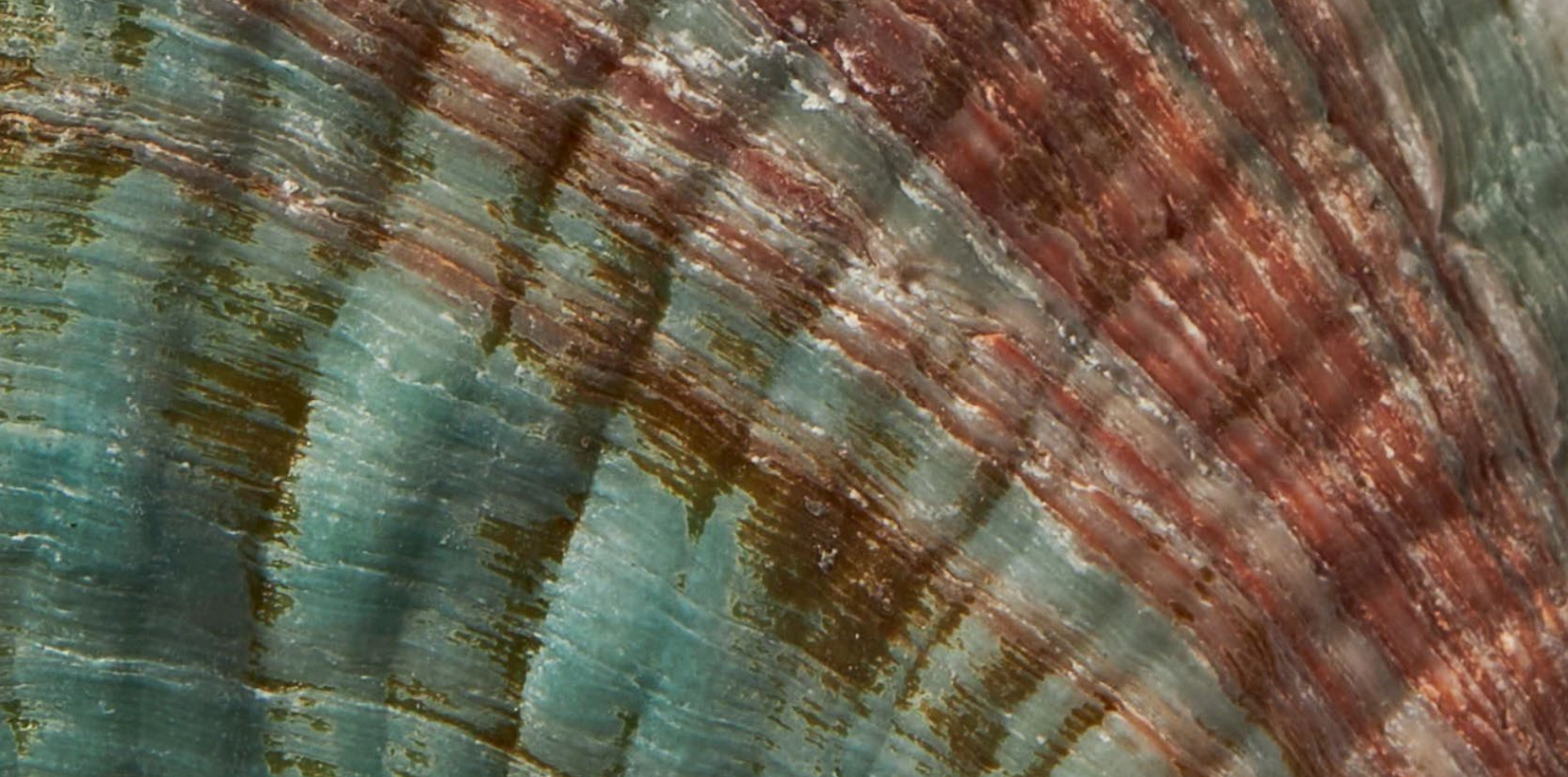




# Nelson, what does your right eye see? When does wilful ignorance amount to dishonesty

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1. On 2 October 2026, the Court of Appeal handed down judgment in Grosvenor Property Developers Limited v Portner Law Limited [2026] EWCA Civ 1238. The decision contains useful guidance on the relevant test for dishonesty in a civil fraud context and when the Court will impute a party with Nelsonian knowledge.
2. Mr Broughton, a conveyancer, was engaged by Mr Varma in relation to various property transactions pursuant to which various proceeds were paid into the Portner Law's

client account. There was no dispute between the parties that these sums represented the traceable proceeds of sums which were misappropriated from the Claimant by its former directors, Mr Varma and Mr England.

