



House of Commons
Scottish Affairs Committee

Blacklisting in employment

Written evidence

Only those submissions written specifically for the Committee and accepted by the Committee as evidence for the inquiry into the referendum on separation for Scotland are included.

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Written evidence from Kenny Newton

My name appears on the Consulting Association data base along with another 279 whose "file" contains only a name and nothing else. If one uses their imagination you could multiply many times the number of people that this may have affected.

As to having proof of being blacklisted well that could be in the majority of cases difficult to prove. I could write a book on the number of times that I have been victimised by my past employers. While working for a number electrical construction companies I was deliberately kept off jobs and in many cases worked as the sole electrician on construction sites. Most companies are quite subtle and are usually economical with the truth when you approached regarding such matters.

I would like to enlighten you with one such case that happened to me.

I was working for electrical company on the Shell Oil Refinery in Ellesmere Port I had been employed at the time for over a year. It was common knowledge that I was about to be elected shop steward. On the morning of the election myself and the other electrician were informed because of which was a minor problem. We would have to be transferred to another site for 2 weeks and a promise of a return back to site. I informed the site manager of the situation but his hands were tied and rather than create a problem for my work colleagues I resigned. I and my work colleague then went to work on another site in the Wirral area. After 3 days a request was made for my work colleague to return to the Shell Oil Refinery. I then continued working for that company for over a further 10 years. The company employed dozens of electricians on the Shell Oil refinery throughout that time and I was never (allowed) to set foot on that site again.

The construction industry is by its nature is a here today gone tomorrow industry you get use to that. Also part of the game is you know if you stand up to the boss there is a good chance you will be shot at. During my 50 years in the electrical construction I was lucky I was able to spend a lot of time with small local companies but a company or someone took time out to put my name on the CA data base. There are plenty of my colleagues who have suffered long term unemployment and their family's extreme hardship from many a spiteful employer but proving it is another matter.

Written Evidence from the Joseph Rowntree Foundation

Thank you for the opportunity to address the Committee on the subject of forced labour as part of its inquiry on Blacklisting in Employment. I committed to follow up with a brief note on the current and potential future remit of the Gangmaster's Licensing Authority, and more broadly, the wider regulatory environment.

Gaps / weaknesses in the current regulatory framework

At present, enforcement of an individual's employment rights (pay, terms and conditions etc) is largely dependent on employee action. This means that the employee needs to both understand their rights and the route by which they might enforce them as well as be prepared to take action. For migrant workers, particularly vulnerable isolated migrants, this is not an effective option.

A second problem is the scale and complexity of the UK's regulatory environment, as recognised by the Hampton Review (2005). Unlike many European countries, the UK has no single agency organising labour inspections, and this has led to differential protection of workers rights by sector or type of employment (set out in the table at appendix i). This complexity makes joint working, or shared training and standards far more difficult to achieve.

The Gangmasters Licensing Authority

The GLA is widely perceived to be effective as a consequence of its risk assessment and intelligence led approach (amongst other things this reduces dependence on complaints from an individual worker). Along with other agencies, JRF would urge that serious consideration be given to extending its remit to cover all sectors characterised by the use of labour providers or agency workers.

In addition, the main sanction available to the GLA (removal of license) has the consequence of rendering the exploited worker redundant. There is increasing recognition in the field of the need to provide an adequate system of compensation and support for victims, not least in order to encourage whistleblowing. Enabling the GLA to impose civil penalties could form an important part of that system. For instance, one such penalty would be to require immediate payment of unpaid wages, and place the offending gangmaster on notice that future infractions would lead to a removal of their license to operate.

This potential to increase the effectiveness of regulators by giving them access to civil remedies has been recognised in number of reviews, including Hampton. Indeed, the recent Ministerial statement on the GLA in response to the Red Tape Challenge explicitly recognises the need for such measures including "*penalties for low-level and technical minor offences, including a measure similar to a repayment order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed*".

I hope this of use, and if there is anything else we can do to support the work of the Committee, please do not hesitate to contact us.

