

Annual Returns, Financial Irregularities and Access to Accounting Records

This chapter deals with the requirements for trade unions and employers' associations to keep proper accounting records and to submit annual returns to the Certification Officer. It also deals with the provisions relating to the investigation of the financial affairs of trade unions and employers' associations and with the provisions giving union members a right of access to accounting records.

The statutory provisions

- 3.1 Sections 28 and 131 of the Trade Union and Labour Relations (Consolidation) Act 1992 ("the 1992 Act") provide respectively that every trade union and every employers' association (except those which consist wholly or mainly of representatives of constituent or affiliated organisations) must keep proper accounting records in respect of its transactions, assets and liabilities. Each trade union or employers' association must establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all its receipts and remittances. The accounting records kept must be such as are necessary to give a true and fair view of the state of affairs of the organisation and to explain its transactions.
- 3.2 Under sections 32 and 131 of the 1992 Act such an organisation (unless it has been in existence for less than 12 months) is also required to submit an annual return to the Certification Officer in the form prescribed. The return is to include revenue and other accounts and a balance sheet, which must give a true and fair view of the matters to which they relate. The return must also give details of the salary and other benefits paid to each member of the executive, the president and the general secretary (see paragraphs 4.21 and 4.22). Any changes in the organisation's officers or in the address of its head office must be shown on the return and it must be accompanied by a copy of the rules in force at the end of the period covered by the return. All funds maintained by the trade union or employers' association must normally be included in the return made to the Certification Officer. Section 24ZA of the 1992 Act, inserted by the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 requires trade unions to submit a membership audit certificate, in relation to the relevant reporting period at the same time as it sends to the Certification Officer its annual return.
- 3.3 Organisations which consist wholly or mainly of constituent or affiliated organisations or representatives of such organisations, are referred to within the 1992 Act as "federated" trade unions or employers' associations and are described fully within sections 118 and 135 of the Act. Those federated bodies which are composed of representatives of trade unions or employers' associations are exempt from certain provisions of the Act, including the duty to supply a copy of their rules, to keep

accounting records and to submit annual returns. The same does not apply to those federated bodies which are composed of constituent or affiliated organisations.

- 3.4 It is not the responsibility of the Certification Officer to determine whether an organisation is financially viable but to ensure that accounts in the prescribed form covering all funds administered by the organisation are available for public inspection.
- 3.5 The Act requires trade unions and employers' associations to submit before 1 June each year a return of their financial affairs covering the year ending the preceding 31 December. However, the Certification Officer may direct that the return is to relate to a different annual period. This is usually done if the normal timetable would cause serious inconvenience to the organisation concerned.
- 3.6 The annual return must include a copy of the auditor's report on the accounts. Under section 34 of the 1992 Act, a person is qualified to act as auditor of a trade union's or employers' association's accounts if he or she is eligible for appointment as a company auditor under Part 42 of the Companies Act 2006 ("a Companies Act auditor"). Section 37 of the 1992 Act sets out the rights of auditors including access to information and the entitlement to attend and speak at general meetings of the organisation.
- 3.7 A trade union (other than a special register body as described in Chapter 1 of this report, paragraphs 1.14 to 1.17) or an employers' association may have its accounts audited by someone who is not a Companies Act auditor if its receipts and payments do not in aggregate exceed £5,000, the value of its assets is less than £5,000 and it has less than 500 members. If any one of these conditions is not satisfied, it must use a Companies Act auditor.
- 3.8 The auditor must state whether, in his or her opinion, the accounts give a true and fair view of the matters to which they relate. The auditor has a duty to carry out such investigations as will enable an opinion to be formed on whether proper accounting records have been kept, whether a satisfactory system of control has been maintained and whether the accounts are in agreement with the accounting records. If, in the opinion of the auditor, the statutory requirements have not been satisfied or the union or employers' association has failed to supply all the necessary information and explanations the auditor must say so in the report by way of qualification.
- 3.9 There were no returns received by the Certification Officer during this reporting period containing an audit report in which the auditors gave a qualified opinion as to whether the return gave a true and fair view.
- 3.10 To avoid the duplication of broadly similar financial statements, the Certification Officer allows a special register body or an employers' association incorporated under the Companies Acts, to submit with its return, in lieu of the completion of certain pages in the return form, a copy of its accounts prepared under the Companies Acts provided the period covered is the same and there is no significant diminution

in the degree of disclosure. In such circumstances, however, and notwithstanding anything in the Companies Acts, an auditor's report for the purposes of the 1992 Act is still required.

