

**Northern Ireland Certification Office
for Trade Unions and Employers' Associations**

FINANCIAL IRREGULARITIES

in Trade Unions and Employers' Associations

**The approach of the Certification Officer in
exercising her powers of investigation**

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1. Introduction

1.1 The Certification Officer is the statutory authority responsible for the regulation of particular aspects of the affairs of trade unions and employers' associations. Her duties include maintaining a list of trade unions and employers' associations; receiving and scrutinising annual returns from trade unions and employers' associations; dealing with complaints concerning trade union elections, the conduct of merger ballots and breaches or threatened breaches of trade union rules; ensuring observance of statutory requirements governing mergers between trade unions and between employers' associations; overseeing the setting up and operation of political funds and trade union finances; and certifying trade union independence.

1.2 The Certification Officer has powers under Articles 12A to 12E of the Industrial Relations (Northern Ireland) Order 1992 to investigate the financial affairs of trade unions and employers' associations in certain circumstances. This booklet sets out when she may use these powers; who can inform her of alleged irregularities; how such information is dealt with, including the issue of confidentiality, and what might be the eventual outcome. None of the powers discussed below affect in any way either an individual's right to take such matters to the police or the powers of the police to investigate them.

2. Grounds for action

2.1 The Certification Officer will consider whether it is appropriate for her to investigate the financial affairs of a trade union or employers' association if it appears to her that there are circumstances suggesting –

- that the financial affairs of the organisation are being or have been conducted for a fraudulent or unlawful purpose;
- that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or other misconduct;
- that the organisation has failed to comply with any duty imposed on it by the Trade Union and Labour Relations (Northern Ireland) Order 1995 in relation to its financial affairs, or
- that a rule of the organisation relating to its financial affairs has not been complied with.

2.2 The full text of Articles 12A to 12E of the Industrial Relations (Northern Ireland) Order 1992 is set out in Appendix 1.

3. Who can complain

3.1 A member of a trade union or employers' association may inform the Certification Officer of circumstances suggesting that one or more of the situations described in paragraph 2.1 exists. The Certification Officer can also receive information from any other source and will consider this on its merits. In addition, Certification Office staff will monitor the media for references which suggest that such circumstances exist in the financial affairs of any trade union or employers' association.

4. How to make a complaint

4.1 Anyone who wishes to complain to the Certification Officer about an alleged financial irregularity should do so as soon as possible after becoming aware of it. The complaint should be in writing and accompanied by any evidence which can support the allegations being made. As far as possible it should make clear what the allegations are and how they relate to the statutory requirements within which the Certification Officer must operate (paragraph 2.1).

5. Confidentiality

5.1 Where a complaint relates to a trade union, the Certification Officer will normally disclose the identity of the complainant to the union, unless she decides that the circumstances are such that she should not do so. Anonymous complaints will be considered in the light of the circumstances they describe and the evidence provided to support them. However, if the information given requires clarification or more detail, anonymous complaints are likely to be difficult to process further.

6. How a complaint is dealt with

6.1 The Certification Officer will consider the facts of each case together with any supporting evidence. She will then decide what action if any to take.

6.2 If the allegations appear to have substance, the Certification Officer may approach the trade union or employers' association for comment. The reply may then be put to the complainant for observations. If the Certification Officer directs that the complainant be formally interviewed, the interview will normally be conducted by her staff, and may be tape recorded. The Certification Officer may wish to meet officials of the organisation concerned and in preparation of this her staff may need to visit the organisation's offices for fact finding purposes.

6.3 The Certification Officer has statutory powers to direct an organisation to produce relevant documents at any time, if she thinks there is good reason to do so, and she is also empowered to take copies of those documents and to require an explanation of any of them. "Relevant documents" means accounting documents and documents of any other description which may be relevant in considering the financial affairs of the organisation concerned.

6.4 The Certification Officer also has powers to appoint inspectors to investigate the financial affairs of an organisation and to require that the inspectors report on them in such manner as she may direct. Inspectors are likely to be either accountants or solicitors - or both - or, in certain circumstances, members of the Certification Officer's own staff.

