1</sup>. Registered bookmakers must understand that there are financial consequences for committing repeated breaches of the Responsible Gambling Code of Conduct (see s 4.5A.10A) particularly where bookmakers can derive not insignificant revenue from conduct of this nature; and
38. Secondly, specific deterrence would not be achieved by anything less than a fine. Realbookie must be deterred from again engaging in the same conduct described in this decision, and to encourage Realbookie to address gaps in its processes and systems.

#### **Number of fines**

39. As a preliminary matter, the VGCCC considers that despite determining that there are seven breaches of the Code, there is one ground for disciplinary action against Realbookie for which the VGCCC served a single notice to show cause pursuant to ss 4.5A.14(3). Therefore, the VGCCC will issue a single fine under ss 4.5A.14(4).

#### **Setting the fine in this case**

40. The VGCCC concludes that a fine of \$50,000 is an appropriate penalty in all the circumstances of this case.
41. The maximum fine available when taking disciplinary action against a registered bookmaker is 50,000 times the value of a penalty unit. Taking the penalty unit at the time of the contravening conduct of \$192.31, the maximum penalty that may be imposed in this case is \$9,615,500.00.
42. The size of the maximum penalty that may be imposed indicates that Parliament intended for serious consequences to be available to the VGCCC when a ground of disciplinary action is established and in taking disciplinary action warranting the imposition of a fine.
43. The need for deterrence, both specific and general, weighs heavily on the VGCCC when setting the appropriate level fine. It is the case that a lesser disposition is appropriate.
44. The VGCCC considers that the conduct here is such that it falls within the lower end of the scale of the maximum penalty. The VGCCC considers that a fine of \$50,000 is appropriate. However, a fine at the lower range should not be misunderstood to suggest that the contraventions giving rise to the ground for disciplinary action were not serious.
45. In arriving at this position, the VGCCC has given consideration to the following factors.
  - (a) Realbookie is a small partnership bookmaker, employing approximately six to seven staff.
  - (b) Between January 2023 and March 2024, Realbookie made net gaming revenue of \$2,535,473.00.
46. Despite the breach, Mr Guerra did not gamble with Realbookie after his self-exclusion on 14 September 2023, and therefore, Realbookie did not profit from the breach.
  - (c) The VGCCC is not aware of Realbookie committing other breaches of the Act.

<sup>1</sup> *TPC v CSR Limited* [1990] FCA 762; [1990] FCA 521; (1991) 13 ATPR 41-076

- (d) Upon being alerted to the breach by the Complainant on 7 October 2023, Mr Sampieri and Mr Lester took immediate steps to investigate and resolve the cause of the breach which was understood to be the creation of a duplicate marketing profile for the Complainant, attributable to a technical malfunction that occurred between Intercom and Betmakers platforms. Intercom and Betmakers are engaged by Realbookie to provide marketing and technology services as part of their business operations.
  - (e) The implementation of additional measures by Realbookie to prevent reoccurrence – Realbookie's Compliance Officer is now undertaking a secondary cross-check of Realbookie's marketing list to ensure there are no duplicate marketing profiles.
  - (f) That, pending further investigation conducted by Realbookie, this is not a systemic issue but an isolated event.
  - (g) Mitigation controls have been put in place since this occurred with manual checking of duplicate entries of customers by Realbookie Compliance officers.
  - (h) The objective seriousness of the matter. The act of continuing to send promotional gambling material to a self-excluded problem gambler poses a real risk of harm.
  - (i) The need for deterrence, particularly where harm minimisation breaches are involved.
47. The VGCCC considers the fine in this case balances the various competing considerations that are relevant to setting a fine. What this disciplinary action shows to Realbookie is that they are to ensure compliance with the Code at all times and should assess and review on a regular basis existing systems, policies and procedures to prevent the occurrence of a similar breach in the future.
48. The VGCCC request that Realbookie complete their investigation with Intercom and BetMakers to determine how the duplicate Intercom profile was created, and provide the outcome of that investigation, along with confirmation that no other duplicate profiles were created, to the VGCCC for consideration.

#### **Review of a Decision**

49. Under ss 4.5A.15(h), a person whose interests are affected by a decision to take disciplinary action against a registered bookmaker may apply to the Victorian Civil and Administrative Tribunal for review.
50. An application for review must be made within 28 days after the day the decision was made.