

IN THE MATTER OF

A complaint made under s 73 & 74 of the Private Security Personnel and Private Investigators Act 2010 (the Act)

AGAINST

T LIMITED & MR T

PENALTY DECISION

[1] In my previous decision I concluded Mr T breached r 6(2) of the Code of Conduct by covertly attaching a tracking device to Ms W's vehicle without her consent. Mr T had accordingly contravened a regulation made under the Act and was guilty of misconduct.

[2] Misconduct is a discretionary ground for cancellation of a certificate or licence. However, I concluded that Mr T's misconduct was towards the lower end and therefore neither cancellation nor suspension of Mr T's certificate was the appropriate disciplinary action. Ms W and Mr T have both made submissions on the appropriate penalty or disciplinary action that should be taken.

[3] Ms W says that she does not want any action taken against Mr T that might harm his career. Since my previous decision she says Mr T has contacted her to apologise and she has accepted his apology. If the PSPLA has the power to do so she would like Mr T to be ordered to pay her compensation to help meet the cost of therapy she is receiving for anxiety and PTSD.

[4] Mr T advises he was subcontracted by another reputable private investigation company to install the tracking device. That company had in turn been contracted by Ms W's former partner, Mr Z. The instructing company were advised that Ms W's vehicle was relationship property. They therefore considered Mr Z was an owner and legally entitled to possession of the vehicle and as such could give the appropriate consent.

[5] In my previous decision I concluded that even if the vehicle was relationship property as all property matters had not been formally resolved, this did not in itself make Mr Z the owner or the person legally entitled to possession of Ms W's vehicle for the purposes of the Code. However, I accept that both Mr T and his instructing private investigator believed that Mr Z could give consent and Mr T considered he was complying with the Code. The breach was therefore inadvertent and not intentional.

[6] Section s81(1)(c) of the Act says that instead of cancellation I can make other orders including ordering the certificate holder to undertake further training, impose conditions on the certificate holder, reprimand the certificate holder or impose a fine of up to \$2,000. However, I have no jurisdiction to order compensation to the complainant.

[7] In determining the appropriate penalty, I need to consider both the gravity of the misconduct, the impact of any penalty, and any other relevant factors in relation to Mr T's competency, experience, and character.

[8] Mr T is an experienced and competent private investigator. He has held a certificate since March 2012 and a licence since 2013. His colleagues consider him to be of the highest integrity and competence.

[9] The tracking device was discovered shortly after it was installed and did not in fact track Ms W, or her vehicles movements. I also consider that it is her former partner that is primarily responsible for the trauma and stress that was caused by the installation of the tracking device rather than Mr T.

[10] While I can impose a fine, as opposed to compensation, I do not consider a fine is appropriate in this case. Mr T has already incurred significant expense in responding to the complaint at a time when he has been largely unable to work because of the Covid lockdown in Auckland.

[11] While the complaint has been established, I do not consider any further penalty is required. Mr T had no intention to break the Code and I am confident he will not do so again. He has also apologised to Ms W. The complaint is accordingly close without any further penalty imposed.

DATED at Wellington this 3rd day December of 2021



P A McConnell
Private Security Personnel Licensing Authority