

## DOCUMENT DESTRUCTION IN BUSINESS

by Sally Ramage®



Being deeply involved with the figures as accountants and accounting technicians can often lead us to miss the importance of the very documents we use to get to the accounts we deal with.

When things go wrong, contemporary documents are of the utmost value. It is to documents that the legal people look with special care when there is any issue with accounts. Oral testimony alone is less reliable. Documents are the means of tracing a contemporary record going to the thing in issue. That is why no documents should be destroyed.

In certain cases, the destruction of documents is illegal. For example, a company officer who destroys or falsifies a document affecting the company's property or affairs is liable to prosecution under the Companies Act 1985, section 450, unless he can prove that he did not intend to deceive by doing so. Section 450 of the Companies Act states:

“Punishment for destroying, mutilating, etc, company documents.

(1) An officer of a company who

(a) destroys, mutilates or falsifies or is privy to the destruction, mutilation or falsification of a document affecting or relating to the company's property or affairs, or

(b) makes, or is privy to the making of a false entry in such a document,

is guilty of an offence, unless he proves that he had no intention to conceal the state of

affairs of the company or to defeat the law.

(2) Such a person as above mentioned who fraudulently either parts with, alters or makes an omission in any such document or is privy to fraudulent parting with, fraudulent making of an omission in any such document, is guilty of an offence.

(3) A person guilty of an offence under this section is liable to imprisonment or a fine, or both.

(4) Section 732 (restriction on prosecutions), section 733 (liability of individuals for corporate default) and section 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.

(5) In this section “document” includes information recorded in any form.

And if a dispute has already arisen, it is very dangerous to destroy any documents. In some cases a deliberate decision to destroy documents if it is extremely likely that a dispute is soon to arise or after a dispute has arisen could make one liable under the criminal offence of obstructing or perverting the course of justice.

Anyway, missing documents usually leave tell-tale indications of their existence because they are often referred to in surviving documents. If the case goes to court, one has to list not only documents in one's possession, custody or power, but also those which were but are no longer. Destruction of documents can lead to the case being found against you by inference. Such a case was the 1985 case of Infabrics versus Jaytex, a case of copyright infringement of prints for shirts. It was discovered that after the case commenced, most of the invoices, stock records and similar documents had been destroyed.

The judge said :

“ I am not prepared to give the defendants the benefit of any doubt or to draw an inference in their favour where a document, if not destroyed, would have established the matter beyond doubt.” It speaks for itself.

Companies should have document retention policies and should not be haphazard as to what they keep and what they decide not to keep. It used to be the case that we could look to the Limitation Act 1980 for how long we should keep files, most professions keeping papers for at least six years. But the recent case of Brocklesby versus Armitage makes it possible now for someone to bring a case in respect of say, a bad piece of accounting advice, long after the six year limit.

What are the documents that the Companies Act mention in section 450? Well, documents can include text messages and emails. In the Guinness case in 1986, Mr Saunders was charged with destroying a jottings book, some correspondence, some pages from an address book and a 1986 diary, among other things. They were seen to be documents. In this case the judge said

“Section 450 is the part of the heavy artillery of the Companies Act. It carries a maximum of a seven year sentence. No other Companies Act offence carries a higher maximum sentence.... This section (450) is also unusual in that it places the burden of making out the statutory defence on the defence. Under this section, the prosecution need merely prove that the documents destroyed affected or related to the company’s property or affairs... The onus is then on the defendant to show that he had no intention to conceal the state of affairs of the company or to defeat the law.”

The judge went on to decide that Mr Saunders’ diary , etc. were documents as per section 450. He went on to say “Those words ‘affecting or relating to the company’s property or affairs’ show that the embargo against destruction goes beyond the formal documents that are the company’s documents, to the officer’s private documents, provided they affect or relate to the company’s

property or affairs. In my judgement, the ordinary literal construction of the word 'document' is the correct one, it being the intention of the legislature to forbid all unjustifiable destruction of documents or other less formal documents, whether the company's documents or not, and whether in the company's possession or not". It couldn't have been stated more clearly. Nowadays with advanced technology at our hands, it would be wise to preserve files using scanners and other electronic storage means rather than destroy them. A written policy on document destruction and retention , to be applied consistently, is a wise move.

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