Case No: CO/4200/2009

Neutral Citation Number: [2010] EWHC 1469 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 June 2010

Before :

THE HON. MR. JUSTICE LLOYD JONES

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Between :

R (on the application of Glenn & Co (Essex) Ltd.)	**Claimant**
- and -	
Commissioners of Her Majesty's Revenue and Customs	**Defendant**

- -
- -

David Southern (instructed by **Anami Solicitors**) for the **Claimant**
Ben Collins (instructed by **Solicitors for HMRC**) for the **Defendant**

Hearing date: 26th May 2010

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Judgment

The Hon. Mr. Justice Lloyd Jones :

1. By this application for judicial review Glenn & Co (Essex) Limited ("the Claimant") seeks to challenge the legality of the conduct of the Defendant's authorised representatives in removing computers from the Claimant's premises.

2. The facts can be stated relatively briefly. The Claimant deals in excise goods and was at the relevant time registered as a revenue trader. At 10.00 am on 4th February 2009 several revenue officers entered the Claimant's business premises unannounced and without having obtained a warrant. The purpose of the operation was to conduct interviews and to inspect business records, including computers. While at the Claimant's premises the revenue officers disconnected and removed a computer server and nineteen computers which were standing on desks. The purpose of removing the computers was to interrogate the hard disks of the computers. All but one of the computers were returned the next day 5th February 2009. The remaining computer and server were returned on the 6th February 2009.

3. In the case of excise goods the powers of the Defendant in relation to inspection, information and search are contained in Customs and Excise Management Act 1979 ("CEMA"). The inspection power is contained in section 118C(1) which provides:

> "118C(1) For the purpose of exercising any powers under the customs and excise Acts an officer may at any reasonable time enter premises used in connection with the carrying on of a business."

4. The information power is contained in section 118B which provides in relevant part:

> "(1) Every revenue trader shall—
>
> (a) furnish to the Commissioners, within such time and in such form as they may reasonably require, such information relating to—
>
> (i) any goods or services supplied by or to him in the course or furtherance of a business, or
>
> (ii) any goods in the importation or exportation of which he is concerned in the course or furtherance of a business, or
>
> (iii) any transaction or activity effected or taking place in the course or furtherance of a business,
>
> as they may reasonably specify; and
>
> (b) upon demand made by an officer, produce or cause to be produced for inspection by that officer—
>
> (i) at the principal place of business of the revenue trader or at such other place as the officer may reasonably require, and
>
> (ii) at such time as the officer may reasonably require,
>
> any documents relating to the goods or services or to the supply, importation or exportation or to the transaction or activity.
>
> …
>
> (4) An officer may take copies of, or make extracts from, any document produced under subsection (1) or (2) above.
>
> (5) If it appears to an officer to be necessary to do so, he may, at a reasonable time and for a reasonable period, remove any document

produced under subsection (1) or (2) above and shall, on request, provide a receipt for any document so removed.

(7) Where a document removed by an officer under subsection (5) above is reasonably required for the proper conduct of a business he shall, as soon as practicable, provide a copy of the document, free of charge, to the person by whom it was produced or caused to be produced."

5. This power to obtain information is to be distinguished from the search power, which can be exercised only pursuant to a warrant. The search power is contained in section 118C (3) and (4):

"(3) If a justice of the peace … is satisfied on information on oath—

(a) that there is reasonable ground for suspecting that a fraud offence which appears to be of a serious nature is being, has been or is about to be committed on any premises, or

(b) that evidence of the commission of such an offence is to be found there, or

(c) that there is reasonable ground for suspecting—

…

he may issue a warrant in writing authorising, subject to subsections (6) and (7) below, any officer to enter those premises, if necessary by force, at any time within the period of one month beginning with the date of the issue of the warrant and search them.