Sources:

Balch, Alex (2012) Regulation and Forced Labour: a systematic response, JRF
<http://www.jrf.org.uk/publications/regulation-and-enforcement-forced-labour>

Written Statement by the Minister of State for Agriculture and Food (Citation: HL Deb, 24 May 2012, c95WS) <http://www.theyworkforyou.com/wms/?id=2012-05-24a.95.0>

Appendix i. Enforcement agencies and employment rights protected

Enforcement agency	Rules enforced	Rights protected/ how protected	Universal coverage?
Her Majesty's Revenue and Customs (HMRC)	National minimum wage (on behalf of BIS)	Right to fair pay/ via tribunal system or complaints investigated by HMRC	No – some types of employment exempt
Department for Environment, Food and Rural Affairs (Defra)	Agricultural minimum wage	Right to fair pay/ complaints-based enforcement regime operated by the Agricultural Wages Enforcement Team (AWT)	No – specific sectors or types of employment
Employment Agency Standards Inspectorate (part of Department of Business, Innovation and Skills, BIS)	Employment agency standards	EAS works with employers of agency workers to ensure compliance with employment rights	No – specific sectors or types of employment
Gangmasters Licensing Authority – a Non-Departmental Public Body (NDPB) sponsored by Defra	Gangmaster licensing standards	GLA regulates businesses in certain sectors to ensure employment rights are observed	No – specific sectors or types of employment

Health and Safety Executive – an NDPB sponsored by Department for Work and Pensions (DWP)	Health and safety and working time	Right to safe working environment, working time rights/ investigates complaints made to Health and Safety Executive	Yes
<i>Source:</i> The author; BERR (now BIS) (2008, p. 10); Unite (2010)			

13 July 2012

Written evidence from Unite

Introduction

This submission represents the views of Unite the Union. Unite is the UK's largest trade union with approximately 1.5 million members working in a raft of industrial sectors including construction, energy, manufacturing, engineering, transport, information technology, finance, local authorities and the health sector.

Unite is now the sole or joint signatory union to every significant national collective agreement across the whole of the UK construction industry and also throughout the construction products supply chain. In addition, Unite represents skilled craft workers operating across the public sector.

Unite believes that many of its members, especially those employed in the UK construction industry, have had their employment opportunities blighted by the existence of blacklists.

Historical Context

Unite is mindful of the fact that the transient nature of the UK construction industry, and the covert nature of the activity of blacklisting itself, has made it difficult to establish objectively the existence of such blacklists.

Unite therefore welcomes the fact that, since the investigation into the activities of The Consulting Association by the Information Commissioner's Office (ICO) in March 2009, the practice has been objectively exposed.

Unite are confident that blacklisting is not just a recent and ongoing activity.

Unite would encourage the Committee to consider the existence (between 1919 and 1993) of the Economic League, a controversial service that gathered information on 'left wingers' and was used to vet people for jobs, including construction workers.¹

The actions of the Economic League were entirely consistent with their core objective to "combat the fallacious economic doctrines of collectivism, socialism and communism".² Although the political language is dated by modern standards, it does demonstrate an unfounded and irrational fear of union activity in the workplace. By their own admission, the Economic League believed that "a shop steward can acquire influence out of all proportion to the real nature of his position".³

Despite the assertion that the Economic League was disbanded in 1993 following allegations that much of the information they held was inaccurate⁴, Unite continued to

¹ Labour White Paper No.23, What is the Economic League? - Labour Research Department 1927

² Labour White Paper No.23, What is the Economic League? - Labour Research Department 1927

³ Subversion in Industry – The Economic League Ltd (London & South Eastern Region) 1958

⁴ Building Magazine – 20th March 2009

maintain that the blacklisting of workers in the UK construction industry was still taking place.

Recent Activity

This assertion, based on anecdotal evidence provided to us by our membership, was borne out by the aforementioned investigation undertaken by the ICO.

In reality the exposure of the blacklist – containing details on 3,213 construction workers, used by over 40 construction companies to vet individuals for employment, and administered by The Consulting Association – only served to reaffirm the suspicions of a significant number of Unite’s members.