- 3.11 Where trade union membership exceeds 10,000, the union is required by section 24ZB to appoint an assurer. The assurer is required to provide to the union a membership audit certificate in relation to the relevant reporting period. This must be sent at the same time as it sends to the Certification Officer its annual return. Where a union has less than 10,000 members this is done by an authorised officer of the union (See paragraph 4.15).
- 3.12 With the exceptions already noted, the duties imposed by sections 28 and 32 of the 1992 Act apply to all trade unions and employers' associations, whether or not listed under sections 2 or 123. Refusal or wilful neglect to perform any of them is an offence for which the organisation concerned may be prosecuted and fined. The Certification Officer is responsible for enforcing these provisions, but does not generally undertake prosecutions for offences such as theft or fraud which would normally be dealt with by other prosecuting authorities. However, the Certification Officer is able to appoint inspectors to investigate allegations of financial irregularities in the affairs of a trade union or employers' association (see paragraph 3.19 below).

Late submission of returns

- 3.13 The 1992 Act requires an organisation to submit an annual return to the Certification Officer before 1st June in the calendar year following the year to which the annual return relates. This applies to most organisations (71%) whose financial year coincides with the calendar year and ends on 31 December. The remaining 29% have differing reporting periods that have been agreed by the Certification Officer. By 31 March 2017, all due returns had been received. The annual returns of 11.4% of organisations were submitted more than three months after their due date.
- 3.14 The Certification Officer continues to seek full compliance with the statutory requirements and will take steps to improve the performance of those organisations which consistently submit late annual returns.

Prosecution

- 3.15 No prosecutions for failure to submit an annual return were initiated during this period.

Statement to members

- 3.16 A statement containing specific information must be issued to all members within eight weeks of the submission of the annual return to the Certification Officer. The statement must specify:
- (i) the total income and expenditure of the union;
 - (ii) how much of the income consisted of payments in respect of membership;

- (iii) the total income and expenditure of any political fund of the union; and
- (iv) the salary and other benefits paid to each member of the executive, the president and the general secretary.

The statement must also give the name and address of the auditor, set out in full the auditor's report and should not contain anything which is inconsistent with the contents of the annual return. Members must also be told how they can complain should they be concerned that some irregularity is occurring or has occurred in the financial affairs of the trade union. The 1992 Act is specific about how this must be done and the wording of the prescribed statement is reproduced below.

“A member who is concerned that some irregularity may be occurring, or have occurred, in the conduct of the financial affairs of the union may take steps with a view to investigating further, obtaining clarification and, if necessary, securing regularisation of that conduct.

The member may raise any such concern with such one or more of the following as it seems appropriate to raise it with: the officials of the union, the trustees of the property of the union, the auditor or auditors of the union, the Certification Officer (who is an independent officer appointed by the Secretary of State) and the police.

Where a member believes that the financial affairs of the union have been or are being conducted in breach of the law or in breach of rules of the union and contemplates bringing civil proceedings against the union or responsible officials or trustees, he/she should consider obtaining independent legal advice.”

A model statement and guidance is available on the Certification Officer's website, www.gov.uk/certificationofficer.

- 3.17 It is not a requirement that the statement to members is distributed individually. As an alternative, section 32A(2)(b) of the 1992 Act provides that unions may use *“any other means... which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.”*
- 3.18 Trade unions have in the main readily complied with the requirement to provide members with a statement which contained the required information and met the statutory timescale. The Certification Officer will endeavour to ensure that full compliance with the 1992 Act is maintained.

Financial affairs of trade unions and employers' associations – use of statutory powers

- 3.19 The 1992 Act allows the Certification Officer to investigate the financial affairs of almost all trade unions and employers' associations (exceptions being in respect of federated employers' associations and trade unions made up wholly or mainly of representatives of constituent affiliated organisations and in respect of

organisations that have been in existence for less than twelve months). Under the 1992 Act, the Certification Officer may, if she thinks there is good reason to do so, give a direction to the organisation concerned to produce relevant documents and explanations of them. In addition, the Certification Officer may appoint an inspector(s) to investigate the organisation's financial affairs and to report on them. However, the Certification Officer may only appoint an inspector(s) if one or more of the following circumstances are suggested: *that the financial affairs of the trade union or employers' association have been or are being conducted fraudulently or unlawfully, that those managing those affairs have been guilty of fraud, misfeasance or other misconduct in connection with that management, that the organisation concerned has failed to comply with a duty under the Act relating to its financial affairs or that a rule of the organisation relating to its financial affairs has not been complied with.* A member may complain to the Certification Officer that there are circumstances suggesting any of the foregoing. The Certification Officer must then consider whether it is appropriate to exercise any of the powers conferred on her by the 1992 Act in that respect.