(4) Any officer who enters premises under the authority of a warrant under subsection (3) above may—

(a) take with him such other persons as appear to him to be necessary;

(b) seize and remove any documents or other things whatsoever found on the premises which he has reasonable cause to believe may be required as evidence for the purposes of proceedings in respect of a fraud offence which appears to him to be of a serious nature …; and

(c) search or cause to be searched any person found on the premises whom he has reasonable cause to believe to be in possession of any such documents or other things; …"

6. Section 114, Finance Act 2008 ("FA 2008") applies to sections 118B and 118C:

"(1) This section applies to any enactment that, in connection with an HMRC matter—

(a) requires a person to produce a document or cause a document to be produced,

(b) requires a person to permit the Commissioners or an officer of Revenue and Customs—

(i) to inspect a document, or

(ii) to make or take copies of or extracts from or remove a document,

(c) makes provision about penalties or offences in connection with the production or inspection of documents, including in connection with the falsification of or failure to produce or permit the inspection of documents, or

(d) makes any other provision in connection with a requirement mentioned in paragraph (a) or (b).

(2) An enactment to which this section applies has effect as if—

(a) any reference in the enactment to a document were a reference to anything in which information of any description is recorded, and

(b) any reference in the enactment to a copy of a document were a reference to anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly.

(3) An authorised person may, at any reasonable time, obtain access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been used in connection with a relevant document.

(4) In subsection (3) "relevant document" means a document that a person has been, or may be, required pursuant to an enactment to which this section applies—

(a) to produce or cause to be produced, or

(b) to permit the Commissioners or an officer of Revenue and Customs to inspect, to make or take copies of or extracts from or to remove."

7. By its claim form issued on 1st May 2009 the Claimant sought permission to apply for judicial review on two grounds. The first proposed ground contended that the Defendant, in fact, carried out a search of the Claimant's premises without the authority of a warrant. The second proposed ground contended that the powers confirmed by section 118B did not permit the removal of the computers because they are not documents within section 118B(1).

8. On 28th July 2009 Mr. Justice Burton refused permission on both grounds.

9. On a renewed application 19th October 2009 Mr. Justice Cranston granted permission on the second ground only.

Application to rely on a further ground.

10. At the hearing before me the Claimant sought permission under CPR 54.15 to rely on an additional ground, namely that the revenue officers had failed to make any demand for the production of documents prior to the removal of the computers. I refused permission for the following reasons. First, there was no reason why the point could not have been raised earlier. Secondly, this is an issue which, if properly raised, should be addressed in the evidence. The point is not dealt with in the evidence filed on behalf of the Claimant. The point not having been raised before the application notice dated 29th April 2010, it was not dealt with in the evidence of Mr. Mark Fisher on behalf of the Defendant. Moreover, if permission had been granted, it was the intention of Mr. Southern, who appeared on behalf of the Claimant, to seek disclosure in relation to this issue. Thirdly, and most fundamentally, this proposed ground turns largely on questions of fact for which the judicial review procedure is not appropriate. If so advised, the Claimant may seek to pursue this as a private law claim in proceedings where witnesses can be heard and cross examined.

The effect of section 114.

11. On behalf of the Claimant Mr. Southern submits that notwithstanding the enlarging effect of section 114, FA 2008, section 118B, CEMA does not apply to computers. Mr. Collins, who appears for the Defendant, maintains that section 118B read in the light of section 114, FA authorises the conduct of which complaint is made in relation to the computers.

12. Section 114(2)(a) is not strictly a definition of "document"; rather it extends the application of a provision to which it applies by giving it effect as if a reference to a document were a reference to anything in which information of any description is recorded. In his submissions on behalf of the Claimant Mr. Southern suggested that the provision in section 114(2)(a), FA 2008 may have its origins in the Civil Evidence Act 1995 which itself was the product of a Law Commission Report and a draft bill prepared by the Law Commission. It is certainly the case that Schedule 1 to the Civil Evidence Act 1995 introduces a definition of "document", which uses the same words as appear in section 114, into a range of statutes concerned with many different subjects. It is therefore a definition in widespread use. I also note that the same definition is employed in the Civil Procedure Rules. (See part 31.4; ***Marlton v Tectronix UK Holdings*** [2003] EWHC 383 (Ch)).

13. Whatever the history of the definition may be, I am concerned in this case with this specific statutory provision which must be considered in the context of the Finance Act 2008 and sections 118B and 118C of CEMA, 1979. I bear in mind that section 118B permits a substantial intrusion into the affairs of the persons against whom it may be invoked and that there is, accordingly, a particular need to ensure that the provision is given no wider reading than Parliament must be taken to have intended.