## First Instance Decision

3. The trial Judge found that whilst Mr Broughton had no actual knowledge of the underlying dishonest conduct, he had:

- 3.1 Failed to conduct any anti-money laundering checks beyond carrying out a proof of identity;
  - 3.2 Treated funds which were advanced from an account in Mr Varma's son's name as well as from a company called Casa Investment Limited ("**CIL**") (of which Mr England was the sole director) as being from the "*same family pot*";
  - 3.3 Knowingly signed a false certificate confirming to the lender that it had acted for Mr Varma's company – My Casa PBSA Limited ("**My Casa**") – for one year and that the borrower was known to him; and
  - 3.4 Received an email from a long-standing client, Mr Essex, who alerted him in an email stating: "*This guy is dodgy. Do you know what he's up to here??*".
4. Taking these matters in the round, the Judge found that "*an honest solicitor in these circumstances would [not] have behaved as Mr Broughton did*" and accordingly, imputed Mr Broughton with blind-eye knowledge of the underlying dishonest conduct. In so doing, the Judge: (1) rejected the submission that in order to impute an individual with Nelsonian knowledge, one must show a suspicion of specific wrongdoing; and (2) found that the fact that Mr Broughton acted recklessly was strong evidence of dishonesty.

## Court of Appeal

5. The Court of Appeal allowed the appeal; it concluded that the Judge failed to apply the correct test for dishonesty.
6. In so doing, the Court of Appeal revisited various authorities on the test for dishonesty and distilled them down to the following propositions:
  - 6.1. Post-*Ivey v Genting*, establishing dishonesty requires a two-stage approach. The Court must first ascertain the individual's relevant knowledge and beliefs, as well as actual state of mind; this is a subjective enquiry. In stage two, the Court then asks, as a jury question, whether given that state of mind, the conduct was dishonest by applying the standards of ordinary decent people;
  - 6.2. The second limb of the *Ghosh*-test is no longer applicable. The Court need not be satisfied that the individual subjectively appreciated that s/he was acting dishonestly;
  - 6.3. Conduct which is merely negligent, even if grossly negligent cannot without more amount to dishonesty; although the more negligent the conduct and the more unreasonable the belief, the less likely (as a matter of evidence) the Court will believe that such a belief was genuinely held;
  - 6.4. As a part of the Court's first-stage enquiry, "*blind-eye*" knowledge is treated in the same way as actual knowledge. In order to establish blind-eye knowledge, the Court must be satisfied of: (1) the existence of a suspicion that certain facts may exist; (2) a deliberate decision to avoid taking steps that would confirm their existence;

7. Importantly, the Court of Appeal considered that the Judge was wrong in concluding that a mere unspecified suspicion is sufficient. Endorsing the reasoning in *Stanford International Bank Ltd v HSBC Bank plc* [2021] EWCA Civ 535, the Court of Appeal held that the suspicion must be “*firmly grounded and targeted on specific facts, and the deliberate decisions not to ask questions must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe*”. Untargeted or speculative suspicions are insufficient.
8. Furthermore, the Court of Appeal was also critical of the Judge’s reliance on a statement in a leading textbook that recklessness was strong evidence of dishonesty. Recklessness was not the same as dishonesty and whilst recklessness “*can be a tell-tale sign of dishonesty*”, the Court of Appeal considered that the use of the word reckless is one best avoided in this context.

## Key Takeaways

9. The Court of Appeal decision is important for civil fraud practitioners. Not only does it provide a comprehensive and clear statement on the law related to dishonesty and Nelsonian blindness, it is a stark reminder that when seeking to impute knowledge to an individual, it is important to be forensic and precise as to what facts it is said the individual had suspicion of and in respect of which knowledge should therefore be imputed. No doubt in the future, there will be many more cases which will give rise to disagreements about how specific such a suspicion needs to be.
10. The Court of Appeal’s attempt to limit the usefulness of recklessness as an indicium for dishonesty might also have gone too far. In the context of tort of deceit, for instance, recklessness continues to be a good indicator as to whether a belief is honestly held: *Derry v Peek* [1889] 14 App Cas 337.

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