

Wingate v SRA [2018] EWCA Civ 366

Honesty, integrity and how professionals should behave.

“This...is not a Socratic quest for ultimate truth,” asserts Jackson LJ, handing down judgment today, the day of his retirement.

Nevertheless, his judgment in two conjoined appeals, with which the two other members of the Court of Appeal agreed, constitutes an important analysis of one of the hot topics in professional disciplinary law – where do the boundaries (if there are any) lie between honesty and integrity? We now have our answer.

The approach to the concepts of honesty and integrity have come to the forefront of legal regulation since the Solicitors’ Code of Conduct 2011. Principle 2 requires solicitors to act with integrity. Principle 6 requires solicitors to behave in a way that maintains “the trust the public places in you and in the provision of legal services”. Dishonesty is not a discrete offence under the Code; it is an aggravating feature.

Part 5 of Jackson LJ’s judgment resolves a stark difference of approach in the High Court between Holman J in the first appeal and Mostyn J in the second. Jackson LJ’s exposition of the developing law in relation to dishonesty is, as ever, masterful, pausing only briefly to explain that in Ivey “*the tectonic plates of the legal firmament moved.*” [90] The difference of approach is resolved firmly in favour of there being a clear distinction between honesty and integrity. Objectionable behaviour is explained as follows.

“Honesty is a basic moral quality which is expected of all members of society. It involves being truthful about important matters and respecting the property rights of others. Telling lies about things that matter or committing fraud or stealing are generally regarded as dishonest conduct...The legal concept of dishonesty is grounded upon the shared values of our multi-cultural society. Because dishonesty is grounded upon basic shared values, there is no undue difficulty in identifying what is or is not dishonest.” [93]

“Integrity is a more nebulous concept...In professional codes of conduct, the term ‘integrity’ is a useful shorthand to express the higher standards which society expects from professional persons and which the professions expect from their own members...The underlying rationale is that the professions have a privileged and trusted role in society. In return they are required to live up to their own professional standards...Integrity connotes adherence to the ethical standards of one’s own profession. That involves more than mere honesty.” [96, 97, 100]

“Principle 6 is directed to preserving the reputation of, and public confidence in, the legal profession. It is possible to think of many forms of conduct which would undermine public confidence in the legal profession. Manifest incompetence is one example. A solicitor acting carelessly, but with integrity, will breach Principle 6 if his careless conduct goes beyond mere professional negligence and constitutes ‘manifest incompetence’...” [105]

As a footnote, those who defend registrants may like to take note of paragraph [156], where Jackson LJ notes: *“As a general rule a prosecutor should not say that the respondent is fortunate not to have been charged with more serious offences. The prosecution should either (a) charge the respondent solicitor with that more serious offending or (b) refrain from suggesting that he is guilty of that more serious offending and lucky to get away with it.”*

It is likely that this judgment will have repercussions beyond legal regulation. The equivalent codes for both doctors and dentists, for example, contain references to – and requirements to act with – honesty and integrity. Given too that Mr Wingate was suspended for lack of integrity (Principle 2) and manifest incompetence (Principle 6) in entering into a sham financial transaction, professionals should be made aware that their registration is at risk even if they act with honesty.

Note by Nicholas Peacock

Hailsham Chambers, Wednesday 7th March 2018