True or false?

There are seven offences in the UK of 'obtaining by deception'. **Sally Ramage** explains what this means and how you can help clients protect themselves against accusations of deception

The Theft Act 1968 creates three offences of 'obtaining by deception' and the Theft Act 1978 adds another four. So what is deception?

The Theft Act 1968, s15(4), states: "'Deception' means any description (whether deliberate or reckless) by words or conduct as to fact or as to law, including a deception as to the present intentions of the person using the deception or any other person". If we take at look at cases in which the judge explains what such fraud is, we find that as far back as 1889, in the case *Derry v Peek*, Lord Herschell said: "Fraud is proved when it is shown that a false representation has been made knowingly, without belief in its truth, or recklessly, careless whether it be true or false...".

In 1891, in the case *Angus v Clifford*, Lord Justice Bowen asked of a fraudster: "Did he know that the statement was false, was he conscious when he made it that it was false, or if not, did he make it without knowing whether it was false and without caring?"

Examples of deception are identity theft, corporate espionage, bank fraud... and cash-flow forecasts. A cashflow forecast is a statement of a sort and may be true or false, depending on whether it relates to existing facts, past or present. The making of a forecast, like that of a promise, will normally lead the recipient to draw certain inferences as to existing facts. It is clearly deceptive to make a forecast knowing that it will not come true.

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The making of a false statement is an offence in itself under the Financial Services Act, s200(1), and whether it is deceptive depends on how its recipient understands it and is intended or expected to understand it. As the judge said in the 1994 case *Regina v Morris*: "Where... the charge is one of fraudulent trading, not requiring proof that any particular person was deceived, the question in issue must be as to the interpretation which a reasonable reader would, or might, put upon a document."

So how does someone claim that they were deceived and claim damages for the deceit? We can look for an example at the case of someone, a plaintiff, who made a loan to another, the defendant, on the strength of a cashflow statement.

The plaintiff will have to establish that the defendant made a representation to the plaintiff. The plaintiff would have to have evidence of this document, for example the cashflow forecast or at least a witness statement to the representation and its having been made to the plaintiff.

The plaintiff would have to establish that he acted on that document. He would need the documentation or a witness statement showing that he made the loan as a result of the document supplied. He would have to prove that he suffered damage by acting on that document, so he would need to have evidence such as his bank statements showing his financial position before and after he acted on the misrepresentation.

He would also have to establish that the representation by way of, for example, the cashflow statement was untrue, so he would have to have that document, the cashflow statement, for example, or a witness statement to the circumstances in which the representation was made.

The only defences a defendant would have are that they did not intend to make a representation or that it was mere puff, was not aware that it was untrue or believed it was true at the time.

As an accounting technician, you would be well advised to create a sub-file in a client's file when making a cashflow forecast. This should include all supporting documentation used to furnish figures in the forecast. Apart from the past year's financial statements, supporting figures – current interest rates, the current margins for the client's trade or sector, real figures showing the client's outgoings based on mortgage statements, car purchase details, documentation relating to other debts he has at the time, current bank statements for all bank accounts, tax liability statements and statements to show provision for VAT liabilities – should be kept in this sub-file.

To protect oneself, a signed statement from the client that he has given you all relevant details and is aware of what the cashflow statement says would be a cautious step to take.

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