

IN THE MATTER OF

Complaint Under s 74 of the Private Security Personnel and Private Investigators Act 2010 against **STEVEN BUCKLAND**

HEARD at Palmerston North on 11 November 2019 and by telephone on 12 December 2019

APPEARANCES

A F – Complainant
S Buckland – Certificate Holder with counsel E Maassen

DECISION

[1] Stephen Buckland is a licensed private investigator. Ms F says Mr Buckland agreed to provide her with investigative services following the breakup of her marriage. She considers Mr Buckland is guilty of misconduct in the provision of his investigative services by failing to provide updated information and by passing on personal information and copies of a message to her estranged husband.

[2] Mr Buckland denies that he ever agreed to provide investigative services to Ms F and he did not provide any. He says he helped Ms F out as a friend and any information he provided was in the public domain. Therefore, he cannot be guilty of misconduct while carrying out work as a private investigator.

[3] The issues I therefore need to decide are:

- Did Mr Buckland agree to provide investigative services to Ms F?
- Did he provide any investigative services?
- If so, is he guilty of misconduct in the provision of those services

Did Mr Buckland agree to provide Ms F with investigative services?

[4] Mr Buckland and Ms F have been professional associates and friends for many years. In 2017 Ms F was concerned about her husband's behaviour and discussed her family problems with Mr Buckland. She says that Mr Buckland offered to carry out investigation work on her husband.

[5] Mr F left the family home in December 2017. Ms F says that following the separation Mr Buckland repeated his offer to investigate her husband and his whereabouts. When she explained that she was not in a financial position to pay for an investigation Mr Buckland offered to contract his services at no charge due to the amount of work Ms F had done for him and his family over the years.

[6] Ms F says Mr Buckland's services started around April 2018 although until July 2018 most of the communication was verbal. She points to documents, emails and text messages from June 2018 onwards which she considers confirm that Mr Buckland was doing private investigation work on her behalf. One of the jobs Ms F says Mr Buckland assisted her with is trying to obtain records from Spark of the calls made on Mr F's phone.

On 2 July 2018 Mr Buckland sent her a Privacy Act Acknowledgement form which Ms F signed and returned with some amendments.

[7] Ms F has also provided copies of email and text messages confirming that Mr Buckland gave advice on the information to be sent to Spark, sent her a copy of a trespass order which she signed and sent back and obtained information confirming Mr F's address. There are also several communications from Ms F to Mr Buckland requesting a copy of a report that Ms F says Mr Buckland advised had been drafted and requests for the contact details of the agent he said he used in Napier.

[8] Mr Buckland denies that he ever agreed to provide investigative services for Ms F either for payment or without charge. He says that Ms F changed the privacy form intended for something else without his consent. He says he did not accept the changes. There is no paper trail of this as he says he advised Ms F in a telephone call.

[9] Mr Buckland also says he told Ms F in telephone conversations that there was no report and that he was not doing any investigative work for her but never put this in writing. I do not accept Mr Buckland's evidence in this regard. It is not credible that Mr Buckland would not have put this advice in writing by way of text or email particularly given the detailed, and increasingly desperate communications from Ms F by the end of August 2018 and the advice that she would be laying a complaint against him if he did not provide the information.

[10] The few written communications from Mr Buckland to Ms F around this time tend to support Ms F's version of events. Just one example is Mr Buckland text to Ms F on 22 August 2018 asking for more time and saying that he would deal with Mr F soon. This was in response to a request as to whether Mr Buckland had served Mr F with the trespass order and other documents and for Mr Buckland's contact in Napier so that Ms F could deal with him directly.

[11] If there was no agreement for investigative work, and if Mr Buckland had already told Ms F there was no report, Mr Buckland would have said this in his text message. In addition, he would have advised Ms F's son of this in a follow up conversation. Ms F's son however says that Mr Buckland advised him that he had everything under control and that he would be back in touch with Ms F soon.

[12] I conclude that Mr Buckland agreed to undertake investigative work for Ms F in early 2018 free of charge. I also accept that Mr Buckland led Ms F to believe that he had undertaken investigative work or had used an agent in the Hawkes Bay to assist with obtaining information and had drafted a report including photographs of the outcome of his investigations.

Did Mr Buckland undertake any investigative services for Ms F?

[13] Mr Buckland and Ms F not only disagree on what Mr Buckland says he would do but also on what investigative work he did. Although I accept that Mr Buckland agreed to investigate Mr F and intimated that he had information and a draft report the investigative work he did was more limited. His main involvement was to try and provide support and general advice as a friend while Ms F was going through a difficult separation.