Unite would encourage the Committee to consider the fact that the ICO, during its investigation into the Consulting Association, discovered that companies paid an annual fee of £3,000 and £2.20 each time they wanted to check details held on an individual. To put the scale of activity into context, the ICO seized annual invoices up to the value of £28,000 for individual companies during its investigation.

Furthermore Unite would point out that evidence suggested that The Consulting Association had in its possession information which pre-dated its existence. For Unite this clearly demonstrated the long standing operation and use of blacklists in the UK construction industry.

Whilst the nature of the industry has made it difficult to establish their existence, Unite has been advised by a number of its members that blacklists other than the one held by The Consulting Association exist.

In addition Unite believes that a range of less formalised arrangements have also existed which in effect lead to blacklisting. Anecdotal evidence suggests that a number of organisations in the construction industry have in the past engaged relatively junior members of staff to monitor employment tribunals and local media for the sole purpose of identifying individuals who are perceived to have had previous ‘employment issues’ and who may make an application for employment in their organisation.

Unite would also highlight the somewhat contentious practice which has previously operated in the offshore oil and gas industry, known colloquially as ‘NRB’ or ‘not required back’. This practice involved operatives, engaged indirectly through a contract with a service provider, being removed from site at the discretion of the offshore installation manager, acting for the duty holder. The power afforded to the offshore installation manager has meant that the operative has had little or no recourse to the decision which can effectively blacklist them from the whole sector.

Unite members have expressed concerns that they have been subject to such procedures simply because of their union involvement and activities.

Impact on Blacklisted Workers

Unite is keen that the Committee fully understands the dreadful consequences of blacklisting for thousands of UK construction workers. Particularly when they are denied gainful employment in a trade for which they have served an apprenticeship and spent many years acquiring additional skills and experience.

We might consider for example *Electrician A* who has asked to remain anonymous for fear of continued blacklisting.

Electrician A entered the industry as an apprentice at the age of 16 and became a qualified electrician in 1988. He spent a number of years working in the industry moving between jobs, as is the nature of the work, without any difficulty.

He gained employment on a major infrastructure project in 1995 and was duly elected as one of the Trade Union Shop Stewards. He remained in employment until 2000, when the project came to an end. During these 5 years he was a productive worker and an active Shop Steward.

His career progression after the year 2000 was a very different picture.

By 2001 it became apparent that despite making numerous applications there was an issue in gaining employment on major projects, despite the fact that the industry was in a period of sustained growth and his skills were very much in demand.

Consequently *Electrician A* took up a series of employment opportunities in the building maintenance sector, which although maintaining an income considerably impacted on his career progression and earning potential.

It was not until 2007 that *Electrician A* managed to gain employment on a major construction project. However this job was short lived when he raised issues around health & safety and lack of accredited training.

The existence of the blacklist was well known, albeit unproven, amongst the construction industry workforce and over time *Electrician A* came to the realisation that this was the reason for his lack of employment opportunities, having made somewhere in the region of 40 separate applications from the year 2000 and having them all turned down.

In 2009 with the exposure of The Consulting Association the assumptions of *Electrician A* were proven. What came as a shock however was the extent and detail of the information held.

Electrician A discovered that The Consulting Association had an 18 page file on him going right back to his election as a Shop Steward, which included not only details of every job for which he was turned down, but also personal details.

Electrician A is convinced that this information, which included dates of various house moves, was so detailed that it could only have been obtained through some form of surveillance.

Interestingly this dynamic has been alluded to by the Guardian Policy Editor, Daniel Boffey, in his article of the 3rd March 2012 titled “Police are linked to blacklist of construction workers”.

Despite the exposure of The Consulting Association *Electrician A* is still unable to gain employment on any major construction project and has been told unofficially that he will never work in the industry again.

As the Committee will be only too well aware the experience of *Electrician A* is unfortunately not unique. Unite is very mindful of the experience of its longstanding member Colin Trousdale.

