

Does it matter if an employee bends the truth on their CV?

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In R v Andrewes the Supreme Court ordered the confiscation of almost £100,000 from a senior executive who committed “CV fraud” by making false representations and failing to disclose the truth about his qualifications and experience when he applied for and secured several senior posts.

What happened in this case?

In 2004, Mr Andrewes was offered and accepted a role as Chief Executive Officer at St Margaret’s Hospice in Taunton. The job advert stated that a first degree was “essential” and an MBA “desirable”. In terms of experience, ten years of managerial experience with three years in a senior position was “essential” and five years in a senior appointment was “desirable”. Mr Andrewes fraudulently misrepresented his qualifications and experience on his application form. In July 2007 and July 2015, Mr Andrewes applied to join two NHS Trusts again relying on the same false academic qualifications and falsehoods about his employment history.

In 2015, the truth emerged about Mr Andrewes misrepresentations and his employment at the Hospice and appointments at the two NHS Trusts came to an end. The Chair of Trustees of the Taunton Hospice said that Mr Andrewes would not have been offered the CEO role if it had been known that he was lying about his previous education and experience. This was also the case with his appointments to the two NHS Trusts.

Despite this, throughout Mr Andrewes’ time as CEO, his performance and aptitude for the CEO role was never called into question. Indeed, Mr Andrewes was regularly appraised as being either strong or outstanding in his annual reviews. A review of his work at one of the two NHS Trusts just one month before the termination of his appointment gave a similarly glowing account of his skills in all areas.

Mr Andrewes was prosecuted under the Theft Act 1968 and the Fraud Act 2006, and the Crown sought a confiscation order in respect of his earnings under the Proceeds of Crime Act 2002.

What was decided?

In the Crown Court, it was decided that Mr Andrewes' benefit from his criminal conduct comprised the earnings he received from his employment and the two NHS appointments. The total benefit was £643,602.91. The Court went on to identify the available amount, and hence the "recoverable amount", as £96,737.24. A confiscation order was made for the full recoverable amount on the basis that it would not be disproportionate to do so since that amount represented less than 15% of the total benefit figure.

The Court of Appeal allowed Mr Andrewes' appeal on the grounds that the confiscation order was disproportionate. It found that by performing the services which it was lawful for him to carry out, Mr Andrewes had given full value for the remuneration he had received. This situation, according to the Court of Appeal, amounted to "double recovery" which went beyond confiscation and amounted to a penalty. It was this "double recovery" that made the confiscation order disproportionate. The Crown appealed to the Supreme Court.

The Supreme Court considered the "take all" approach put forward by the Crown and the "take nothing" approach put forward by Mr Andrewes. Under the "take all" approach, the Crown argued that it would not be disproportionate to take Mr Andrewes' full net earnings from the period in question as it would otherwise allow him to enjoy the proceeds of his criminal enterprise. Under the "take nothing" approach, Mr Andrewes argued that to deny him his net earnings where he had restored the benefit by providing his services in full would constitute "double recovery" and therefore be a penalty which was disproportionate (as had been held in the Court of Appeal).

However, the Supreme Court found a “middle way” between these two approaches and restored the confiscation order of £96,737.24. The Supreme Court compared the salary that Mr Andrewes received in his new job as CEO in 2004 with the salary he earned immediately beforehand. The percentage difference between the two was 38%. On a broad-brush basis, a proportionate confiscation order (assuming it did not exceed the recoverable amount) would have been 38% of the total benefit (i.e. 38% of £643,602.91) which would have been £244,569. This amount represented the profit Mr Andrewes had made from his CV fraud. As this amount far exceeded the recoverable amount of £96,737.34, the Supreme Court held that it was proportionate to confiscate the full recoverable amount.

The Supreme Court also stressed that this “middle way” would not, at least as a general rule, be appropriate where the performance of the services constitutes a criminal offence. This is because the employee or officeholder in that situation has not provided restoration by performing valuable services. In at least most cases, performance of those services has no value that the law should recognise as valid. In that situation, confiscation of the full net earnings would not be disproportionate. That is, the “take all” approach is a proportionate approach in that situation and there is no justification for taking the “middle way” which may lead to a lower confiscation order. This was not the case for Mr Andrewes who had provided his services lawfully and in full, albeit that they were tainted by his initial fraudulent representations.

What does this mean for employers?

The key takeaway from this case is that employers should always conduct thorough due diligence when hiring employees and ensure that they verify an applicant’s qualifications and experience where these are necessary for a particular role. Employment contracts should also state that a failure to meet the specified requirements for the role may result in summary

dismissal and, if appropriate, be reported to the police.

R v Andrewes

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Associate James Hockley (jameshockley@bdbf.co.uk), Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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