



Building Societies Act 1986

1986 CHAPTER 53

PART VI

POWERS OF CONTROL OF THE COMMISSION

Inspections, etc.

55 Investigations on behalf of Commission

- (1) If it appears to the Commission desirable to do so for the purposes of its supervisory functions in relation to a building society, the Commission may appoint one or more competent persons to investigate and report to it on the state and conduct of the business of the society concerned, or any particular aspect of that business.
- (2) If a person appointed under subsection (1) above thinks it necessary for the purposes of his investigation, he may also investigate the business of any body corporate which is or has at any relevant time been—
 - (a) a subsidiary of the building society under investigation or,
 - (b) an associated body (other than a subsidiary) of that society.
- (3) It shall be the duty of every officer, employee and agent of a building society or other body which is under investigation—
 - (a) to produce to the persons appointed under subsection (1) above all records, books and papers relating to the body concerned which are in his custody or power; and
 - (b) to attend before those persons when required to do so; and
 - (c) otherwise to give to those persons all assistance in connection with the investigation which he is reasonably able to give.
- (4) Any officer, employee or agent of a building society or other body who—
 - (a) without reasonable excuse fails to produce any records, books or papers which it is his duty to produce under subsection (3) above, or

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- (b) without reasonable excuse fails to attend before the person appointed under subsection (1) above when required to do so, or
 - (c) without reasonable excuse fails to answer any question which is put to him by persons so appointed with respect to any building society or other body corporate which is under investigation,
- shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Any officer, employee or agent of a building society or other body who knowingly or recklessly furnishes to any person appointed under subsection (1) above any information which is false or misleading in a material particular, shall be liable—
- (a) on conviction on indictment to imprisonment for a term not exceeding two years or to a fine or both ; and
 - (b) on summary conviction to a fine not exceeding the statutory maximum.
- (6) In this section—
- (a) " agent", in relation to a building society or other body whose business is under investigation, includes its bankers, its accountants and solicitors and any persons, where they are not officers of the other body concerned, who are employed as its auditors ;
 - (b) " the purposes of its supervisory functions ", in relation to the Commission, has the same meaning as in section 52; and
 - (c) any reference to an officer, employee or agent of a building society or other body includes a reference to a person who has been but no longer is an officer, employee or agent of that society or other body.

56 Inspections and special meetings: general

- (1) In the circumstances mentioned in subsection (2) below, the Commission—
- (a) may appoint one or more competent inspectors to investigate and report on the affairs of a building society, or
 - (b) may call a special meeting of a building society to consider its affairs, or
 - (c) may (either on the same or on different occasions) both appoint an inspector or inspectors and call a special meeting for those purposes;
- and, in the circumstances mentioned in subsection (3) below, the investigation or consideration may extend to the affairs of any body corporate which is or at any relevant time has been a subsidiary of or body associated with the building society.
- (2) The powers conferred by subsection (1) above may be exercised either—
- (a) on the application of the requisite number of members of the society, or
 - (b) where no such application is made but the Commission is of opinion that an investigation should be held into the affairs of the society, or that the affairs of the society call for consideration by a meeting of its members.
- (3) The powers conferred by subsection (1) above may be exercised in relation also to a subsidiary of or body associated with a building society either—
- (a) where the application referred to in subsection (2)(a) above so requests, or
 - (b) where the application contains no such request but the Commission is of the opinion that it is necessary for the purposes of the investigation into or consideration of the affairs of the building society that the affairs of the subsidiary or associated body should also be investigated or considered.

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- (4) Where the inspectors are of the opinion mentioned in subsection (3)(b) above in relation to a subsidiary of or body associated with a building society they may, with the consent of the Commission, extend their investigation to the affairs of the subsidiary or associated body and make their report accordingly.
- (5) For the purposes of subsections (1) to (3) above the requisite number of members—
 - (a) in the case of a building society having more than 1,000 members, is 100, and
 - (b) in the case of any other building society, is one-tenth of the whole number of members of the society.
- (6) The following provisions shall have effect where an application is made as mentioned in subsection (2)(a) above, that is to say—
 - (a) the application shall be supported by such evidence as the Commission may require for the purpose of showing that the applicants have good reason for requiring an investigation by inspectors or consideration by a special meeting, as the case may be, and that the applicants are not actuated by malicious, frivolous, vexatious or scandalous motives in their application ;
 - (b) such notice of the application shall be given to the building society and, in a case where the investigation is to extend to its affairs also, to the society's subsidiary or associated body, as the Commission may direct;
 - (c) the Commission shall require the applicants to give security for payment of the costs of the investigation or meeting before the inspector is appointed or the meeting is called subject, in the case of the costs of an investigation, to an amount not exceeding the corresponding Companies Act limit; and
 - (d) as regards the expenses of or incidental to the investigation or meeting—
 - (i) in the case of an investigation (in whichever way instituted), the expenses shall be defrayed in the first instance by the Commission but without prejudice to its rights to contribution under section 57(10);
 - (ii) in the case of a meeting, the expenses shall be defrayed by the applicants, or out of the funds of the society, or by the members or officers or former members or officers of the society, in such proportions as the Commission may direct.
- (7) Before exercising its powers under subsection (1) above in a case falling within subsection (2)(b) above, the Commission shall inform the building society of the action which it proposes to take and the grounds for that action, and the society shall, within 14 days of receiving the information, be entitled to give the Commission an explanatory statement in writing by way of a reply.
- (8) Where the Commission proposes to exercise its powers under subsection (1) above in a case falling within subsection (3)(b) above, subsection (7) above shall apply in relation to the subsidiary or associated body as it applies in relation to the society.
- (9) Inspectors appointed under this section shall, in addition to having the powers which are necessary for or incidental to the discharge of their functions under this section, have the powers specified in section 57.
- (10) Where a special meeting is called under this section—
 - (a) the Commission may direct at what time and place the meeting is to be held, and what matters are to be discussed and determined at the meeting, and may give such other directions as it thinks fit with respect to the calling, holding and conduct of the meeting;