Colin joined the Union in 1975 as an apprentice and qualified as an electrician in 1979, he first took up an elected shop steward role in 1982.

The first experience Colin had working for one of the companies named as participating in blacklisting by the ICO was when he started work for the Scottish company Balfour Kilpatrick (now known as Balfour Beatty Engineering Services) in 1985. He found their style of management draconian and left for another job after 3 months. His departure was not welcomed and he was told he would never work for the company again.

Despite this threat Colin did have several other periods of employment with the company. He worked on the Channel Tunnel project between 1989 and 1990 and on Manchester University project between 1999 and 2000.

Colin was made redundant from the Manchester University project in 2000, shortly after demonstrating sympathy with fellow Union members engaged in a dispute with Balfour Kilpatrick at the Pfizers chemical plant project in Kent.

The last period of employment Colin had with Balfour Kilpatrick was on the Manchester Royal Infirmary project in 2005, where he was elected as a Shop Steward. This coincides with the start of his file at The Consulting Association.

He was made redundant from the project in 2006, at which time he was assured that he would be recalled for the second phase in 2007. However this never happened.

Colin took the company to an employment tribunal in 2008 at which time they denied the existence of the blacklist and of The Consulting Association.

A year later the blacklist was exposed and Colin found that details of the tribunal were included in his file and with details of his activities.

Despite being vastly experienced in the industry and having worked on several high profile construction projects since 2006, Colin has found it increasingly difficult to gain employment and has not worked again for Balfour Beatty or any of its subsidiaries. In fact following the exposure of the blacklist in 2009 Colin has found it more difficult to gain employment.

This experience is also shared by Unite member Tony Jones who has been forced to leave the industry altogether.

Tony entered the construction industry at the age of 16 as an apprentice electrician and qualified in 1988. He was an active Union member working on a range of sites and major projects. In 2001 he was working for a small electrical contracting company where he was duly elected as the Shop Steward. This coincides with the start of his Consulting Association file. Notably, it wasn't his employer that placed him on the file, rather a major contractor indentified by the ICO, who clearly had undue influence over the supply chain.

Unite notes with interest that Tony's Consulting Association file includes details of all major projects on which he sought employment and was subsequently turned down. This includes his application to AMEC in 2005 for work on Heathrow Terminal 5 (at the time was the largest construction site in Europe).

On occasions where Tony has gained employment with smaller subcontractors, including the Piccadilly Gardens project (2003) and Manchester Royal Infirmary project (2005) he has found these opportunities short lived and subsequently was made redundant. The subcontractors in question have admitted to being put under pressure by certain major contractors not to employ Tony and others.

Recourse for Blacklisted Workers

Unite hold the view that the blacklisting should be categorised as a criminal offence with appropriate penalties.

When government announced in July 2009 that it would consult on blacklisting legislation⁵, Unite were encouraged that real and decisive action would be taken against this abhorrent breach of human rights.

However this optimism was short lived when the proposals were studied in detail.

Despite a significant number of consultation responses from a range of Trade Unions no significant changes were made to the original proposals.

Of particular concern for Unite was the lack of any automatic or retrospective compensation for blacklisted workers, and only in effect the recovery of lost earnings

⁵ The Blacklisting of Trade Unionists: Consultation on Revised Draft Regulations – Department for Business Innovation & Skills, July 2009

when these could be unequivocally proved to have occurred as a direct result of blacklisting.

Unite also expressed apprehension about the restrictive nature of the definitions within the proposed regulations – such as the distinction between “trade union activities” and “trade union related activities” - which would ensure in effect that much legitimate activity remained outside of the regulations.

In reality, the burden of proof and lack of any retrospective compensation scheme for blacklisted workers means that the only remedy for a significant number of blacklisted workers is through a complaint to the European Court of Human Rights in respect of a breach of their Convention rights - Article 8 on privacy and Article 11 on freedom of association.

Conclusion

Unite are encouraged by the fact that the Scottish Affairs Committee are undertaking a rigorous inquiry into blacklisting.

