

IN THE MATTER OF

Complaints against **NICHOLAS MAYER**
made under s 73 Of the Private Security
Personnel and Private Investigators Act
2010

DECISION

[1] Nicholas Mayer holds an individual licence as a private investigator. In January he was engaged by someone who wished to remain anonymous to contact the complainant and tell her that her husband was having an affair.

[2] Following his client's instructions Mr Mayer rang the complainant and told her that someone wanted her to know that her husband was being intimate with a work colleague and it had been going on for some time. The complainant's daughter was at home and overheard some of the conversation. It caused the complainant and her daughter severe anxiety.

[3] The complainant considers that in passing on this information on an anonymous basis without any proof other than what Mr Mayer had been told amounts to gossip or telling tales. She considers this is a breach of both the Code of Conduct for private investigators and Mr Mayer's licence and that he is guilty of either unsatisfactory conduct or misconduct.

[4] There is no dispute about the factual background that gave rise to the complaint. Mr Mayer accepts he was engaged by someone with first-hand knowledge of the situation who insisted on remaining anonymous. He also accepts that he rang the complainant and told her that her husband was having an affair. Mr Mayer did not undertake his own independent investigation but says he was satisfied that the information provided by his client was reliable. Mr Mayer does not accept he breached the Code or his licence or that his conduct was inappropriate.

[5] The only issues I therefore need to decide are whether Mr Mayer's actions breached his licence, or the Code of Conduct, or amounted to misconduct or unsatisfactory conduct

[6] Mr Mayer's actions do not constitute a breach of the Act or his licence as a private investigator. In addition, as previously noted, the Code of Conduct for private investigators, as set out in the relevant regulations, only relates to covert surveillance. Mr Mayer did not carry out an investigation, there was no covert surveillance and therefore no possible breach of the Code of Conduct.

[7] The New Zealand Institute of Private Investigators (NZIPI), of which Mr Mayer is a member, has their own Code of Conduct. That code extends beyond covert surveillance and covers acting with integrity and maintaining high standards of fairness and honesty when dealing with clients or the public. Any breach of NZIPI's Code of Conduct is not however a breach of the statutory Code. It can only be a relevant consideration when deciding whether a licence holder's actions amount to unsatisfactory conduct or misconduct.

[8] Misconduct is defined in s 4 of the Act as conduct a reasonable person would consider to be disgraceful, wilful, or reckless. The definition of unsatisfactory conduct includes conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent private investigator. It also includes conduct that would reasonably be regarded by other private investigators as being unacceptable.

[9] Mr Mayer does not accept he acted unethically or that he fell short of the standards of a reasonably competent private investigator. He says he was simply acting as a middle person in good faith to give power to the complainant. He says he has reflected on whether

there was something better he could have done to deliver the message or assist the complainant further but does not think he could have done anything differently.

[10] The issue however is not so much the way Mr Mayer carried out his instructions but the fact that he accepted them in the first place. Effectively what Mr Mayer was engaged to do was tell tales, or in the complainant's words, pass on school yard gossip, without naming his informant.

[11] It is difficult to understand why someone would engage a private investigator to do this. It is even less understandable why Mr Mayer thought it was appropriate to accept such instructions. I consider Mr Mayer was at best foolish to do so. However, I do not consider accepting and carrying out such instructions amounts to misconduct as a reasonable person would not consider this to be to be disgraceful, wilful, or reckless behaviour.

[12] However private investigators should not accept instructions to tell tales or be busy bodies. It was inappropriate for Mr Mayer to pass on the information particularly when he had not independently investigated the matter and was not able to give the complainant the details which convinced him the information was reliable.

[13] In accepting and carrying out such instructions, no matter how sensitively he may have tried to do so, Mr Mayer's conduct fell short of the standards a reasonable member of the public is entitled to expect from a reasonably competent private investigator. I also consider a private investigator of good standing would consider accepting such instructions to be unacceptable. I therefore conclude Mr Mayer is guilty of unsatisfactory conduct.

[14] I accept that this was due to Mr Mayer not giving due consideration to what he was being engaged to do rather than any deliberate poor conduct on his part. Mr Mayer has already apologised to the victim in his written submissions in response to the complaint. I therefore consider the finding of unsatisfactory conduct together with the publishing of this decision is a sufficient penalty.

DATED at Wellington this 10th day of February 2024



P A McConnell

Private Security Personnel Licensing Authority