

Crime brief

Elaborate lies on a CV are never a good idea, especially when the Supreme Court gets involved: **David Walbank KC** reports on some tall tales & costly consequences

IN BRIEF

- ▶ Proportionality in confiscation proceedings.
- ▶ CV fraudster giving full value for fraudulently obtained salary.
- ▶ The Supreme Court's 'pragmatic solution'?

The Supreme Court gave judgment in August on a question that has long vexed criminal lawyers and academics. *R v Andrewes* [2022] UKSC 24, [2022] All ER (D) 63 (Aug) arose from an extreme version of what is sometimes euphemistically described as 'CV padding'. Jon Andrewes had obtained a succession of prestigious public sector jobs based on application forms in which he described his educational qualifications and professional career in a way which bore absolutely no relation to reality. When he pleaded guilty to a series of offences of dishonesty, it threw into stark relief the proportionality of criminal confiscation proceedings where they are brought against a convicted CV fraudster who has performed his job well and given full value for his fraudulently obtained salary.

Impressive credentials

In September 2004, St Margaret's Hospice in Taunton advertised in the national press a vacancy for the position of Chief Executive Officer. Jon Andrewes applied for the job and on his form he listed an impressive array of academic qualifications and study. He claimed to have attended Bristol University and obtained a joint honours degree in 'Social Policy and Politics' and an MPhil in 'Poverty and Social Justice'. He claimed to have an MBA in 'Management Science' from Edinburgh and to be studying for a PhD in 'Ethics and Management' at Plymouth University. As for his professional qualifications, he said that he had an advanced diploma in management accounting (CIMA). The problem, however, was that this was all a pack of lies. When it came to his employment history, he had been equally 'economic with the actualité'. In summary, the position was that some parts of his application form were dishonestly inflated, others were completely

bogus and, overall, it was seriously misleading. However, at the time of the application process, none of this came to light and Jon Andrewes got the job.

His annual salary started at £75,000 per annum and he remained in post for more than a decade until 2015. Not long after he started at the charity, he informed the staff there that he had obtained a PhD from Plymouth University and insisted on being addressed as 'Dr Jon Andrewes'. That too was untrue. But it didn't stop him appearing as 'Dr Andrewes' in staff structure diagrams and adding that title to his email footers. In July 2007, plain old Mr Andrewes applied for a paid part-time role as a non-executive director at the Torbay NHS Care Trust, again telling a pack of lies about his academic qualifications and career, with the addition this time of a DPhil qualification and styling himself Dr Andrewes. In September 2007, he was appointed to that position, initially for a period of four years. His contract was subsequently renewed and he ended up being promoted to the chairmanship of that NHS Trust. Next, in 2015, he obtained yet another paid public appointment, this time as chair of the Royal Cornwall NHS Hospital Trust. That application form too was a complete fabrication, enabling him to beat four other interviewees.

Later in 2015, however, someone smelled a rat. He was challenged about his academic history and the whole elaborate edifice finally fell apart. Andrewes pleaded guilty to three offences of fraud and was sentenced on the basis that, although his performance in these jobs had been consistently outstanding, nevertheless his outwardly prestigious life had been based on what the judge described as 'a series of staggering lies'. He received a sentence of two years' imprisonment and the case then proceeded to confiscation proceedings, which ultimately came before the Supreme Court. The Court of Appeal certified the following question:

'Where a defendant obtains remuneration as a result of or in connection with an offence of fraud based upon the obtaining of employment by false representations or non-disclosure, in what circumstances

(if any) will a confiscation order based on the wages earned be disproportionate within the terms of section 6(5) of the Proceeds of Crime Act 2002, or contrary to article 1, Protocol 1 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?'

What's proportionate?

The court answered as follows. Where a CV fraudster's job performance represents full value for the salary they receive, it is disproportionate to make a confiscation order equivalent to all their net earnings (unless doing the job without a particular qualification is itself a criminal offence, in which case recovery of the full salary is proportionate). However, where the mere fact of the defendant doing that job is not a freestanding criminal offence and where they have, in effect, earned their salary through their job performance, a proportionate confiscation order is one equal to the difference between the higher salary they obtained by lying on their CV and the lower salary they might otherwise have obtained elsewhere. The court has pragmatically to determine a figure approximating to the defendant's fraudulent profits, rather than conducting a detailed evidential or accounting exercise. Here, the defendant's lies on his application forms had resulted in him earning roughly 38% more than he might otherwise have done in another job and, assuming he had the financial wherewithal to pay that sum from his available assets, a confiscation order representing the difference would not be disproportionate.

Some will see this as another recent example of the Supreme Court overturning a cogent analysis by the Court of Appeal (Criminal Division). It will be fascinating to see if it proves to be a workable solution to this long-standing conundrum. **NLJ**

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