14. The words of section 114(2) are extremely wide. As a matter of first impression, the words used in section 114(2) are sufficiently wide to extend the inspection power in section 118B to a computer because a computer is a thing in which information is recorded. However, before turning to consider the arguments to the contrary advanced by Mr. Southern, it is appropriate to say something about the nature of a computer as a means of storing information. Here I gratefully adopt the description provided by Stanley Burnton J, as he then was, in ***R(H) v Commissioners of Inland Revenue*** [2002] EWHC 2164 (Admin).

> "32. Consideration of these submissions involves consideration of the nature of a computer and of the data and documents stored on it. For this purpose it was not suggested that any distinction is to be made between a computer and its hard disk, at least where, as in the present case, the hard disk is not readily removable: the data is stored on the hard disk of the computer, and removal of the hard disk from the computer and taking it to the offices of the Inland Revenue would have the same effect, so far as the seizure of irrelevant information is concerned, as removing the entirety of the computer. For present purposes I can also ignore the fact that the hard disk also contains the operating system of the computer and other software.
> 33. The data on the hard disk is stored in magnetic form. Although the data may be regarded for some purposes as contained in separate files, they are all stored on the same physical object, namely the hard disk. Files may be copied to a floppy disk or other storage medium. They may be removed from the hard disk by a "cut and paste" onto another storage device, but this process alters accessibility to the data on the hard disk; which, if not

> obliterated becomes non-referenced data … Files cannot be removed from the hard disk physically."

He went on to explain that the data on the hard disk includes non-referenced data that is not accessible or visible with ordinary software. The data on the hard disk may also include embedded data which is contained within a file but cannot be accessed by simply opening the container file. He explained that there may also be distributed data i.e. data that has elements stored in more than one file, and encrypted data.

15. The only reported case of which I have been made aware on the issue whether section 118B applies to a computer is ***Demand & Supply Cash & Carry Limited v Commissioners of HM Revenue and Customs*** [2009] EWHC 3321 (Admin). There, one of the grounds of challenge was that HMRC had acted unlawfully in removing and detaining a number of computers found at the Claimants' premises. However, at the hearing the Claimants did not pursue their argument that "document" in section 118B did not include a computer. Parker J observed at paragraph 10:

> "10 The Claimants initially contended that "document" in Section 118B of the Act did not include a computer. At the hearing Mr. Brown, who appeared on behalf of the Claimants, prudently did not pursue this contention. Section 114(2) of the Finance Act 2008 expressly expands the meaning of "document" to include anything in which information of any description is recorded, an expansion that is plainly broad enough to cover the hard disk of a computer. In any event there is a welter of authority, from different contexts, where the expression "document" has been interpreted to include a computer (see, for example, ***R v The Commissioners of Customs and Excise (ex parte Bottlestop)*** [1997] EWHC Admin 467 at paragraph 16; and cf CPR 31.4.1)."

Although the judge did not decide the point, he left little doubt as to his preliminary view.

16. The welter of authority to which he referred comprises cases concerning search pursuant to a warrant. ***R v HM Commissioners of Customs and Excise ex parte Bottlestop*** [1997] EWHC Admin 467 concerned the seizure and retention of items pursuant to a search warrant. The warrant authorised entry to the Claimant's premises to "search for documents and other papers in relation to the movement of excisable goods". In executing the warrant customs officers removed all written and computer records of Bottlestop including its computer terminal, keyboard, mouse and all floppy discs. In rejecting the submission that the warrant did not extend to the computer Forbes J observed:

> "16. Third, it is said that the computer hardware, mouse, keyboard and such like, were unlawfully seized under the terms of the warrant, because the warrant was restricted to the search and seizure of documents. Again, there is no substance in that criticism. The data stored electronically on either the hard disk of the base units of the computer in question or on the floppy disks were all documents for the purposes of the warrant. That seems to me to be beyond argument. It appears that it was not fully appreciated that the base unit would include the hard disk within it and that the hard disk would have upon it electronically stored data and thus satisfies the definition of being a document for the purposes of the warrant. So far as items such as