The clandestine nature of this abhorrent activity makes it very difficult to prove objectively. However anecdotal evidence provided by Unite members from every corner of the UK suggests that blacklisting is still a practice undertaken by less scrupulous employers in the construction industry.

Not only are Unite concerned about the impact of this activity on the career progression and remuneration of its members, but we are also legitimately concerned that the crucial work undertaken, on behalf of the whole industry, by Trade Union Shop Stewards and Health & Safety Reps is being undermined by the threat to their future employment prospects.

At time of writing Unite have legitimate concerns about the employment opportunities for some of our construction members at the Ineos Grangemouth refinery and the BP Kinniel projects.

Specifically, our concerns centre on reports that active and vocal Unite members have been selected for redundancy on other projects whilst recruitment is still taking place at Grangemouth, and that had these members been offered the opportunity to transfer to Grangemouth, then their continued employment would have been protected, thereby mitigating any requirement to make them redundant.

The Committee will be interested to note that as a result of the 2012 Unite Policy Conference, we intend to campaign politically and industrially for clear contract procurement and tendering policies that prohibit work being placed with companies found guilty of blacklisting workers.

Unite would highlight the fact that a number of the companies named by the ICO undertake major private and public sector construction work in Scotland. Current projects involving such companies include improvement works at Edinburgh Waverley Station, refurbishment of Glasgow Royal Infirmary and the redevelopment of Edinburgh University.

Unite are looking forward to seeing the result of this inquiry and remain available to provide further evidence should it be required.

28 August 2012

Written evidence from the Gangmasters Licensing Authority

1. Introduction

- 1.1. This paper explains the role and remit of the Gangmasters Licensing Authority (“GLA”) with particular reference to its impact in Scotland.

2. Background

- 2.1. The Gangmasters (Licensing) Act 2004 (the “Act”) paved the way for creating the GLA. Sponsored by the Department of Environment, Food and Rural Affairs, the GLA is a non-departmental public body and was set up in April 2005 to address worker exploitation in agriculture, shellfish gathering and food processing and packaging in the UK.
- 2.2. The regulatory means for achieving this is through licensing those who supply or use a worker to provide a service in the sectors covered by licensing. For the shellfish industry, anyone who uses a worker to gather shellfish also needs to be licensed.
- 2.3. “Gangmasters” – often referred to as labour providers – range from recognisable high street recruitment agencies supplying large-scale food manufacturers to micro-sized businesses with a few workers providing agricultural services to local farmers.
- 2.4. The GLA is financed by grant-in-aid by Defra and through a SLA with Defra.
- 2.5. The GLA is directed by an independent Board (see annex A for a list of Board members).

3. Who needs a licence

- 3.1. Section 4 of the Gangmasters (Licensing) Act 2004 defines the term “gangmaster”. In summary, a licence is required for anyone:
 - Supplying a worker to agriculture, shellfish gathering and food processing and packaging,
 - Using a worker to provide a service in the regulated sector, or
 - Using a worker to gather shellfish.
- 3.2. A licence can be granted to any kind of legal entity, individuals (sole traders), limited companies, unincorporated associations or partnerships. The GLA takes a wide interpretation of the term “supply”. It does not matter whether the worker is supplied on a temporary or permanent basis.
- 3.3. If the work is undertaken in the UK, a licence is required regardless of where the business is located.

4. GLA Licensing Standards

4.1. The Authority's Licensing Standards set out what the GLA expects applicants and licence holders to comply with. The Licensing Standards are the conditions of a licence and comprise the requirements set out in the Gangmasters (Licensing Conditions) Rules 2009 plus other relevant law.

4.2. In summary, they include:

- A general fit and proper test,
- The indicators of forced labour, including withholding wages, physical and mental treatment, restricting a worker's movement and debt bondage,
- Paying the correct amounts of PAYE, National Insurance and VAT,
- National Minimum Wage, including the relevant Agricultural Wages Order,
- Working time, paying the correct statutory benefits and providing payslips,
- Quality of accommodation,
- The right to belong to a trade union and not replacing striking workers,
- Health and safety, including transport and specific standards relating to gathering shellfish,
- Recruitment and contractual matters, including prohibition on job finding fees, and
- Not using unlicensed subcontractors.

