

IN THE MATTER OF

A complaint under s 74 of The Private Security Personnel and Private Investigators Act 2010 (the Act) against **TYLER CROFT**

HEARD via Teams Video hearing on 13 September 2023

APPEARANCES

Graeme Axford, complainant
Tyler Croft, certificate holder

DECISION

[1] Graeme Axford says Tyler Croft is guilty of misconduct or unsatisfactory conduct by sending him abusive, expletive ridden, threatening messages on Facebook messenger. He wants Mr Croft to be ordered to attend anger management training.

[2] Mr Croft agrees his behaviour was unacceptable, however he says it was a one-off and arose after a family related dispute unrelated to his work as a security guard. He advises he provided a written apology shortly after and considers this was sufficient.

[3] Mr Axford is the uncle of Mr Croft's partner. During a telephone call involving Mr Croft's partner, Mr Axford and another of their family members Mr Croft became upset. He took the phone from his partner and started abusing Mr Axford. He then left a series of abusive and threatening voice messages.

[4] Mr Axford and Mr Croft both contacted police about aspects of the dispute. It appears that Mr Axford's complaint to police will be resolved by the apology by Mr Croft and by him being given a formal warning.

[5] Mr Croft accepts the messages he left were abusive and threatening. I also accept that his reaction was completely disproportionate to any provocation given. The issues I therefore need to decide are:

- Did Mr Croft's behaviour amount to misconduct, or unsatisfactory conduct as defined in the Act.
- If so, what disciplinary action is appropriate

Is Mr Croft guilty of misconduct?

[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, wilful, or reckless or conduct that contravenes this Act or any Regulations made under this Act.

[7] The Authority has previously held that the use of the 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 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.

[8] Mr Croft’s conduct does not need to be in the course of his work as a security guard to amount to misconduct. However, it needs to be related to his security work for any disciplinary action to be taken against him as set out in s 83(e) of the Act.

[9] I do not consider a one-off series of intemperate and abusive messages is sufficient to reach the level of culpability required to amount to misconduct, particularly as it was in relation to a private family situation and unrelated to his work. The complaint of misconduct against Mr Croft is accordingly dismissed

Is Mr Croft guilty of unsatisfactory conduct?

[10] Unsatisfactory conduct means³

- (a) *Conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licence or certificate holder*
- (b) *Conduct that is incompetent or negligent; or*
- (c) *Conduct that would reasonably be regarded by private security personnel or private investigators of good standing as being unacceptable.*

[11] To fit within the definition of unsatisfactory conduct as set out in (a) and (b) above the conduct complained about would generally need to take place while Mr Croft was working as a security guard or at least be related to his working life. However, under (c) behaviour in a guard’s personal capacity can meet the threshold of unsatisfactory conduct if it is conduct that other security guards would consider to be unacceptable.

[12] Security guards are required to de-escalate confrontational situations and not inflame them. They also need to ensure their reactions to situations are proportional and appropriate to the situation they face. These skills should be employed within their private lives as well as their professional lives.

[13] Given the nature and content of the messages Mr Croft left for Mr Axford I conclude that security guards of good standing would find Mr Croft’s conduct in this instance to be unacceptable. Mr Croft is therefore guilty of unsatisfactory conduct.

What is the appropriate penalty?

[14] A finding of unsatisfactory conduct cannot result in a person’s certificate being suspended or cancelled. Section 81(1B) of the Act says that the penalties I can impose include, ordering Mr Croft to undergo training or work under supervision, impose conditions on his certificate, reprimand Mr Croft or order him to apologise.

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

² The Concise Oxford Dictionary

³ S 4 of the Act

[15] In determining the appropriate penalty, I need to consider both the gravity of the conduct, the impact of any penalty and any other relevant factors in relation to Mr Croft's competency, experience, and character.

[16] Mr Axford considers the lack of honesty in Mr Croft's accusations and his intemperate reaction raises questions about the way Mr Croft may react if provoked or faces contentious situations while working as a security guard. He says they show a lack of judgement and an inability to control his temper. He considers Mr Croft should be ordered to undertake anger management counselling.

[17] Mr Croft however advises that he has already been taught anger management and de-escalation strategies. He accepts he did not use them in this instance, but the situation was a one off due to difficulties he was experiencing at the time. He says he has never acted in this way in a work situation.

[18] There is no evidence of any inappropriate or disproportional conduct by Mr Croft in his professional life or other similar incidents in Mr Croft's personal life. If there were, I would order Mr Croft to undertake further anger management training. In addition, if Mr Croft were to behave in such a way while he was working as a security guard his certificate would most likely be suspended.

[19] Mr Croft has provided a reference from a work colleague who confirms that Mr Croft always works within the boundaries of his role as a security guard, is skilled at de-escalating situations and is well liked and trusted by his colleagues and those for whom he works. I also note that Mr Croft provided a written apology for his behaviour shortly after the events in question.

[20] Therefore, I conclude that the appropriate penalty in this case is a formal reprimand.

Summary and Conclusion

[21] The complaint of misconduct against Mr Croft is dismissed. However, I conclude that Mr Croft is guilty of unsatisfactory conduct in sending abusive and threatening messages to Mr Axford. As Mr Croft has already given a written apology the penalty for Mr Croft's misconduct is a reprimand.

[22] I therefore order:

- a) Mr Croft is formally reprimanded

DATED at Wellington this 18th day of September 2023

The image shows a handwritten signature in blue ink, which appears to read 'P A McConnell'. To the right of the signature is a circular official seal. The seal features a central coat of arms with a crown on top, surrounded by the text 'THE PRIVATE SECURITY PERSONNEL LICENSING AUTHORITY' in a circular border.

P A McConnell
Private Security Personnel Licensing Authority