7. Outcome

7.1 The Certification Officer's duty in investigating complaints about the conduct of the financial affairs of a trade union or employers' association differs from that in handling other complaints. In all other complaints she is required to produce a reasoned determination of the complaint as presented, but with financial issues her primary aim is to ensure compliance with the legislation rather than to determine a member's complaint.

7.2 Accordingly, where she decides not to exercise her powers to investigate a member's complaint of financial irregularity, she must notify the complainant of her decision to take no action but need not give her reasons unless she thinks fit. On the other hand, enquiries into an organisation's financial affairs arising from a member's complaint may serve to identify other problems. In that case, in contrast to other complaints, the enquiries will not remain restricted to the original complaint but will deal also with these other matters.

7.3 While on some occasions it may be necessary to initiate proceedings against an organisation, on others merely bringing information into the public domain will be all that is required.

7.4 Where enquiries are conducted by Certification Office staff rather than inspectors, matters can often be resolved either by additional information from the body concerned or by further enquiry and evaluation by the staff. If this is the case and further action by the organisation is not thought to be necessary, the Certification Officer may write setting out her findings and observations and noting the remedial action taken. She may also place a copy of her letter on the organisation's public record file at the Office. If the complaint was made by a member of a union, the Certification Officer will write notifying that member of her decision not to appoint an inspector and, if she thinks fit, giving her reasons.

7.5 If inspectors are appointed, the form of their report to the Certification Officer is a matter for her direction. The inspectors have considerable powers and can require the production of relevant documents and summon to attend before them persons who are, or have been, officials or agents of the organisation in question. Any other person who appears to the inspectors to have relevant information can be required to produce it and to attend before them. The Certification Officer may direct the inspectors to curtail an investigation if the circumstances are such as to warrant this action, but any final report made to the Certification Officer must be published.

THE STATUTORY POWERS OF INVESTIGATION

The following is the text of Articles 12A to 12E of the Industrial Relations (Northern Ireland) Order 1992 (as inserted by Article 9 of the Trade Union and Labour Relations (Northern Ireland) Order 1995).

Investigation of financial affairs

Power of Certification Officer to require production of documents etc.

12A.-

- (1) The Certification Officer may at any time, if he thinks there is good reason to do so, give directions to a trade union or employers' association to which Article 11¹ applies, or a branch or section of such a trade union or employers' association, requiring it to produce such relevant documents as may be specified in the directions; and the documents shall be produced at such time and place as may be so specified.
- (2) The Certification Officer may at any time, if he thinks there is good reason to do so, authorise a member of his staff or any other person, on producing (if so required) evidence of his authority, to require a trade union or employers' association to which Article 11 applies, or a branch or section of such a trade union or employers' association, to produce forthwith to the member of staff or other person such relevant documents as the member of staff or other person may specify.
- (3) Where the Certification Officer, or a member of his staff or any other person, has power to require the production of documents by virtue of paragraph (1) or (2), the Certification Officer, member of staff or other person has the like power to require production of those documents from any person who appears to the Certification Officer, member of staff or other person to be in possession of them.
- (4) Where such a person claims a lien on documents produced by him, the production is without prejudice to the lien.
- (5) The power under this Article to require the production of documents includes power -
 - (a) if the documents are produced –
 - (i) to take copies of them or extracts from them, and
 - (ii) to require the person by whom they are produced, or a person who is or has been an official or agent of the trade union or employers' association, to provide an explanation of any of them; and

¹ Article 11 covers "Duties as to annual returns, auditors and members' superannuation schemes"

- (b) if the documents are not produced, to require the person who is required to produce them to state, to the best of his knowledge and belief, where they are.
- (6) In paragraphs (1) and (2) “relevant documents” in relation to a trade union or employers’ association or a branch or section of a trade union or employers’ association, means accounting documents, and documents of any other description, which may be relevant in considering the financial affairs of the trade union or employers’ association.
- (7) A person shall not be excused from providing an explanation or making a statement in compliance with a requirement imposed under paragraph (5) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is made or provided -
 - (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
 - (b) on a prosecution for some other offence where in giving evidence the person makes a statement inconsistent with it.

