

IN THE MATTER OF

Complaint by The Police under s 74 of
the Private Security Personnel and
Private Investigators Act 2010 against
AARON WHALLEY

Heard virtually on 13 December 2023

APPEARANCES

Snr Constable D Leahy and Constable a Rom for NZ Police
A Whalley, certificate holder and J Jaram

DECISION

[1] Police were called to an incident at Mr Whalley's home on 3 November 2023. When they arrived, police say Mr Whalley was extremely hostile and yelled and swore at them. They consider Mr Whalley's behaviour breached one of the conditions attached to his certificate of approval in February 2022 after a previous complaint hearing.

[2] Mr Whalley denies that he was hostile towards police or that he breached a condition of his licence. He says he cooperated with the police and responded politely. He says he was swearing at his dog and not at the police.

[3] The issues I therefore need to decide are:

- What happened when police visited Mr Whalley's home on 3 November?
- Did Mr Whalley breach either of the conditions attached to his certificate of approval by acting aggressively towards police or failing to cooperate with police?
- If so, should Mr Whalley's certificate be cancelled, or some other disciplinary action taken?

What happened on 3 November when police visited Mr Whalley's home?

[4] Constable Rom says that when he and Constable Gould arrived at Mr Whalley's home on 3 November Mr Whalley was on an upper deck and immediately began to yell at them and tell them they were not welcome. He was extremely hostile towards police and displayed anti-police behaviour throughout the encounter.

[5] Even after he complied with the police request to get the attention of his partner and her son Mr Whalley continued to yell abuse at the police telling them repeatedly to "fuck off" and leave the property. This was despite the fact police were not on the property but outside the front gate. Police advise Mr Whalley continued to impede their investigation as they were trying to speak to his partner and her son. At one stage they heard Mr Whalley call them "pig shit".

[6] Mr Whalley says he was polite to the police when they arrived and called them "sirs". He says his dog Chaos was at the gate barking and as he was trying to remove the dog and get him inside it was the dog he was telling to "fuck off" and not police. He also denies calling police "pig shit" but said "I am sick of this shit".

[7] Mr Whalley's evidence is partially supported by James Jaram who wrote a statement in his support. However, at the hearing Mr Jaram accepted he only heard the end of the interaction between Mr Whalley and police.

[8] I prefer the police recollection of events, other than accepting Mr Whalley more likely said something like "I am sick of this shit" rather than calling the police "pig shit". I do not accept Mr Whalley's evidence he was swearing at his dog rather than police. As he was trying to get the dog to come towards him and into the house, he is unlikely to be yelling at the dog to "fuck off".

[9] I also note that Constable Rom made handwritten notes of the key events at the end of his shift on the same day. Those notes record the key parts of his evidence at the hearing. In addition, Constable Rom was sufficiently concerned by Mr Whalley's behaviour that he contacted Senior Constable Leahy or one of her colleagues that day. He completed his witness statement the following day.

[10] Therefore, I accept that Mr Whalley acted aggressively towards police, swore at them and was generally unhelpful when police visited his home on 3 November 2023.

Did Mr Whalley breach the conditions attached to his certificate in February 2022?

[11] Police made an earlier complaint against Mr Whalley after he had been convicted on two charges of threatening to kill. During the hearing into that complaint police provided evidence of other occasions when Mr Whalley had acted inappropriately towards police. Mr Whalley in response provided evidence of the steps he had taken to deal with the depression and anxiety which contributed to his offending and poor behaviour.

[12] I therefore expressly gave Mr Whalley a final chance and allowed him to keep his certificate of approval so he could continue working in security. However, I imposed the following conditions on Mr Whalley's certificate:

- Mr Whalley is not to threaten or act aggressively towards others. If the Police are informed of any further incidents where Mr Whalley has threatened to kill or cause harm to others the Police can file a further complaint regardless of whether charges are laid.
- Mr Whalley must cooperative with the Police and other legal authorities. The Police can also file a further complaint and request the immediate suspension of Mr Whalley's certificate should Mr Whalley refuse to cooperate with them or other legal authorities or be abusive or speak aggressively towards them.

[13] I conclude that Mr Whalley breached these conditions on 3 November 2023 when he acted aggressively towards police and rather than cooperating with them, he yelled and swore at police and told them to leave his property.

Should Mr Whalley's certificate be cancelled, or some other disciplinary action taken?

[14] It is unfortunate that Mr Whalley has breached the conditions attached to his certificate after two years of creditable work as a security guard, sometimes in very trying circumstances. It is also disappointing that Mr Whalley has not accepted responsibility for his actions but has endeavoured to reconstruct events to put him in a better light.

[15] If Mr Whalley had accepted, he reacted inappropriately and provided assurance it was a one off, given the stress he was under, I most likely would have agreed the period of

suspension he has already served was a sufficient penalty despite the fact he was on a final warning. However, he has not accepted responsibility and is inferring the police are liars.

[16] It is likely that on this occasion Mr Whalley was not practicing the strategies he has learnt to remain calm and focused when under stress. However, to his credit Mr Whalley advises he is seeking further counselling as the counselling being provided by his employer following an assault was discontinued when he resigned from his job.

[17] In deciding the appropriate penalty for contravening the conditions of his certificate, I have considered the fact that the incident was a one off and did not occur while Mr Whalley was working. In addition, there is no evidence that Mr Whalley has acted inappropriately while working as a security guard. To the contrary he has been commended for some of the work he has done.

[18] Therefore, I will not cancel Mr Whalley's certificate but will extend the suspension of his certificate of approval for a total period of eight months. Mr Whalley may apply to have the suspension lifted before the end of eight months by providing a letter from his counsellor as set out below.

Conclusion and Orders

[19] Police have established that Mr Whalley has breached the conditions placed on his certificate by acting aggressively towards police, swearing at them and generally being obstructive when they attended an incident at his home on 3 November 2023.

[20] I therefore make the following orders:

- Mr Whalley's certificate of approval is suspended for a period of eight months effective from Monday 18 November 2023.
- Mr Whalley may apply for the suspension order to be lifted before the expiry of eight months by providing a letter from his counsellor, or similar person. The letter should confirm that Mr Whalley is appropriately implementing strategies so that he does not respond inappropriately when under stress or provocation and that he continues to address his historic trauma. In addition, the letter should confirm that in his counsellor's opinion Mr Whalley is suitable to return to work as a security guard.

Dated at Wellington this 18th day of December 2023


P A McConnell
Private Security Personnel Licensing Authority

