

IN THE MATTER OF

A complaint under s 74 of the Private Security Personnel and Private Investigators Act 2010 against **FD**

HEARD virtually on 9 November 2023

APPEARANCES

X

FD

[redacted] for [redacted] Group Ltd

[redacted]for [redacted]

DECISION

- [1] FD holds a Certificate of Approval (COA) in the classes of Crowd Controller, Property Guard and Personal Security Guard that is valid until 30 March 2026. He has held a COA ostensibly without incident since 2020.
- [2] A member of the public, X laid a complaint against FD concerning events on 18 August at a bar in Wellington where FD was providing crowd controlling services. He says that FD took his identification card (ID), refused to return it and damaged it. As a result of FD's actions he was without his ID for over two months.
- [3] X was given leave to file his complaint pursuant to S74(3) of the Private Security Personnel and Private Investigators Act 2010 (the Act) by the Authority in August.
- [4] X's main areas of concern regarding FD's alleged behaviour are as follows:
 - [i] He gave him no ability to explain the state of the ID. X says that after FD had decided that the card was fake, he would not enter into a discussion about it and as such he was powerless as to what would happen to his ID.
 - [ii] He did not explain to him the correct way he could have his card returned. X says FD said he could get it back with the Police that night or when the bar closed. He said this was incorrect as FD took it with him so he could not get it back when the bar closed.
 - [iii] He did not give adequate reasoning for why he considered the ID was fake. X said he was only given the reason that the side was peeling which was understandable given the card is four years old.
 - [iv] FD referenced a potential prison sentence of 10 years for using fake ID three to five times in the course of the discussion. He said this was concerning and intimidating.
 - [v] It was several months before he was able to retrieve his ID from the Police.

- [vi] FD damaged the card by rubbing it. X says he saw FD rub the card with his knuckles which had rings on. When he retrieved his ID, he says there were holes in the laminate which now renders it unusable.

The law

- [5] Pursuant to section 74(4) of the Act, a complaint may be made on the basis that the COA holder has been guilty of unsatisfactory conduct or misconduct or gross negligence.
- [6] Misconduct is defined in s 4 of the Act as being conduct 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*”. In addition, any negligence needs to be gross to be a valid ground for a complaint.
- [7] Unsatisfactory conduct is conduct that falls short of the standard that a reasonable member of the public is entitled to expect from a reasonably competent licensee or certificate holder; or conduct that is incompetent or negligent; or conduct that would reasonably be regarded by private security personnel of good standing as being unacceptable.
- [8] Where alleged facts differ, I am tasked with ascertaining an understanding of the situation to the civil standard of proof, which is the balance of probabilities. Put simply, this means that I must consider what is more likely than not to have occurred. I do that after weighing the relevant evidence I have been provided.

The evidence

- [9] FD’s evidence is that he was concerned at the ID X was presenting as it was a different colour to what it should be, and the lamination was peeling. He says both these factors are often signals that an ID is fake. He says that he could not allow X to keep the ID for use at a different venue because of his suspicions, he therefore retained it and told him he could go and get a Police officer to whom he would give the ID to, or he could pick it up from the Police station on another opportunity.
- [10] When he finished his shift some time later, he took the ID with him as he was going to a bar where he would see Police (this bar was in a quieter area). At this point X was still waiting and as he passed him, he agrees he did mention the potential penalty upon conviction but says this was the only time he made such reference. He says he did give the ID to the first Police officer he saw who said he would hand it in at the station for subsequent collection.
- [11] FD submits that he was not aggressive during the interaction at any stage and provided X with his COA number when asked for his details. He agrees he did rub the ID with his thumb but not his knuckles and is adamant he did not damage the ID. His view is that the ID is in the same state now as it was when he confiscated it, which is why he did so, deeming it a fake.

[12] FD attended the hearing with [redacted] and [redacted] who are senior members of his employer organisation; [redacted] Group Ltd. Both [redacted] and [redacted] fully support FD who is employed as their Manager of Operations and has been with their organisation since 2020. They say he is a reliable and extremely competent employee with a high level of integrity. They rely on and trust him completely. On what they know, they support his actions in this interaction.

[13] [redacted] provided and spoke to their Security and Alcohol Assessment Plan (the plan). There are two relevant parts to this situation in the plan as follows:

- *We can't confiscate ID even fake but If it is clear the ID is fake all we can do is hand it to police while the person is present but otherwise it is seen as theft ...*
- *If the ID appears to be fake and shows significant signs of damage and your suspicions are that the person will be using it at other bars, you are able to confiscate it and hand it in to the police on the night (preferably with the person present). Although not encouraged it sometimes will be necessary and alert the DM as soon as possible.*

[14] [redacted] says this plan is in their Whatsapp groups so that all staff are aware of their procedures, and they are discussed at monthly meetings as well as every weekend through a buddy system of ongoing training. He says that FD was aware of the policies, and they are satisfied he kept to them as much as possible on the night. They accept his reasoning for withholding the ID.