Investigations by inspectors

12B.-

- (1) The Certification Officer may appoint one or more members of his staff or other persons as an inspector or inspectors to investigate the financial affairs of a trade union or employers' association to which Article 11 applies and to report on them in such manner as he may direct.
- (2) The Certification Officer may only make such an appointment if it appears to him that there are circumstances suggesting-
 - (a) that the financial affairs of the trade union or employers' association are being or have been conducted for a fraudulent or unlawful purpose,
 - (b) that persons concerned with the management of those financial affairs have, in connection with that management, been guilty of fraud, misfeasance or misconduct,
 - (c) that the trade union or employers’ association has failed to comply with any duty imposed on it by this Order in relation to its financial affairs, or
 - (d) that a rule of the union or association relating to its financial affairs has not been complied with.

- (3) Where an inspector is, or inspectors are, appointed under this Article it is the duty of all persons who are or have been officials or agents of the trade union or employer's association -
- (a) to produce to the inspector or inspectors all relevant documents which are in their possession,
 - (b) to attend before the inspector or inspectors when required to do so, and
 - (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (4) Where any person (whether or not within paragraph (3)) appears to the inspector or inspectors to be in possession of information relating to a matter which he considers, or they consider, to be relevant to the investigation, the inspector or inspectors may require him –
- (a) to produce to the inspector or inspectors any relevant documents relating to that matter,
 - (b) to attend before the inspector or inspectors, and
 - (c) otherwise to give the inspector or inspectors all assistance in connection with the investigation which he is reasonably able to give;
- and it is the duty of the person to comply with the requirement.
- (5) In paragraphs (3) and (4) “relevant documents” in relation to an investigation of the financial affairs of a trade union or employers’ association, means accounting documents, and documents of any other description, which may be relevant to the investigation.
- (6) A person shall not be excused from providing an explanation or making a statement in compliance with paragraph (3) or a requirement imposed under paragraph (4) on the ground that to do so would tend to expose him to proceedings for an offence; but an explanation so provided or statement so made may only be used in evidence against the person by whom it is provided or made
- (a) on a prosecution for an offence under Article 13(9) (false explanations and statements), or
 - (b) on a prosecution for some other offence where in giving evidence the person makes statement inconsistent with it.

Inspectors' reports etc.,

12C.-

- (1) An inspector or inspectors appointed under Article 12B –
 - (a) may, and if so directed by the Certification Officer shall, make interim reports, and
 - (b) on the conclusion of their investigation shall make a final report, to the Certification Officer.
- (2) Any report under paragraph (1) shall be written or printed, as the Certification Officer directs.
- (3) An inspector or inspectors appointed under Article 12B may at any time, and if so directed by the Certification Officer shall, inform the Certification Officer of any matters coming to his or their knowledge as a result of the investigation.
- (4) The Certification Officer may direct an inspector or inspectors appointed under Article 12B to take no further steps in the investigation, or to take only such further steps as are specified in the direction, if-
 - (a) it appears to the Certification Officer that matters have come to light in the course of the investigation which suggest that a criminal offence has been committed and those matters have been referred to the appropriate prosecuting authority, or
 - (b) it appears to the Certification Officer appropriate to do so in any other circumstances.
- (5) Where an investigation is the subject of a direction under paragraph (4), the inspector or inspectors shall make a final report to the Certification Officer only where the Certification Officer directs him or them to do so at the time of the direction under that paragraph or subsequently.
- (6) The Certification Officer shall publish a final report made to him under this Article.
- (7) The Certification Officer shall furnish a copy of such a report free of charge –
 - (a) to the trade union or employers' association which is the subject of the report,
 - (b) to any auditor of that trade union or employers' association, or of any other branch or section of the union or association, if he requests a copy before the end period of three years beginning with the day on which the report is published, and
 - (c) to any member of the trade union or employers' association, if -

- (i) he has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),
 - (ii) the Certification Officer considers that the report contains findings which are relevant to the complaint, and
 - (iii) the member requests a copy before the end of the period of three years beginning with the day on which the report is published.
- (8) A copy of any report under this Article, certified by the Certification Officer to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspector or inspectors in relation to any matter contained in the report; and a document purporting to be a certificate of the Certification Officer under this paragraph shall be received in evidence and be deemed to be such a certificate unless the contrary is proved.