> the mouse and the keyboard are concerned, arguably those were not documents and it may be, although I make no conclusive finding about the matter that, in taking those pieces of hardware, the officers in question may have gone beyond the terms of the warrant. Having regard to the fact that they are, to all intents, part and parcel of the base unit which are required to enable the base unit to be operated and since the base unit contained documents in the form of electronically stored material on the hard disk, it does seem to me that it is strongly arguable by Customs and Excise that the keyboard and mouse are part and parcel of the base unit, although detachable from it. If they are part and parcel of the base unit, then they are part and parcel of the packaging of the documents in question. However, it does not seem to me to be necessary to resolve such an interesting academic point in this case, because all the computer and its hardware were returned to the applicant in January of this year. There is therefore no need for this aspect of the matter to be resolved by reference to public law principles. Any legitimate complaint that the applicant may have so far as concerns the mouse, the keyboard and perhaps the VDU are, so it seems to me, perfectly capable of being dealt with by reference to remedies available in the field of private law. Accordingly, for those reasons I am satisfied that there is no substance in that aspect of the applicant's arguments."

It is quite correct that this decision does not concern any statutory definition of "document". However the terms of the warrant set out in the judgment reveal that the power of search and seizure was limited to "documents and other papers". The decision therefore provides some support for the Defendant.

17. In ***R v Thames Magistrates Court, ex parte Da Costa & Co*** [2002] EWHC 40 (Admin), the Divisional Court found the Commissioners' power to seize "documents" when entering with a warrant under paragraph 10(3)(b) of Schedule 11 to the Value Added Tax Act 1994 could extend to the physical removal of computers. "Documents" were defined in section 96(1) of that Act as "anything in which information is recorded", a very similar definition to that in section 114(2) of the Finance Act 2008. At paragraph 20 the court accepted a submission that:

> "A computer hard disk is a single storage entity which falls within the definition of a "document" in section 96(1) of the 1994 Act because it is something "in which information of any kind is recorded".

While it is correct that the warrant authorised the search and seizure not only of documents but also of "any other items or information which reasonably appears to the officers to be evidence …", the reasoning of the Divisional Court clearly supports the Defendant's case.

18. In ***R(H) v Commissioners of Inland Revenue*** [2002] EWHC 2164 (Admin) Stanley Burnton J. considered whether a computer could be a "document" for the purposes of the Taxes Management Act 1970 in which "document" is defined in the same terms as section 114(2) FA 2008. He concluded that it could.

> "For these reasons, even if I were free to do so, I would not differ from the conclusion reached by the Divisional Court in ***Da Costa***. In any event, I do not think that ***Da Costa*** is distinguishable. While it is true that for the

> purposes of VATA a hard disk is a "document", it is equally a "thing", and in my judgment would be subject to a power of seizure in paragraph 10(3) of Schedule 11 to that Act even without the extended definition of "document"." (at paragraph 39).

These conclusions were made in the context of the execution of a search warrant. While the decision appears to turn of whether a hard disk is a "thing" the judge took it as read that a hard disk is a "document".

19. ***H*** was approved by the Divisional Court in ***R (Faisaltex Limited) v Crown Court sitting at Preston*** [2008] EWHC 2832 (Admin). There the Divisional Court concluded that a computer and its hard disk were capable of being "material" within section 8(1), Police and Criminal Evidence Act 1984 ("PACE"). Referring to ***H*** the court noted that it was a decision on a different statutory provision but considered that there was no reason to adopt a different approach under section 8 of PACE, nor was there any justification for construing the words in section 8 such as "material" and "anything" more narrowly than the word "thing" in the Taxes Management Act 1970.

20. ***Marlton v Tectronix UK Holdings*** [2003] EWHC 383 (Ch) is a decision on disclosure pursuant to what was then Part 31.4.1 CPR. The definition of "document" was in the same terms as appear in section 114(2) FA 2008. Pumfrey J, as he then was, expressly approved the following commentary in the White Book:

> "A computer database which forms part of the business records for company is, in so far as it contains information capable of being received and converted into readable form, a document for the purposes of CPR 31.4 and is therefore susceptible to disclosure…" (at paragraph 14).

21. The authorities, therefore, provide a considerable measure of support for the Defendant. However, it appears that this is the first case in which the issue has had to be decided in the context of section 114(2) FA 2008.