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- (b) the Commission may appoint a person to be chairman at the meeting or, in default of such an appointment, the meeting may appoint its own chairman ;
- (c) the meeting shall have all the powers of a meeting called according to the rules of the building society ;

and the provisions of this subsection and any direction given under it shall have effect notwithstanding anything in the rules of the building society.

- (11) In this section " the corresponding Companies Act limit", in relation to security for the payment of the costs of an investigation, is £5,000 or such other sum as is specified for the time being in an order under section 431(4) of the Companies Act 1985 for the purposes of that section.

57 Inspections: supplementary provisions

- (1) In this section—

" the body under investigation " means the building society whose affairs or, as the case may be, the building society whose affairs, and each subsidiary of or body associated with the building society whose affairs, are the subject of the investigation ;

" the inspectors" means the persons appointed by the Commission under section 56 to conduct the investigation ;

" the investigation " means the investigation under section 56 which the inspectors have been appointed to hold; and references to officers or to agents include past, as well as present, officers or agents (as the case may be) and " agents ". in relation to a building society or any subsidiary of or body associated with a building society, includes its bankers, its accountants and solicitors and its auditors.

- (2) When the inspectors have been appointed it is the duty of all officers and agents of the body under investigation—
- (a) to produce to the inspectors all documents and material of or relating to the body under investigation which are in their custody or power;
 - (b) to attend before the inspectors when required to do so, and
 - (c) otherwise to give the inspectors all assistance in connection with the investigation which they are reasonably able to give.
- (3) If the inspectors consider that a person other than an officer or agent of the body under investigation is or may be in possession of information concerning its affairs, they may require that person to produce to them any documents or material in his custody or power relating to the body under investigation, to attend before them and otherwise to give them all assistance in connection with the investigation which he is reasonably able to give; and it is that person's duty to comply with the requirement.
- (4) The inspectors may examine on oath the officers and agents of the body under investigation, and any such person as is mentioned in subsection (3) above, in relation to the affairs of the body under investigation, and may administer an oath accordingly.
- (5) An answer given by a person to a question put to him under the foregoing provisions of this section may be used in evidence against him.
- (6) If an officer or agent of the body under investigation or any such person as is mentioned in subsection (3) above—

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- (a) refuses to produce any document or material which it is his duty under this section to produce, or
- (b) refuses to attend before the inspectors when required to do so, or
- (c) refuses to answer any question put to him by the inspectors with respect to the affairs of the body under investigation,

the inspectors may certify the refusal in writing to the High Court; and the court may thereupon inquire into the case and, after hearing any witnesses who may be produced against or on behalf of the alleged offender and after hearing any statement which may be offered in defence, may punish the offender in like manner as if he had been guilty of contempt of the court.

- (7) The inspectors may, and if so directed by the Commission shall, make interim reports to the Commission, but they may at any time in the course of the investigation, without making an interim report, inform the Commission of matters coming to their knowledge as a result of the investigation tending to show that an offence has been committed.
- (8) The Commission may, if it thinks fit—
 - (a) send a copy of any report made by the inspectors to the body whose affairs are or were the subject of the investigation;
 - (b) furnish a copy of any such report on request and on payment of the prescribed fee to—
 - (i) any member of the body whose affairs are or were the subject of the investigation;
 - (ii) the auditors of that body ;
 - (iii) any person whose conduct is referred to in the report;
 - (iv) any other person whose financial interests appear to the Commission to be affected by matters dealt with in the report, whether as creditor or otherwise; and
 - (c) cause the report to be printed and published.
- (9) A copy of a report of inspectors appointed under section 56 to hold an investigation under that section, certified by the Commission to be a true copy, is admissible in any legal proceedings as evidence of the opinion of the inspectors in relation to any matter contained in the report; and a document purporting to be such a certificate shall be received in evidence and be deemed to be such a certificate, unless the contrary is proved.
- (10) The Commission shall be entitled to be repaid the expenses of the investigation defrayed by it under section 56(6)(d) as provided in the following paragraphs, that is to say—
 - (a) by the applicants for the investigation, to such extent (if any) as the Commission may direct;
 - (b) by any body whose affairs were the subject of the investigation, to such extent (if any) as the Commission may direct;
 - (c) by any person convicted of an offence in proceedings instituted as a result of the investigation, to such extent (if any) as the court by or before which he was convicted may order;

and a person liable under any one of paragraphs (a) to (c) above is entitled to contribution from any other person liable under the same paragraph, according to the amount of their respective liabilities under it.

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- (11) In the application of this section to a building society whose principal office is in Scotland, any reference to the High Court shall be read as a reference to the Court of Session.