- 3.20 Information suggesting circumstances where one or more of the situations described in paragraph 3.19 above have occurred may come to the Certification Officer's attention from a variety of sources including, for example, from members who query information supplied by the union in its statement to members. In addition, the Certification Officer's staff monitor references in the media for situations which suggest that such circumstances may exist in the financial affairs of a trade union or employers' association.
- 3.21 Not all the information received by the Certification Office is of sufficient merit to warrant an approach to the body concerned. Where an approach is warranted, the matter is frequently resolved either through correspondence between the Certification Office and the parties concerned or by means of informal meetings with the body or the individual or a combination of these methods.
- 3.22 At the end of the last reporting year enquiries were in progress concerning allegations of financial irregularities in two trade unions, Unite the Union Bassa Branch and NUM (Northumberland Area). By the end of this reporting year the enquiry into NUM (Northumberland Area) had concluded. The Certification Officer used his powers under section 37A of the 1992 Act to require documents to be produced in relation to his enquiries into the NUM Northumberland Area.
- 3.23 The Unite the Union Bassa Branch enquiries continued during this reporting period. In addition, new concerns were raised about the conduct of two other unions, however, in both of those cases the Certification Officer did not deem it necessary to make enquiries with the union.
- 3.24 Where the Certification Officer concludes her enquiries regarding a possible financial irregularity which has been raised by a union member and decides not to appoint an inspector, she must notify that member of her decision and, if she thinks fit, will also give her reasons. In the case of NUM (Northumberland Area) no

inspector was appointed. A letter to the Union setting out the Certification Officer's main findings and explaining his decision not to appoint an inspector was published on the Certification Officer's website: www.gov.uk/certificationofficer.

Public inspection of annual returns

3.25 Copies of the annual returns and the rules of trade unions and employers' associations from 1974 onwards are available for public inspection. The returns of existing organisations are available at the Certification Office or, where appropriate, the Office of the Assistant Certification Officer for Scotland. The returns of former trade unions and employers' associations are mainly kept at The National Archive where they are also publicly available for inspection. Also available for public inspection (with notification of one week) are the earlier annual returns, accounts, copies of rules and other documents submitted for the purposes of:

- (a) the Trade Union Acts 1871 to 1964
- (b) the Industrial Relations Act 1971; and
- (c) the Trade Union and Labour Relations Act 1974.

3.26 The annual returns of trade unions and employers' associations submitted in this reporting period are available on the Certification Officer's website, www.gov.uk/certificationofficer.

Access to accounting records

3.27 Section 30 of the 1992 Act provides a member of a trade union with a right of access to any accounting records of the union which are available for inspection. Where a member claims that a trade union has failed to comply with his or her request for access to the trade union's accounting records under section 30 of the Act, the member has the option of applying to the court or to the Certification Officer under section 31 of the 1992 Act. The Certification Officer may not consider an application if the claimant has applied to the court in respect of the same matter. Similarly, once an application has been made to the Certification Officer, the same matter may not be put to the court.

3.28 On application to her, the Certification Officer is required to make such enquiries as she thinks fit and give the claimant and the trade union an opportunity to be heard. On receipt of an application the Certification Officer will, so far as reasonably practicable, determine it within six months of it being made.

3.29 If the Certification Officer decides that the complaint is well-founded she is required to make such orders as she considers appropriate for ensuring that the claimant:-

- (a) is allowed to inspect the records requested;
- (b) is allowed to be accompanied by an accountant when making the inspection of those records; and
- (c) is allowed to take, or is supplied with, such copies of, or of extracts from, the records he may require.

- 3.30 An order made by the Certification Officer under this section may be enforced in the same way as an order of the court.

Applications and complaints received in 2017-2018

- 3.31 In this reporting period the Certification Officer concluded the complaint outstanding from the previous reporting period, *Markham v GMB* (D/51/17-18). The Certification Officer upheld the complaint but did not deem it necessary to make an order as the union had subsequently provided access to the accounting records. One new complaint was received in this reporting period and is currently being considered by the Certification Officer.
- 3.32 Sections 28 to 30 of the 1992 Act do not define “accounting records”. However the Certification Officer has considered this matter in the cases of *Mortimer v Amicus* (D/1/03), *Foster v Musicians Union* (D/13-17/03) and *Lee v NASUWT* (D/3/06). This was reconsidered in the case of *Mills v Unite* (D/38/15-16). The decision was appealed to the EAT (UKEAT/0148/16/LA). Although upholding the decision and dismissing a cross-appeal the EAT did make a point significant to this decision. At paragraph 60 of their decision the EAT stated: *‘we disagree with this [the Certification Officer] observation “that accounting records are those that are created or kept principally for the purpose of accounting”. Whether something is an accounting records an objective test is to be applied. It may be that invoices and receipts are retained for the purpose of accounting. They may need to be made available to the auditor for checking the accounts. The fact that documents are kept for the purposes of accounting does not transform them into accounting records within the meaning of TULRCA section 28(1)(a) and (2)’*. The EAT goes on to say at paragraph 61: *‘Proper accounting records within the meaning of section 28 are those which are “necessary to give a true and fair view of the state of affairs of the trade union and explain its transactions”*. Copies of all decisions made by the Certification Officer are available on the Certification Officer’s website: www.gov.uk/certificationofficer. Hard copies of decisions can be obtained free of charge upon request to the Certification Office.