22. Mr. Southern on behalf of the Claimant draws attention to the dictionary definition of "document":

> "Something written, inscribed etc. which furnishes evidence of information upon any subject, as a manuscript, title-deed, tomb-stone, coin, picture etc" (OED, "document", substantive definition 4.)

He submits that the primary meaning is therefore something tangible on which evidence or information is physically recorded. By contrast, he submits, a computer is a piece of machinery, comprising a number of features, operated by electricity and having a wide range of functions.

23. Mr. Southern accepts that the effect of section 114 is an enlarging definition but he submits that it is subject to control by the dictionary definition. In support of this submission as to the potency of the definition he relies on Bennion on Statutory Interpretation, 5th Edition (2008) at p 566:

> "Potency of the term defined. Whatever meaning may be expressly attached to a term, it is important to realise that its dictionary meaning is

> likely to exercise some influence over the way the definition will be understood by the court. It is impossible to cancel the ingrained emotion of a word merely by an announcement."

This passage in Bennion was expressly approved by Lord Scott in ***Oxfordshire County Council v Oxford City Council*** [2006] UKHL 25; [2006] 2 AC 674 at paragraphs 82 and 83. Mr. Southern submits that to stretch the words "anything in which information of any description is recorded" to include computers would greatly extend the dictionary sense.

24. I have already referred to my view that section 114 is not strictly a definition of "document" but a provision extending the application of the provisions to which it applies. Unlike some of the other provisions referred to above, it does not define document as including anything in which information of any description is recorded. To my mind, this prevents reliance on the usual meaning of document as limiting the application of section 114. But in any event, section 114 is clearly intended to ensure that the provisions to which it applies have effect in relation to a category of things which are described in extremely wide terms. In their natural meaning the words of section 114 are entirely appropriate to include a computer because a computer is a thing in which information is recorded.

25. Mr. Southern then submits that such a wide reading of section 114 would lead to the conclusion that a mobile telephone, an iPod, a camera or a USB stick would also be a document for this purpose, and that this would be an absurd conclusion. Strictly, we are here concerned with the extended ambit of a provision achieved by section 114. However, in any event, the conclusion does not seem to me absurd at all. On the contrary, these items are routinely used for recording information.

26. On behalf of the Claimant Mr. Southern draws attention to the fact that section 114(3) and (5) make separate provision for computers. However, the mere fact that computers are expressly referred to in these other provisions does not prevent the provision in section 114(2) from extending to a computer. However Mr. Southern then goes on to argue that sub-section (3) draws a distinction between a "relevant document" and a "computer…used in connection with a relevant document". He submits that if "document" means "computer", this reads "computer…used in connection with a computer". He submits that the legislation only makes sense on the basis that a computer is not a document. However, this sub-section is clearly intended to apply to a computer used in connection with a document. It may be necessary to inspect and check the operation of a computer to find out when a document was written, amended, deleted, received or sent. This provision is intended to address the way in which information has been handled. To my mind there is no incompatibility between this express reference to a computer and the distinct possibility that a computer may fall within the ambit of section 114(2). Mr. Southern then submits that if "document" in sub-section (2) is read as including a computer, sub-sections (3) and (5) become redundant. However, this is not the case. Those sub-sections are directed at very specific matters. Sub-section (3), as indicated above, is concerned with the inspection of a computer in order to ascertain how information has been processed. Sub-section (5) enables an authorised person to require assistance in the operation of a computer. There is no incompatibility between these provisions and the reading for which the Defendant contends.

27. The Claimant then points to the disruption of the Claimant's business which was caused by the removal of the firm's computers on this occasion and contends that the power of inspection under section 118B cannot have been intended to permit such disruption of the Claimant's business. The difficulty with this submission is that section 118B makes express provision in sub-section (5) for the removal of documents at a reasonable time and for a reasonable period and sub-paragraph (7) makes provision requiring copies of documents required for the conduct of the business to be made available. These provisions clearly contemplate some disruption of the business. There is likely to be disruption whether the things to be inspected are paper records or computers. To my mind, these considerations do not cast any light on the question of the ambit of section 114(2).

28. Mr. Southern makes a further point in relation to section 118B (4) and (7) concerning the making of copies of documents. He submits that a document must therefore be capable of being copied and that while things within a computer can be copied the computer itself cannot. However, while the machine itself cannot be copied, the entirety of its contents are capable of being copied.