5. Assessing Compliance

5.1. The GLA adopts a proportionate approach when applying the Licensing Standards. The Authority is concerned with identifying the more persistent and systematic exploitation rather than isolated non-compliances, unless the non-compliance is "critical" in its own right. Compliance is assessed through inspections.

5.2. The information gathered during an inspection will be used to determine an application or whether any action should be taken against an existing licence holder.

5.3. The inspection will test the relevant licensing standards, which will result in an overall score. Each standard has an associated score. Standards designated as "critical" are worth 30 points. All other standards are worth 8 points, except standard 1.4 which can score up to 16 points. There are three possible outcomes:

No issues identified

- 5.4. For applicants, a licence will be granted. There would be no change for existing licence holders.

Inspection score is below 30 points

- 5.5. Additional Licence Conditions (ALCs) will be attached to the licence. An ALC is a specific requirement which a licence holder must comply with. Usually, ALCs will be against individual non-Critical standards where non-compliance has been identified. The licence will become conditional on those non-compliances being corrected.

Inspection score is 30 points or more

- 5.6. The application or licence will normally be refused or revoked. However, the GLA may consider attaching ALCs where it is proportionate to do so after considering the extent and nature of the non-compliance.
- 5.7. If an application is refused, the applicant must not trade in the licensable sectors. Any revocation will be with or without immediate effect depending on which standards are failed and the seriousness of the issues. If a licence is revoked, the business will be notified as to whether trading may continue, usually until the outcome of any appeal is determined, or whether they must stop immediately.

Example of GLA Licensing Standards Scoring System

Scottish Border Dykers was a gangmaster supplying workers in agriculture based in Hawick, Scotland. The Principal Authority was Mr John Armstrong. A compliance inspection of the business led to decision to fail the following Licensing Standards:

- Minimum Wage (Standard 2.2): unable to produce sufficient records to demonstrate the agricultural minimum wage was being paid. Standard 2.2 is a critical standard with a score of 30.
- Health and Safety – Assigning Responsibility and Assessing Risk (Standard 6.1): did not cooperate with clients to make sure responsibility was assigned and risk properly assessed. Standard 6.1 is a non-critical standard with a score of 8 points.
- Health and Safety – Instruction and Training (Standard 6.2): did not cooperate with clients to make sure training was provided. Standard 6.2 is a non-critical standard with a score of 8 points.
- Health and Safety – Safety at Work (Standard 6.3): failing to provide Personal Protective Equipment. Standard 6.3 is a non-critical standard with a score of 8 points.
- Contractual Arrangements and Records with Workers (Standard 7.3): non-compliant contracts and poor record keeping. Standard 7.3 is a non-critical standard with a score of

8 points.

- Agreements and Records with Labour Users (Standard 7.4): no contracts with clients. Standard 7.4 is a non-critical standard with a score of 8 points.

Licence holders must score less than 30 points. As Scottish Border Dykers scored 70 points, its licence was revoked without immediate effect. Scottish Border Dykers did not appeal the decision.

- 5.8. The GLA will usually automatically refuse applications for a two year period where an applicant has been found not fit and proper or if they have been refused or revoked twice in the previous two years. Otherwise, the GLA is willing to consider applications from business's previously refused or revocation on its merits if it has corrected the non-compliances.

6. Right of Appeal

- 6.1. There is right of appeal against any decision of the GLA to refuse or revoke a licence, attaching conditions to licence as well as refusing to transfer a licence to another person.

7. Criminal Offences

- 7.1. The GLA enforces the following criminal offences in the Act on behalf of Defra in Great Britain and the Department of Agriculture and Rural Development in Northern Ireland:

Section 12(1): Acting as a gangmaster without a licence

- 7.2. It is illegal to act as a gangmaster without a licence.

