

## **False Accounting**

False accounting, which is the falsification, concealment or destruction of records, is commonly used as a way to trick people into parting with money or other property, or to cover up what has already been done by falsifying an account.

False accounting is an offence under s17 Theft Act 1968 (“TA 68”).

An offence under s17 TA 68 offence may be linked to an offence under s19 TA 68 – false statements made by company directors.

### **False accounting offences**

S17 TA 68 contains two offences:

1. Under s17(1)(a) and (b) TA 68 it is an offence if any person, dishonestly and with a view to gain for himself or another, or with intent to cause loss to another, destroys, conceals or falsifies any account or record required for any accounting purpose.
2. Under s17(2) TA 68 it is an offence to make a statement that is misleading, false or deceptive in, or to omit a material particular from, an account or other document.

The penalty for false accounting is a maximum of 7 years imprisonment on conviction on indictment, s17(1) TA 68.

### **Account, record or document**

Depending on the offence, the article falsified etc must be either:

- an account; or
- a record or other document which, though not itself an account, is made or required for an accounting purpose.

The word “account” bears its ordinary meaning. A document purporting to be an account is not excluded merely because it is fictitious: *Scot-Simmonds* [1994] Crim LR 933; neither are accounts in a non-documentary form, such as computer files.

The word ‘record’ has a wide meaning and includes a mechanical account such as a meter attached to a turnstile, *Edwards v Toombs* [1983] Crim LR 43.

### **Accounting purpose**

The records or documents must be “made or required for any accounting purpose”. The document itself need not be made specifically for accounting

purposes but it must be required for such a purpose, *A-G's Reference (No.1 of 1980)* [1981] 1 WLR 34, 72 Cr.App.R 60.

Whether a document is required for an accounting purpose is a question of fact and will ordinarily need to be proved by the prosecution. In *R v Sundhers* [1998] Crim LR 497, convictions for false accounting based on dishonest insurance claim forms were quashed as the jury could not be allowed to draw their own conclusions without some evidence being put before them.

However, in *R v Manning* [1998] 4 All ER 876, it was held that it was open for a reasonable jury to conclude simply by looking at the documents involved that they were required for an accounting purpose without specific evidence.

*Manning* can be distinguished from *Sundhers* by the type of documents involved. In *Manning* the document was a cover note that set out what the client had to pay and how to pay it, and so clearly could be seen to be required for an accounting purpose. The claim forms in *Sundhers* were such that they might on occasion be looked at by auditors. Without knowledge of the audit practice the jury could not be expected just by looking at them to reach the conclusion that they were required for such an accounting purpose.

### **Falsification**

A falsification can be made by making a false entry but also by omitting material particulars, *R v Shama* (1990) 91 Cr.App.R 138.

While an entry must be one "which is or may be misleading, false or deceptive in a material particular", the material particular does not have to be one connected with the accounting purpose of the document, *R v Mallett* [1978] 1 WLR 820.

### **Mental element**

A person must be dishonest (*Ghosh* [1982] QB 1053) coupled with a view to gain or with intent to cause loss.

In *R v Layean Atkinson* [2003] EWCA Crim 3031, [2004] Crim LR 226 the Court of Appeal held that where it was established that the appellant, a pharmacist, had submitted prescription forms containing materially false information, the essential question was whether she did so dishonestly with a view to gain or with intent to cause loss. This connoted deliberately and intentionally making a false accounting statement knowing it to be false.

A temporary gain could be sufficient to make out the offence, *R v Eden* (1971) 55 Cr.App.R 193

"Gain" and "loss" must relate to money or other property (s34(2)(a)) TA 68. Thus a mere desire to improve relations with business partners is not of sufficient intent to establish "a view to gain", *R v Masterton*, unreported, April 30, 1996, CA 94/2221/X5.

It is not necessary to prove that the defendant had no legal entitlement to the property or money lost or gained, *Attorney General's Reference (G & S) (No.1 of 2001)* [2003] 1 Cr.App.R 8.

## **Jurisdiction**

False accounting is a Group A offence under Part 1 Criminal Justice Act 1993 ("CJA 93"). Thus, a person may be guilty if any relevant event occurred in England or Wales: s2(3) CJA 93. Any 'relevant event' is defined as "any act or omission or any other event (including any result of one or more acts or omissions) proof of which is required for prosecution of the offence": s2(1) CJA 93. This applies whether or not the defendant was in England or Wales at any material time.