

IN THE MATTER OF

The Private Security Personnel and
Private Investigators Act 2010

AND

IN THE MATTER OF

Complaint by **A C** against **N R** made
under s 74 of the Private Security
Personnel and Private Investigators
Act 2010 (the Act)

DECISION

[1] A C has made a complaint about N R's conduct when he interviewed Mr C on 29 July 2019. Mr C has outlined eight different headings to his complaint and says that he was subject to unprofessional, unbecoming and offensive behaviour.

[2] Mr R had been engaged by a local business manager, a Mr [REDACTED], to investigate an alleged theft by one of the business's employees. Both Mr [REDACTED] and the person accused of theft are friends of Mr C. Mr R holds a current certificate of approval in the class of private investigator and his company, [REDACTED] Limited, holds a current licence in the same class.

[3] Section 74(2) of the Act states that a member of the public, such as Mr C, may only file a complaint with the leave of the Authority. Section 74 says that I should only grant leave if I am satisfied that Mr C has an interest, greater than that of the public generally, in the subject matter of the complaint, that the complaint is made in good faith and that the complaint fits within one of the grounds under which a complaint can be made.

[4] I am satisfied that Mr C has an interest greater than the public generally in the subject matter of his complaint. While Mr C has some misapprehensions about the work of private investigators and the rules and guidelines that apply to them, I am satisfied that the complaint has been made in good faith. However, I am not satisfied that the complaint fits within one of the grounds upon which a complaint can be made.

[5] Complaints against private investigators need to be made on the grounds set out in s 74(4) of the Act. The only ground this complaint could fit within is the ground of misconduct or gross negligence in the course of carrying out the work of a private investigator.

[6] 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.

[7] 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, dishonourable degrading"².

[8] The Act further reinforces the high level of culpability required for a complaint to be established against a certificate holder by requiring any negligence to be gross. Gross is defined in the dictionary as serious, major or flagrant³.

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

² The Concise Oxford Dictionary

[9] I will therefore look at each of the eight numerated complaints made by Mr C, plus an additional complaint not numerated, to decide whether they could amount to a breach of the Act, behaviour that a reasonably person would consider disgraceful, or gross negligence.

First Complaint

[10] Mr C is visually impaired and therefore could not see anything Mr R showed him. He says that once Mr R was made aware of this he should have immediately stopped, informed Mr C of his right to have a support person present and excused himself and left.

[11] However, Mr R did not have documents to show Mr C, other than his business card. It is also relevant to note that Mr R was not investigating Mr C but was only seeking to obtain information about a friend of Mr C's, on behalf of another friend.

[12] There is nothing in the Act, the Code of Conduct or any other guidelines or rules that require a private investigator to advise a visually impaired person that they are entitled to have a support person with them. At most this could be considered best practice. Failure to follow best practice however does not amount to misconduct.

Second Complaint

[13] When Mr R visited Mr C, he brought with him a lap top with a plug-in audio recording device. Mr C says it was wrong of Mr R to bring a recording device into his home without his express permission.

[14] There is no basis to this ground of complaint. Consent is only required from property occupiers for the installation of surveillance equipment. The audio recorder was not surveillance equipment and there was no intention to install it in Mr C's home. Even if Mr R had intended to use it to record his conversation with Mr C he would only need Mr C's consent to recording the conversation, not his consent to bring the recording device into his home.

[15] I also note that mobile phones and even laptops themselves are often used as recording devices. It would be unreasonable to require people to get express permission from a building occupier before bringing in a mobile phone or laptop.

Third Complaint

[16] Mr C says that during the interview Mr R produced a statutory declaration form which he was intending to complete and get Mr C to sign. Mr C says that Mr R was wrong to assume he would make a declaration and should have cautioned him.

[17] I accept that Mr R may have been wrong to assume that the Mr C would be prepared to complete a statutory declaration. However, this cannot amount to misconduct or gross negligence. Mr R did not in fact complete the statutory declaration form or ask Mr C to sign one. Therefore, there was no need for Mr R to caution Mr C.

Fourth Complaint

[18] Mr C alleges that Mr R's relationship with Mr ██████████ was personal as well as professional. He therefore says that Mr R should have indicated this at the outset and declared a conflict of interest.

³ Ibid

[19] Even if Mr R had a personal relationship with Mr ██████████, this did not need to be declared and would not necessarily result in a conflict of interest. When Mr R arrived at Mr C's home he clearly indicated who he was working for and the nature of the investigation he was undertaking. Nothing more was required than this.

Fifth complaint

[20] Mr ██████████ had given Mr R a copy of an email Mr C had earlier sent Mr ██████████. Mr C says that email was private and confidential and should not have been given to Mr R. He says that Mr R should not have accepted such an email and that this could amount to a breach of his privacy.

[21] If anyone breached Mr C's privacy it was Mr ██████████ rather than Mr R. This does not amount to misconduct on the part of Mr R.

Sixth and Eighth complaint

[22] Once Mr C made it clear he was not prepared to provide any information about his friend he says that Mr R's behaviour was offensive and inappropriate. He says that Mr R passed judgement on him by accusing him of a bad attitude and supporting crime. He also considers Mr R's closing comment along the lines of "I hope one day something like this happens to someone in your family, so you can see what it is like" was unprofessional and offensive.

[23] If Mr C's recall of what was said to him is correct I accept Mr R's conduct could be considered unprofessional and fell short of best practice. Mr R's comments appear to have been motivated by his frustration at Mr C's lack of cooperation. I accept Mr C was offended by Mr R's statements. However, I do not consider such comments, if established, are sufficiently offensive that a reasonable person would consider Mr R's conduct to be disgraceful.

Seventh complaint

[24] Mr C says that Mr R prejudged the situation by assuming the subject of his investigation was guilty. He says that this is unprofessional because a person is presumed innocent until proven guilty and that determinations of guilt are made by a court of law and not a private investigator. He considers private investigators are required to keep an open mind and not make presumptions.

[25] Determinations of guilt are ultimately the determination of the courts. However, private investigators are often asked to provide an opinion of whether a person has committed an offence based on the outcome of their investigations. Therefore, it is not inappropriate for private investigators to reach conclusions on whether they consider a person has committed a crime when carrying out an investigation. The allegations made against Mr R under this ground do not amount to misconduct.

Complaint regarding Mr R's business card

[26] When Mr R introduced himself to Mr C he produced his business card to confirm who he was. Mr C says that Mr R was wrong to give him a copy of his business card rather than showing him his certificate of approval. I do not accept this submission. A business card is an appropriate and acceptable document to provide to establish who someone is.

[27] Unlike some other classes of security workers, private investigators are not required to wear an identification badge. Nor are they required to produce their identification badge when interviewing someone. All the Act requires them to do is to produce a copy of their certificate of approval if asked to do so. Mr C did not ask to see Mr R's certificate of approval. Therefore, there is no basis to this part of the complaint.

Summary & Conclusion

[28] I have considered each ground upon which Mr C has made his complaint. I do not consider any of Mr R's actions, if established, would or could amount to a breach of the Act, misconduct or gross negligence as defined by the Act.

[29] Leave to file the complaint is therefore declined and the complaint is dismissed.

DATED at Wellington this 3rd day of September 2019



P A McConnell

Private Security Personnel Licensing Authority