Section 12(2): Possessing False Documents

- 7.3. A person commits an offence if, in an attempt to make another person believe they are licensed, they possess or control:

- A relevant document that is false or they know or believe is false
- A relevant document that was improperly obtained and / or that they know or believe was improperly obtained, or
- A relevant document that relates to someone else

- 7.4. "Relevant" means any document the GLA issues in connection to a licence and being licensed.

Section 13(1): Using an unlicensed gangmaster

- 7.5. It is illegal to use an unlicensed gangmaster.

Section 18(1): Obstruction

- 7.6. It is an offence to obstruct a GLA officer in the course of their duties. It is also an offence to fail to comply, without reasonable cause, with any requirement made by a GLA officer.

8. Working with Other Government Departments and Enforcement Agencies

- 8.1. The GLA works closely with other Government Departments and enforcement bodies. The Authority has Memorandums of Understanding (“MoUs”) with a range of other agencies:

- Association of Chief Police Officers and the Association of Chief Police Officers in Scotland
- Employment Agencies Inspectorate, Department for Business Innovation and Skills
- Fraud Investigation Service, Department for Work and Pensions
- Health and Safety Executive
- HM Revenue and Customs (“HMRC”)
- UK Border Agency
- National Minimum Wage Enforcement Team, HMRC
- Serious and Organised Crime Agency

- 8.2. These MoUs cover information sharing (using section 19 of the Act) and joint working. These agreements create a framework for exchanging and gathering intelligence which helps focus the GLA’s and other agencies operational work.

- 8.3. The GLA is still able to work closely and exchange information with bodies without a formal MoU agreement.

- 8.4. As part of the application process, the GLA will run checks with other Government departments and enforcement agencies:

- Companies House
- Department for Work and Pensions
- Employment Agency Standards Inspectorate, Department for Business, Innovation and Skills
- Health and Safety Executive
- HM Revenue and Customs (“HMRC”)
- Insolvency Service

- National Minimum Wage Enforcement Team, HMRC
- Police
- UK Border Agency
- Vehicle and Operator Services Agency
- Internal check with GLA's intelligence database

8.5. The GLA will also run checks with other bodies where necessary (for example, Land Register).

8.6. Where necessary, the GLA will also check with authorities in other countries to check if the business is compliant with the relevant domestic legislation and requirements.

9. Red Tape Challenge

9.1. The GLA was considered under the employment theme of the Government's red tape challenge last year. Jim Paice MP's Written Ministerial Statement of 24 May 2012 announced the outcome of the red tape challenge process (see appendix A). The statement proposed a range of measures to better focus the Authority's work towards tackling the most serious problems while easing the burden on compliant businesses.

9.2. The proposals will be developed over the next 12 months, including consulting publically on the changes.

10. Impact of the GLA

10.1. Appendix B details various licence statistics as of 3 August 2012. Appendix C sets out information on GLA prosecutions.

In Scotland

10.2. 12 licences have been revoked in Scotland:

One on One Recruitment Ltd

Location: Airdrie

Principal Authority: Mary Ferguson

Date of decision: 18 April 2007

Reasons for decision: attempted to mislead the GLA by providing false documents; illegal deductions from wages; potentially unsafe vehicles used to transport workers; drivers not having the appropriate Passenger Carrying Vehicles licence.

Outcome: the company withdrew its appeal after successfully reapplying for a new licence. The second licence has now expired.

A & M Penman & Sons

Location: Fife

Principal Authority: Mary Penman

Date of decision: 27 July 2007

Reasons for decision: vehicle used to transport workers had no valid MOT; not having a Public Service Vehicle licence; drivers not having the appropriate Passenger Carrying Vehicles licence; attempted to mislead the GLA by providing false documents.

Outcome: the company withdrew its appeal after successfully reapplying for a new licence. The second licence has now expired.

Pure Recruitment

Location: Glasgow

Principal Authority: Colin Carmichael

Date of decision: 14 November 2007

Reasons for decision: not correcting ALCs relating to health and safety and worker records.

Outcome: appeal dismissed. Business successfully re-applied. The second licence has now expired.

