

DISHONESTY

ELOISE POWER

DISHONESTY AND THE CRIMINAL LAW

- Two-stage test in *R v Ghosh*
- Applied in the professional regulatory context in *Twinsectra Limited v Yardley and Others [2002] UKHL 12*
- Refined by Longmore LJ in *Hussein v GMC [2014] EWCA (Civ) 2246* (ordinary and honest doctors not people)

DISHONESTY AND THE CIVIL LAW

- Barlow Clowes International Ltd v Eurotrust International Ltd [2005] UKPC 37
- Lord Hoffman: *"Although a dishonest state of mind is a subjective mental state, the standard by which the law determines whether it is dishonest is objective. If by ordinary standards a defendant's mental state would be characterised as dishonest, it is irrelevant that the defendant judges by different standards."*

KIRSCHNER

- Beata Kirschner v General Dental Council [2015] EWHC 1377 (Admin)
- Mostyn J regarded the *Barlow Clowes* approach with approval.
- He nevertheless confirmed that at the present time the *Ghosh/ Twinsectra* test (as modified by *Hussein*) applies.

THE CURRENT TEST

- *“The tribunal should first determine whether on the balance of probabilities, a defendant acted dishonestly by the standards of ordinary and honest members of that profession; and, if it finds that he or she did so, must go on to determine whether it is more likely than not that the defendant realised that what he or she was doing was by those standards, dishonest.”*
- Different standard of proof for RCVS

DISHONESTY AND SANCTION

- *“Where dishonesty is made out, there is ample support in the case law for the proposition that dishonesty combined with a lack of insight will very frequently lead to the conclusion that nothing short of erasure is likely to be appropriate.”*

Kerr J, *Ninian Peckitt v General Dental Council*
[2016] EWHC 1803

“STEPWISE” APPROACH STILL NECESSARY

- Jonathan Davey v General Dental Council [2015] EWHC 3594 (Admin)
- The “stepwise” approach is a matter of substance not form.

A Practical Example

You are prosecuting a veterinary surgeon for falsification of records. She has indicated that she is likely to admit that she falsified the records, but will say that she did this at a time when she was suffering from mental health problems, specifically bipolar disorder and alcoholism. You intend to charge her with dishonesty.

Would you obtain expert evidence?

If so, what questions would you wish to put to an expert?

Another Practical Example

You are prosecuting a veterinary surgeon for failing to take steps to prevent the death of a racehorse. While the case is ongoing, it comes to your attention that the veterinary surgeon has written to a number of newspapers and his local MP stating: *“The RCVS has no power in law to treat me like this and is almost certainly corrupt,”* together with a large number of similar comments.

Do you decide to charge him with dishonesty? If so, how would you draft the charge?