29. The power under section 118B(1) may be exercised only in relation to "any documents relating to the goods or services or to the supply, importation or exportation or to the transaction or activity" (section 118B (1) (b)). However, the Claimant submits that each of the computers removed would have included documents which did not fall within this description. Accordingly, the Claimant argues that there can have been no power to remove the entire computer. This submission raises a question which has occupied the courts on a number of occasions as to the precise nature of storage of material in a computer. In ***Da Costa*** Kennedy L.J. accepted the submission on behalf of the Customs and Excise that a computer hard disk is a single storage entity which falls within the definition of a "document" in section 96 (1) of the Value Added Tax Act 1994 because it is something "in which information of any kind is recorded". He continued:

> "Thus a hard disk may be seized and removed pursuant to the power to seize and remove documents to be found in paragraph 10(3)(b) of Schedule 11 provided that it contains material which the searching officer at the time of the search has reasonable cause to believe might be required as evidence in relation to the suspected offence or offences,…the officer is not required to extract from the hard disk just the information he believes may be required nor is it practicable for him to do so."

He referred to the imaging of the two hard disks which had taken place and continued:

> "If the result was that the Customs and Excise obtained amongst other things information in relation to clients of the accountancy practice that is no more objectionable than if they had for good reason taken possession of a leather bound ledger much of which contained information of a similar kind. For the reasons given by Mr. Coppel I accept that no complaint can be sustained in relation to the imaging procedure which was adopted." (at paragraph 20).

30. This issue was also of central importance in ***H*** where counsel for the Claimant criticized Kennedy L.J.'s analogy between a computer and a ledger. It was submitted

that unlike a ledger a computer contains distinct files, each of which may be separately accessed, copied or printed. Accordingly the more accurate comparison was said to be with a filing cabinet. On this basis it was said that provisions such as section 20C of the Taxes Management Act do not justify the seizure and removal of an entire filing cabinet that includes irrelevant and non-incriminating material. Having considered the precise nature of computer records in the passages cited earlier in this judgment, Stanley Burnton J. concluded at paragraph 37:

> "These facts show that the comparison of a hard disk with a filing cabinet is inexact and may be misleading. For some purposes no doubt the files on a hard disk may be regarded as separate documents. But a hard disk cannot be regarded as simply a container of the files visible to the computer's operating system. It is a single object: a single thing. I see no basis, therefore, for a computer not being considered a "thing" within the meaning of section 20C(3)(b) of the TMA. If there is incriminating (in the normal sense of the word) material on the hard disk, and if it is assumed that the hard disk is not copied, the computer itself may be used, and may be required, as evidence in order to prove the existence of the incriminating material on the defendant's computer. The fact that there is also on the hard disk material that is irrelevant, and not evidence of anything, does not make the computer any less of a thing that may be required as evidence for the purposes of criminal proceedings."

Accordingly he concluded:

> "In my judgment, if an Inland Revenue officer who enters into premises under the authority of a warrant under section 20C finds a computer, and he has reasonable cause to believe that the data on the computer's hard disk may be required as evidence for the purpose of relevant proceedings, he may seize and remove that computer even though it also contains irrelevant materials." (at paragraph 40).

31. In ***Faisaltex*** the Divisional Court considered whether the execution of a warrant under section 8 of PACE 1984 could be defeated because an item amongst the specified material may contain irrelevant as well as relevant evidence. The Divisional Court observed:

> "This, as it seems to us, turns on whether one is dealing with a single item or "thing", such as a diary or letter which is likely to contain both relevant and irrelevant material, or with something which is to be regarded as a container of a number of things. A filing cabinet is indeed an obvious example of the latter. In particular, how is a computer and its hard disk to be regarded in this context?"

The court adopted the approach of Stanley Burnton J in ***H*** and concluded that there was no reason why the section 8 PACE warrants should not specify computers and similar items amongst the material to be seized if there were reasonable grounds for believing that they contain relevant evidence, notwithstanding the fact that they might also contain irrelevant material. (At paragraph 79).