Discussion and findings

[15] Having considered the evidence provided, I am satisfied that FD was not aggressive in this interaction, and whilst he could have communicated more clearly, he did not show disrespect to X. I also find it proven that FD did give the ID to Police at the first opportunity. It remains unestablished why it took the Police two months to give it to X.

[16] There are however several parts of the night that I consider warrant further discussion, as follows:

- [i] The confiscating of the ID.
- [ii] The reference to the maximum penalty that can be imposed upon a conviction of an offence of making a false document with the intention of using it to obtain any property, privilege, service, pecuniary advantage, benefit, or valuable consideration¹.
- [iii] The damage to the ID.

[17] I am satisfied on the evidence that FD did not tell X he was taking the ID with him to present to Police although X was aware from another member of staff that he could collect it from the Police later. If FD had been following his own company's protocols, he should have told X that, particularly as he knew X was waiting for the bar to close to have his ID returned. As it is, he has taken the ID with him without X's knowledge.

¹ Section 256 Forgery. Crimes Act 1961

- [18] The plan is somewhat conflicting in its reference to an employee's ability to confiscate an ID. Firstly, it says employees *can't* confiscate an ID unless they give it to Police. Secondly it says *can* confiscate an ID and hand it in to Police on the night preferably with the owner present. It is the same end but stated in contradicting ways. This might be an area that [redacted] Group Ltd could consider rewording the plan.
- [19] I accept FD's concerns for the ID were justified.² I also accept the evidence that he handed it to the first Police Officer he met that night. As I said earlier where he did fail in his responsibility was in telling X that he was leaving the bar and would take the ID with him and give it to the Police.
- [20] I find it more likely than not that FD did reference the Crimes Act penalty for the making of a forged ID, more than once. I make this finding in consideration of the impact it would have had on X to hear it; accordingly, I find it likely he would remember the comments more clearly that FD.
- [21] I also find such reference unsuitable in these circumstances. He had X's ID, he was going to give it to Police, there was therefore no need to reiterate the maximum penalty available to the court upon conviction of such an offence. It was highly unlikely that X, even if convicted, would face 10 years in prison for using a false ID card and to make that reference can only have the effect of creating intimidation and fear. Further, it is not his position to comment on whether a charge would be laid, that is for the Police, or what the penalty may be upon conviction, that is for the court.
- [22] I do not find that the evidence has substantiated the claim that FD damaged X's ID. There is no dispute that it was old and worn given it is over four years old and as X said in evidence, has had considerable use. There is no evidence of its state prior to the night. I see no reason why FD would rub it with his knuckles although I accept he did rub it with his thumb. I do not find it likely that damage to it occurred by this rubbing, it is more likely than not a function of its age.
- [23] Accordingly, in summary I have found that FD failed in his responsibility to X by not communicating clearly enough about his actions and intentions in confiscating the ID and in referencing a possible 10 years in prison on various occasions. The suspicion of a false ID is always a difficult scenario for both parties and I am satisfied that in all other ways FD behaved appropriately.
- [24] I consider these failures at the lower end of the spectrum of seriousness. They most certainly do not meet the threshold of misconduct or gross negligence. I do find these two failures to be unsatisfactory conduct. X had a right to know that FD was taking his ID with him and there was no need for FD to unduly scare X with reference to a criminal prosecution.

² I do note that it has not been established in evidence whether X's ID was a forgery.

[25] Given the low level of seriousness of these actions, I consider it justified, pursuant to s81 of the Act, to reprimand FD but take no further disciplinary action. I accept [redacted]' submissions that [redacted] has and will continue to refine their procedures in such situations as they learn from each event.

[26] Pursuant to section 96C of the Act this decision will be published. However, I consider there is good reason not to publish any names referenced within it. Firstly, members of the public should not be deterred from making valid complaints regarding members of the security industry, as such it is appropriate to redact X's name from the publication. Secondly, it would not be proportionate to my finding to publish FD or his company's names given the relatively low level of seriousness of the matters. I also accept [redacted]' submissions on this point regarding the level of sensitivity of some of FD's work.

DATED at Wellington this 14th day of November 2023



K A Lash
Deputy Private Security Personnel Licensing Authority