



Article written by [Paul Parker](#) on 14th March 2018.

What does it mean to be lacking in integrity?

The Court of Appeal has now uttered the last word (and in Jackson LJ's case, literally so, that being his final judgment before retiring) in the dishonesty/integrity debate which has kept regulatory and disciplinary lawyers busy for well over a decade. In the eagerly-awaited decision in the conjoined appeals in *Wingate & Evans v SRA* and *SRA v Malins* [2018] EWCA Civ 366 the court ruled that dishonesty and lack of integrity are not synonymous, nor that lack of integrity is a species of 'dishonesty-lite'. For professional persons, lack of integrity is proved by showing that their profession's ethical code or standards of conduct have been disregarded. As explained by the court at [97], [100] and [102],

"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...

Integrity connotes adherence to the ethical standards of one's own profession. That involves more than mere honesty...."

but also that

"The duty of integrity does not require professional people to be paragons of virtue. In every instance, professional integrity is linked to the manner in which that particular profession professes to serve the public."

In *Wingate* the respondent solicitor entered into a sham funding arrangement in order to bail out his failing practice. Acquitted by the SDT, on appeal to the High Court he was found guilty by Holman J of having breached Principle 2 of the SRA Code of Conduct ("You must ... act with integrity"). He appealed to the Court of Appeal.

In *Malins* the respondent falsely backdated a notice of funding to get round the LASPO bar to recovery of ATE premiums post-1 April 2013. The SDT found the respondent guilty of dishonesty and lack of integrity. On the respondent's appeal to the High Court, Mostyn J concluded that the SRA had not properly pleaded or formulated a case of dishonesty against the respondent, so that finding could not stand, and since dishonesty and lack of integrity were synonymous, the findings of breach of Principle 2 could not stand either. The SRA appealed to the Court of Appeal.

The approach of Holman J in *Wingate* ([2016] EWHC 3455 (Admin) at [37], [76] and [83]-[84]) was as follows:

“Any solicitor who signs a sham contract of this magnitude and significance in relation to a loan of £900,000 must objectively lack integrity in that regard and/or must seriously undermine public trust both in himself and in the provision of legal services. No tribunal, correctly directing itself and appropriately analysing the evidence, could rationally have concluded that this was merely unwise or lacking in care or judgment. Any such tribunal must rationally have concluded that Mr Wingate lacked integrity and undermined trust...

Solemn written contracts, especially for borrowing so large a sum of money, have a very important place in any legal system. They ought not to be signed by anybody lightly, and they certainly should not be signed by a lawyer lightly. Further, it would not maintain, but would tend to undermine, the trust that the public places in solicitors if the public knew that in order to obtain a significant loan for the purposes of his firm and himself, a solicitor had, in whatever circumstances, signed a sham contract....

... at the point when he signed that sham contract and then drew down the money pursuant to it, Mr Wingate did not act with integrity, in breach of Principle 2.”

Holman J’s gaze was directed not towards commonly understood concepts of dishonesty but to a different form of misconduct: conduct which was not of itself necessarily dishonest; conduct which was more than merely unwise or lacking in care or judgment; conduct which, objectively assessed, crossed the line between what was and what was not professionally acceptable.

By contrast, Mostyn J in *Malins* [2017] EWHC 835 (Admin) came to his differing conclusion by means of the following building-blocks:

- a. The OED definition of integrity contained the word honesty;
- b. Lack of integrity included the inability to distinguish between honesty and dishonesty;
- c. This explanation of lack of integrity had been expressly approved by the Divisional Court in *SRA v Scott* [2016] EWHC 1256;
- d. Moreover in *BSB v Howd* [2017] EWHC 210 (Admin), [2017] 4 WLR 54, it had been held that the expression “integrity” took its colour from “honesty”; and
- e. The SRA Principles required a solicitor to act with integrity but there was no requirement of honesty: that had to mean that the two words were synonymous.

The Court of Appeal roundly rejected Mostyn J’s analysis, preferring instead the approach of the Divisional Court in *Williams v SRA* [2017] EWHC 1478 (Admin) in which Carr J (at [54]) and Leveson P (at [130]) respectively held that

“...both on the authorities and as a matter of principle, ... in the field of solicitors’ regulation, the concepts of dishonesty and want of integrity are indeed separate and distinct. Want of integrity arises when, objectively judged, a solicitor fails to meet the high professional standards to be expected of a solicitor...

...in the absence of compelling justification, I would reject Mostyn J’s description of the concept of want of integrity as second degree dishonesty. Honesty, i.e. a lack of dishonesty, is a base standard which society requires everyone to meet. Professional standards, however, rightly impose on those who aspire to them a higher obligation to demonstrate integrity in all of their work. There is a real difference between them.”

In so doing, Jackson LJ in the Court of Appeal in *Wingate* harked back to what has long been regarded by any disciplinary lawyer worth his or her salt as the starting-point for any discussion about lack of integrity, the Fit and Proper Test for Approved Persons in the then FSA Handbook –

“honesty, integrity and reputation; this includes an individual’s openness and honesty in dealing with consumers, market participants and regulators, and ability and willingness to comply with the requirements placed on him under [FSMA] as well as with other legal and professional obligations and ethical standards ...”

– on the strength of which it was held in *Hoodless v FSA* [2003] UKFSMT, FSM007 at [19] that

“...both sides accepted [integrity] involved the application of objective ethical standards. In our view ‘integrity’ connotes moral soundness, rectitude and steady adherence to an ethical code.”

The law’s appreciation of the meaning of lack of integrity has perhaps gone full circle. And after *Wingate*, it is now clear.

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