32. These decisions are all, of course, concerned with different statutory provisions from those in the present case. Nevertheless, the discussion of the nature of records stored on a computer is of general application and it is an analysis with which I respectfully agree. Analogies, whether with filing cabinets or leather bound ledgers, are necessarily imprecise and may not be of particular assistance. However, it is clear that a hard disk is not simply a container of files but is properly regarded as a single object containing a variety of materials. Applying the reasoning in these decisions directly to the present case, the fact that the computers inspected may have contained information which did not fall within the category specified in section 118B (1)(b) would not prevent the exercise of the power in relation to that computer provided it contained some information within that category. Accordingly, I consider that this debate casts no light on the question whether a computer falls within section 118B(1) and certainly does not support the Claimant's case that because a computer will contain a variety of materials it cannot fall within that provision.

33. Finally in this regard, I note that the power under section 118B(4) to take copies of any document produced is expressed to be a power to take copies of or to make extracts from such documents. Clearly, this is apt to cover a situation where only some of the information contained in the computer is relevant.

34. The Claimant submits that the powers conferred under sections 118B and 118C are distinct and that the wide reading for which the Defendant contends would have the effect of eliding the distinction. I would readily accept that there is an important distinction between the information power in section 118B and the search power in section 118C. The power of search and arrest under section 118C is far more extensive and more intrusive into the affairs of the person or undertaking concern, it can only be exercised pursuant to warrant and substantial pre-conditions have to be satisfied before a warrant may be issued. Moreover, I bear in mind that this is a detailed statutory scheme and that the courts should try to avoid any interpretation which would have the effect of distorting the Parliamentary scheme and upsetting the intended balance between different powers. This is particularly so in a case such as the present concerned with such intrusive powers. However, I am not persuaded that the reading for which the Defendant contends would have the effect of distorting or unsettling the distinction between these powers. The information power in section 118B expressly permits, in the case of documents, the making of copies of or extracts from the documents produced and, in certain circumstances the removal of such documents. To my mind the application of the information power to a computer does not trespass into the area reserved for the search power under section 118C.

35. At one point in his submissions Mr. Southern accepted that a hard disk could be a thing in which information is recorded for the purposes of section 118B. However, he maintained that a computer could not. This distinction was not, as I understand it, founded on any suggestion that the hard disks could be removed from the computers. In fact there is no evidence before me to suggest that they could in the present case. Moreover there may be difficulties about reading or gaining access to the contents of the hard disk if it is removed from the computer. Rather, he argued that there is a distinction between the content and the means of getting at the content. In his submission a computer is the means of recording, processing and retrieving the content and this falls outside the ambit of a thing in which information is recorded. However, a computer is also a means of storing information and the thing in which it

is recorded. I consider that the distinction between a hard disk and a computer is artificial. The hard disk is a part of the computer and the computer is the thing in which the information is recorded.

36. For these reasons I conclude that the power of inspection conferred by section does extend to the inspection of a computer.

Pepper v Hart

37. Mr. Southern on behalf of the Claimant applied for permission under part 23.2 (1) to adduce as an aid to construction the official report of the proceedings of the Public Bill Committee (Finance Bill 2008) in considering Clause 109 of the Bill which became section 114 FA 2008.

38. I considered the material *de bene esse*.

39. For the reasons set out above I have come to a clear conclusion as to the meaning of the statutory provision. I do not consider that the meaning of the provision is ambiguous or obscure. Furthermore, I do not accept that the Defendant's suggested reading, which in my judgement is the correct one, leads to any absurdity. In these circumstances the pre-conditions to the application of the rule in ***Pepper v Hart*** are not satisfied. I should, however, record that, in any event, I do not consider that the passages upon which the Claimant wishes to rely provide a clear statement as to the meaning of the statutory provision. On the contrary, I find the statements particularly obscure. Indeed it is not even clear that they refer to section 114 (2).

40. For these reasons I refuse the application to adduce Hansard as an aid to construction.

Law Commission Report

41. Finally, I should record that the Claimant sought to rely on the Law Commission Report on the Hearsay Rule in Civil Proceedings published in 1993 which subsequently resulted in the Civil Evidence Act 1995. It may well be that this is the origin of the form of words which is now found in section 114(2). However the Law Commission Report is remote from the context of the Finance Act 2008 and, in any event, there is nothing the Report which casts any light on the meaning of this provision.

Conclusion

42. For these reasons the application for judicial review is refused.