

**TRADE UNION FUNDS AND
ACCOUNTING RECORDS**

Guidance

2006

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DISQUALIFICATION OF TRADE UNION LEADERS

The law places a duty on every union not to allow anyone convicted of an offence relating to the conduct of union financial and accounting affairs to hold certain positions within a union's leadership during a specified disqualification period. A union member may complain about failure of a union to satisfy this duty.

Which positions within the union are subject to such disqualification?

The positions of:

- President;
- General Secretary;
- member of the union's Principal Executive Committee.

What are the disqualification offences and periods?

The disqualification periods are either five or ten years, depending on the particular offence for which the individual has been convicted. If considering bringing a complaint, it would be advisable for the person doing so to obtain advice and clarification about whether a particular offence renders someone liable to disqualification, and if so for how long.

However, all the relevant offences are offences under section 45 of the Trade Union and Labour Relations (Consolidation) Act 1992 (as amended by subsequent legislation). By way of example, disqualification would be for **five years** following conviction for any of the following offences:

- failing to supply a copy of union rules, failing to keep proper accounting records and to provide access to those records, and failing to provide the Certification Officer with an annual return relating to its affairs (section 45(1) of the 1992 Act);
- contravening a requirement imposed by the Certification Officer for the production of documents (section 45(5) of the 1992 Act).

Similarly, examples of offences giving rise to **ten year** disqualification are:

- wilful alteration of certain documents relating to a trade union's financial affairs with intent to falsify (section 45(4) of the 1992 Act);
- destruction, mutilation or falsification of documents relating to a trade union's financial affairs (section 45(7) of the 1992 Act).

How can a complaint be made?

If a union member considers that the union has failed to comply with the duty not to allow disqualified persons to become, or remain, a union leader, the member has the right to apply to the Certification Officer or the court for a declaration.

What procedures are involved?

The Certification Officer's procedures are less formal than a court's and he is required to reach a decision on an application within six months as far as reasonably practicable. He is also required to give the parties to the complaint an opportunity to present their case at a public hearing, though the parties can agree to the case being determined without a hearing. The timetable for hearing an application to a court is a matter for the court itself to determine.

What happens if a complaint is upheld?

Where proceedings are brought before either the Certification Officer or the court, and the Certification Officer or the court is satisfied that the union has failed to comply with its duty in relation to disqualification, the Certification Officer or the court may make an order requiring the trade union to take steps to remedy that failure. If the order is not obeyed, anyone who is a member of the trade union and was a member at the time the order was made may go back to the Certification Officer or the court and ask that the union or union officials concerned be declared in contempt of court. A union or person found to be in contempt of court may face heavy fines or other penalties which the court may consider appropriate; for example, refusal to pay fines may lead the court to order the union's assets to be seized (sequestered). An order of the Certification Officer is treated as if it were an order of the court.

A union member who has complained to the Certification Officer is prevented from complaining to the court on the same issue and visa versa.

Both the Certification Officer and the court have the power to make an order to remedy any breach that has occurred. Where a trade union refuses to comply with an order made by the Certification Officer, the applicant can apply to the court to enforce it as if it were an order of the court.

If a court order is not obeyed, anyone who sought it can go back to court and ask that the union or union officials concerned be declared in contempt of court. A union or person found to be in contempt of court may face heavy fines or other penalties which the court may consider appropriate; for example, refusal to pay fines may lead the court to order the union's assets to be seized (sequestered).

INVESTIGATION OF A UNION'S FINANCIAL AFFAIRS BY THE CERTIFICATION OFFICER

The law gives the independent Certification Officer powers to:

- require a trade union to produce documents relating to its financial affairs; and
- appoint one or more inspectors to investigate (and report on) the conduct of a union's financial affairs.

The Certification Officer can exercise these powers to decide whether a relevant criminal offence has been committed, or to respond to more general concerns about the conduct of a union's financial affairs (including any concerns raised with him by one or more of the union's members).

Who will decide whether the powers are used?

The Certification Officer will decide whether or not the powers are to be exercised. However, the Certification Officer is required to consider the use of his power to appoint inspectors if a complaint about a financial matter is put to him by a member of the union, or if the union's auditor qualifies the report on the union's accounts. The Certification Officer does however have powers to strike out weak or vexatious cases and vexatious litigants face restrictions on making complaints.

In what circumstances can an inspector be appointed to report on an aspect of the conduct of a union's financial affairs?

The Certification Officer has the power to appoint an inspector if it appears that:

- the union's financial affairs are being conducted for a fraudulent or unlawful purpose/
- anyone managing those affairs has, in connection with that management, been guilty of fraud or similar misconduct;
- the union has failed to comply with its statutory duties in relation to those affairs;
- a rule of the union about those affairs has been broken.

Will inspectors produce reports on their investigations?

In general, yes. A copy of the final report of an investigation must be provided by the Certification Officer to:

- the union;
- the union's auditor(s) if they request one within three years of the report's production;
- any member of the union who has brought a related complaint to the Certification Officer, and who requests a copy of the report within three years of the report's production.

What should a union member do if he wishes to complain to the Certification Officer about possible impropriety in the conduct of his union's financial affairs?

He should contact the Certification Officer at the address given below.

Address of the Certification Officer for trade unions and employers' associations:

22nd Floor
Euston Tower
286 Euston Road
London
NW1 3JJ
Tel: 020 7210 3734

What would happen if a union, or any other person who should do so, resists the proper exercise of the Certification Officer's powers, or refused to co-operate with an appointed inspector?

Such behaviour is a criminal offence.