[14] The allegations of investigative work done fall into three main areas. In relation to each area Mr Buckland says he only obtained information that was available from the public record or agreed to deliver or serve documents. None of this he says falls into the definition of the work of a private investigator as set out in the Act. Ms F however says that Mr Buckland did, or agree to do, far more than what he now says.

[15] The three key areas of investigative work that Ms F says Mr Buckland undertook are:

- Investigating where Mr F was living, his living circumstances, and information regarding any new girlfriend as well as the location of a 20-foot container of matrimonial assets removed by Mr F.
- Accessing phone records of a phone registered against Ms F's company but being used by Mr F
- Organising and serving a trespass notice and other documents.

Finding Mr F's address

[16] Ms F says that Mr Buckland agree to attempt to trace Mr F's current address as she had no idea where he was living. He also offered to investigate the location of a container load of matrimonial property that Mr F had removed from the family home. Ms F says that Mr Buckland managed to locate Mr F and found out he had a new girlfriend and the length of the relationship.

[17] According to Ms F, Mr Buckland advised her that he had drafted a report, complete with photographs, on the information he had obtained, but that initially he could not let her have it until she had signed some documents. After signing and returning the documents to Mr Buckland on 14 August 2018 he made a series of excuses as to why he still could not provide the report. Mr Buckland's father at the time was very ill and subsequently died during which time Mr Buckland sent the text referred to above asking for more time.

[18] Mr Buckland says he did not do any investigative work for Ms F as all he did was a simple Motochek search on Mr F's Ute to confirm his address and then do a google search on that address. He says that Ms F already had the address and that Motochek is a public register and any person can access the information.

[19] During this period both Mr Buckland and Ms F were going through a particularly stressful time. It is therefore unlikely that their recollection of events would be particularly reliable. Most of the communication between Mr Buckland and Ms F on this issue was by telephone and the documentary evidence to support either version is somewhat limited.

[20] The documents provided by Ms F show that she sent photographs of her children and Mr F to Mr Buckland. She also texted him either on or just before 1 June 2018 advising Mr F's last known address was at his sisters. The address is different than the one on the Motochek search Mr Buckland did on 2 June 2018. This tends to support Ms F's evidence that she did not know Mr F's address until it was provided by Mr Buckland.

[21] There is also a text dated 4 June 18 in which Ms F asked whether Mr Buckland had managed to "pop" past and check Mr F's address to which Mr Buckland responded "Okay can confirm the address he is given is the Hasting address on the motor trade check. Sorry Napier address". Another text sent by Ms F on 13 June asks Mr Buckland if he was able to get any compromising photographs of Mr F. There are also several other texts referring to

documentation, serving orders and providing reports as well as one in which Ms F provides Mr Buckland with alternative addresses for Mr F.

[22] The contemporaneous documents still available clearly show that Ms F believed that Mr Buckland had undertaken an investigation into her husband and completed a report with supporting photographs. There are no contemporaneous documents in which Mr Buckland says he did not agree to undertake an investigation or that he did not in fact carry out any investigative work. To the contrary the documents tend to point to Mr Buckland undertaking some investigative work.

[23] While some of the work Mr Buckland did may have been accessing publicly available information the information Ms F says he provided about her estranged husband's new girlfriend was not. I also note that while Motochek may be a public register you need to register and obtain approval from Motochek before you can search the register. The approval process is not automatic and according to their website can take up to 10 days.

[24] I have already concluded that Mr Buckland agreed to investigate Mr F. I also consider that it is more likely than not that Mr Buckland carried out some initial investigative work into Mr F's whereabouts and his new girlfriend but that it was not as extensive or detailed as he led Ms F to believe. I also accept Mr Buckland intimated he had prepared a report on the outcome of his investigation. However, I consider that it is highly unlikely he drafted a report or had any photographs.

Spark records

[25] In June 2019 Ms F was attempting to recover records from Spark of a phone owned by her business and used by Mr F. Mr Buckland says that his sole involvement with this was to tell Ms F to speak to a lawyer and then offering to hand deliver the lawyer's letter to Spark as he knew someone at the Spark office in New Plymouth. Ms F says that Mr Buckland was managing the process of obtaining the Spark records including advising her what the lawyers needed to do.

[26] The documentary record again tends to support Ms F's recollection of events and shows that Mr Buckland's involvement in this issue was significantly greater than what he recalls.

[27] The first reference in the documents is a letter dated 29 June 2018 from Ms F's lawyer to Spark asking for the records. The second document is a copy of an email from Ms F to her lawyer dated 2 July 2018 which says, "Steve has just responded that he is happy with what you have provided and he is proceeding with requesting the Information required".