Expenses of investigations –

12D.-

- (1) The expenses of an investigation under Article 12B shall be defrayed in the first instance by the Certification Officer.
- (2) For the purposes of this Article there shall be treated as expenses of an investigation, in particular, such reasonable sums as the Certification Officer may determine in respect of general staff costs and overheads.
- (3) A person who is convicted on a prosecution instituted as a result of the investigation may in the same proceedings be **ordered** to pay the expenses of the investigation to such extent as may be specified in the **order**.

Articles 12A and 12B: supplementary

12E.-

- (1) Where -
 - (a) a report of the auditor or auditors of a trade union or employers' associations, or a branch or section of a trade union or employers' association, on the accounts audited by him or them and contained in the annual return of the union or association, or branch or section-
 - (i) does not state without qualification that the accounts give a true and fair view of the matters to which they relate, or

(ii) includes a statement in compliance with paragraph 20 of Schedule 1, or

(b) a member of a trade union or employers' association has complained to the Certification Officer that there are circumstances suggesting any of the states of affairs specified in Article 12B(2)(a) to (d),

the Certification Officer shall consider whether it is appropriate for him to exercise any of the powers conferred on him by Articles 12A and 12B.

(2) If in a case where a member of a trade union or employers' association has complained as mentioned in paragraph (1)(b) the Certification Officer decides not to exercise any of the powers conferred by those Articles he shall, as soon as reasonably practicable after making a decision not to do so, notify the member of his decision and, if he thinks fit, of the reasons for it.

(3) Nothing in Article 12A or 12B –

(a) requires or authorises anyone to require the disclosure by a person of information which he would in an action in the High Court be entitled to refuse to disclose on grounds of legal professional privilege except, if he is a lawyer, the name and address of his client, or

(b) requires or authorises anyone to require the production by a person of a document which he would in such an action be entitled to refuse to produce on such grounds.

(4) Nothing in Article 12A or 12B requires or authorises anyone to require the disclosure of information or the production of documents in respect of which the person to whom the requirement would relate owes an obligation of confidence by virtue of carrying on the business of banking unless -

(a) the person to whom the obligation is owed is the trade union or employers' association, or any branch or section of the union or association, concerned or a trustee of any fund concerned, or

(b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

(5) In Articles 12A and 12B and this Article -

(a) references to documents include information recorded in any form, and

(b) in relation to information recorded otherwise than in legible form, references to its production are to the production of a copy of the information in legible form.

CERTIFICATION OFFICE PUBLICATIONS

The following publications are also available, free of charge, from the Certification Office. They are also available to be downloaded or printed from the Certification Officer's website, www.nicertoffice.org.uk

The Certification Officer's Annual Reports.

Mergers: A Guide to the statutory requirements for transfers of engagements and amalgamations of trade unions.

Mergers: A Guide to the statutory requirements for transfers of engagements and amalgamations of employers' associations.

Guidance for Trade Unions and Employers' Associations wishing to establish a political fund.

A guide to political fund review ballots.

Financial Irregularities in Trade Unions and Employers' Associations - The approach of the Certification Officer.

Guidance for Trade Unions wishing to apply for a Certificate of Independence.

A Guide to making a Complaint to the Certification Officer.

Guidance on Procedure at hearings.

The Department for Employment and Learning has produced guides on various aspects of trade union legislation, which can be obtained from any jobcentre or downloaded from the Department's website www.delni.gov.uk .