[28] There is also an email from Mr Buckland to Ms F dated 2 July 2019 which attached a Privacy Act acknowledgement. Ms F amended and signed the document and emailed it back to Mr Buckland on 3 July. The waiver states that it relates to making enquiries regarding phone accounts for the purpose of an ongoing investigation of improper conduct and improper use of a company phone. It authorises Mr Buckland to inquire and obtain any necessary information that he sees fit.

[29] Mr Buckland says he did not authorise the amendments Ms F made but provided no evidence on what those amendments were. Neither he nor his lawyer specifically questioned Ms F on her account of the work she said Mr Buckland had done for her or what changes she had made to the waiver.

[30] The next document produced was an email dated 24 July 18 from Sharla Lochhead, a Spark call investigator, to Mr Buckland, four weeks after the lawyer's letter. It starts by saying "We have received your request for call data as discussed on the phone earlier" and then goes on to provide further information on what might be obtained. If all Mr Buckland had done was hand-deliver the lawyer's letter Ms Lochhead would not have emailed him. In addition, she would not have referred to receiving his request for call data but would have referred to the lawyer's request, nor would it have referred to a telephone discussion. The email clearly points to further involvement from Mr Buckland between the date of the lawyer's letter and the email.

[31] Mr Buckland forwarded Ms Lochhead's email to Ms F on the same date he received it and she responds by asking "Confirming what need my lawyer do and write". Later that day Ms F texts Mr Buckland wanting to confirm the wording to give to her lawyer to ensure they get the records. Mr Buckland texts back by outlining what Ms F's lawyer needs to do and confirming that he will then serve Spark with the order. Ms F sends another text asking for the reason and Mr Buckland again responds with details about the information that needs to be in the court application.

[32] The next day Ms F sends a follow up text asking Mr Buckland to ask Spark whether they would let Mr F know they were handing over records.

[33] I conclude that Mr Buckland was actively involved in assisting Ms F to get the telephone records from Spark by visiting his contact at Spark and seeking information on behalf of Ms F. He followed this up with a phone call and then advised Ms F of what further action she needed to take and the type of information her lawyers should include in any court application. I further conclude that in doing this Mr Buckland was carrying out an investigation on behalf of Ms F.

Trespass notice & serving documents

[34] Ms F has provided a significant amount of documentation that she says Mr Buckland was going to serve on Mr F. The documentation includes a trespass notice which she received in blank from Mr Buckland, signed and sent back for him to complete and serve. Completing and serving a trespass order or serving the other documents referred to at a known address does not in itself involve any investigative work.

[35] Document service is not a restricted class of work as it does not fit within either the work of a private investigator or any of the other categories of security work for which a licence is required under the PSPPI Act. The only exception to this would be where work needs to be done to locate the person before documents were served. Ms F says that locating Mr F was required as Mr Buckland advised her that he had disappeared again. She accordingly provided some alternative addresses where he might be found. There is however no evidence that Mr Buckland did any further investigative work in trying to locate Mr F.

Is Mr Buckland guilty of misconduct in the provisions of investigative services

[36] I have found that Mr Buckland agreed to undertake investigative work for Ms F free of charge. I have also concluded that he undertook such services by carrying out some initial

investigative work in relation to Mr F's whereabouts and circumstances and trying to obtain phone records from Spark.

[37] Ms F alleges Mr Buckland is guilty of misconduct when carrying out those services by acting unethically and inappropriately by:

- Holding information from an investigation he had initiated for her and failing to provide it, or alternatively by telling her he had carried out an investigation and prepared a report when he had not completed an investigation or prepared a report, and
- Passing on an email and other information she had provided to her estranged husband.

[38] At the time of the actions complained about Section 74(4) of the Act provided that it was a ground for a complaint if a certificate holder, such as Mr Buckland, has been guilty of misconduct or gross negligence during his work as a private investigator. While the Act has subsequently been amended to remove the statutory requirement that the misconduct or negligence be during a person's work it is appropriate to consider the provision as it was at the time Ms F lodged her complaint.

[39] Misconduct is defined in s 4 of the Act as:

Conduct by a licensee or certificate holder that a reasonable person would consider to be disgraceful or conduct that contravenes this Act or any Regulations made under this Act.

[40] The Authority has previously held that the use of word "disgraceful" was deliberate and used to indicate that misconduct must be at a reasonably high level.¹ Disgraceful is not defined in the Act but its dictionary definition is "shameful or dishonourable."²

[41] The Act further reinforces the high level of culpability required for a misconduct complaint to be established against a certificate holder by requiring any negligence to be gross. To amount to gross negligence Mr Buckland's actions or inaction would need to amount to a major or serious breach of care or attention, or flagrant or serious carelessness.

[42] The questions that need to be addressed are whether Mr Buckland's conduct was during, or related to, his work as a private investigator and whether it reached the level of misconduct or gross negligence. The fact that Mr Buckland agreed to work for Ms F without charge does not preclude the work from being done in the course of his work as a private investigator.

[43] Ms F says Mr Buckland is guilty of misconduct by withholding information he had collected from her and not providing the report. However, it is unlikely that Mr Buckland had any further information than what he had already provided and there was probably no report.

¹ B *Zindel v Haden*, PSPLA 8 November 2012

² The Concise Oxford Dictionary

[44] While Mr Buckland could be considered negligent in failing to complete his investigation or produce the report any negligence would not reach the level of gross negligence. This is because while I accept that Mr Buckland agreed to investigate Mr F, there was no agreement reached on the terms or extensiveness of any investigation. I consider that it was implicit in the offer he made that he would do what he could. It is likely this is what he did.

[45] However, I find that Mr Buckland was guilty of misconduct by misleading Ms F into believing he had a report with photographs and more detailed information, when he did not have any further information, photographs or a report.

[46] If Mr Buckland had at that point been honest and advised that he had not completed his investigation and there was no report I would not have concluded there was any misconduct or negligence on his part. Rather than doing this however Mr Buckland then threatened to disclose information to Mr F if Ms F filed a complaint against him. This is conduct which a reasonable person would consider to be disgraceful.

[47] Some months later Mr Buckland disclosed a text Ms F had sent him to her estranged husband. On 4 April 2019 Ms F sent a text to Mr Buckland in what she says was a final attempt to try and get the information Mr Buckland had earlier said he had regarding the location of the container of goods taken by Mr F and other information. On receipt of that text Mr Buckland contacted Mr F and told him about the text and passed on other information provided by Ms F.

[48] Mr Buckland accepts he contacted Mr F by Skype after receiving Ms F's text and subsequently send a copy of the text to Mr F's lawyer. This was later used by Mr F in an affidavit for family court proceedings. In addition, it prompted Mr F to fly down to Christchurch and arrange for the container load of goods he had removed to be dumped outside home where Ms F and the children were living.

[49] Mr Buckland however says he disclosed the information to Mr F because he was concerned about Ms F's erratic behaviour and worried for their children. I do not accept this explanation. There is little in the text message of 4 April that would suggest that the children were in any risk from Ms F and Mr Buckland has provided no evidence of erratic behaviour leading up to the 4 April text. The evidence that has been provided tends to show that there was very little communication between Ms F and Mr Buckland after a serious falling out in late August 2018. The only evidence of any erratic behaviour was prior to this.

[50] Mr Buckland accepts that it would be unethical of him to pass on information from a client to someone he had been investigating for the client. He however says that Ms F was not a client but a friend. I have already found that Ms F was a client as well as a friend. Even if Ms F had been only a friend it would be a breach of trust for him to pass on information she had provided him with in this way.

[51] I conclude that contacting Mr F, the person he agreed to investigate on behalf of Ms F and giving him information and a text message sent to him by Ms F pertaining to the investigation is conduct that a reasonable person would consider to be disgraceful.

Conclusion

[52] I therefore conclude that Mr Buckland is guilty of misconduct in the course of the business to which his certificate relates by misrepresenting the extent of the investigative work he had done for Ms F and then threatening to pass the information he had on to Mr F. He is also guilty of misconduct by later passing on information to Mr F.

[53] At the end of the hearing I advised that if I were to find that Mr Buckland was guilty of misconduct I would provide both parties with an opportunity to make submissions before deciding on the appropriate penalty.

[54] It is likely that the issue of penalty can be dealt with on the papers. However, if Mr Buckland considers it more appropriate for the matter to be dealt with either by a telephone hearing or an in person hearing he can request that a hearing be convened. This may be appropriate if Mr Buckland wishes to produce further character evidence in support of any submissions as to penalty.

[55] I accordingly make the following directions in relation to the penalty determination:

- Mr Buckland is to advise the Authority if he wants a telephone or in person hearing by 17 January 2020. If making such a request, he should advise what further witnesses he will be calling.
- If there is no request for a further hearing Ms F has until 24 January to file any further submissions as to the appropriate penalty to be imposed
- Mr Buckland has until 12 February 2020 to make submissions in relation to penalty and to file character evidence in support.
- When making submissions as to penalty I would remind both parties that misconduct is a discretionary and not a mandatory ground for cancellation of a certificate. I also draw their attention to s 81 of the Act which outlines my disciplinary powers in respect of certificate holders.

DATED at Wellington this 20th day of December 2019



P A McConnell

Private Security Personnel Licensing Authority