Ian Smith

Location: Perth and Kinross

Principal Authority: Ian Smith

Date of decision: 28 March 2008

Reasons for decision: not correcting ALCs relating to managing health and safety and worker records; other issues related to record keeping.

Outcome: business did not appeal.

Renavatio Limited

Location: Turriff, Aberdeenshire

Principal Authority: Ieva Osite

Date of decision: 30 May 2008

Reasons for decision: not correcting ALC relating to health and safety; PAYE tax debts; 48 hour opt out not voluntary; non-compliant worker terms and conditions.

Outcome: appeal dismissed.

Lorna McConaghy

Location: Glenrothes

Principal Authority: Lorna McConaghy

Date of decision: 2 March 2009

Reasons for decision: lack of control of business; not paying the agricultural minimum wage.

Outcome: Ms McConaghy did not appeal.

Ronald Shennan

Location: Dalbeattie

Principal Authority: Ronald Shennan

Date of decision: 6 July 2009

Reasons for decision: obstruction; tax debts; not correcting ALCs related to record keeping.

Outcome: Mr Shennan did not appeal.

Victor Wolf Limited

Location: Angus

Principal Authority: Max Wolf

Date of decision: 24 June 2009

Reasons for decision:

Outcome: appeal withdrawn.

Grapevine Recruitment Ltd

Location: Glasgow

Principal Authority: Ian Wright

Reasons for decision: significant tax debts.

Outcome: business did not appeal.

M & A Gielty

Location: Lasswade

Principal Authority: Mr M Gielty

Reasons for decision: not correcting ALC related to non-compliant worker terms and conditions.

Outcome: Mr Gielty did not appeal.

Scottish Border Dykers

Location: Hawick

Principal Authority: John Armstrong

Reasons for decision: insufficient records to prove minimum wage is paid; issues related to health and safety; issues with worker and labour user contracts.

Outcome: business did not appeal.

Muirfield Recruitment Limited

Location: Ellon

Principal Authority: Graeme Dickie

Date of decision: 23 January 2012

Reasons for decision: not accurately calculating and deducting tax and NICs; not paying the Scottish Agricultural Minimum Wage and insufficient records; withholding holiday pay; issues with worker's terms and conditions.

Outcome: the company withdrew its appeal after successfully reapplying for a new licence.

10.3. The GLA has refused nine applications in Scotland:

A1 Harvester Limited

Location: Mid Lothian

Principal Authority: Sandra Melville

Date of decision: 15 June 2006

Reasons for decision: deductions from wages; not paying Scottish Agricultural Wage; not providing statutory benefits; inaccurate payslips; issues with records; issues related to managing health and safety.

Outcome: business did not appeal but did correct the non-compliances and was granted a licence after a further application. That licence has now expired.

Fiona Clark

Location: Blairgowrie

Principal Authority: Fiona Clark

Date of decision: 15 November 2006

Reasons for decision: not accurately calculating and deducting tax and NICs; inaccurate payslips; issues related to record keeping.

Outcome: Ms Clark did not appeal. She was subsequently prosecuted for acting as a gangmaster without a licence.

Mindrin & Co Ltd

Location: Newton Stewart

Principal Authority: Viaceslavas Mindrin

Date of decision: 4 December 2007

Reasons for decision: not accurately calculating and deducting tax and NICs; not providing statutory benefits; no gas or electrical certificates for accommodation provided to workers; no knowledge of Working Time Regulations; issues related to health and safety; poor records.

Outcome: business did not appeal but did correct the non-compliances and was granted a licence after a further application. That licence has now expired.

Myers Agricultural Services Limited

Location: Dalkeith

Principal Authority: Thomas Myers

Date of decision: 21 December 2006

Reasons for decision: attempted to mislead GLA on whether transport was provided to workers.

Outcome: appeal dismissed.

Christopher Murray

Location: Dunscore

Date of decision: 9 July 2009

Reasons for decision: unable to demonstrate sufficient knowledge of the Licensing Standards.

Outcome: appeal withdrawn. Mr Murray was also prosecuted for acting as a gangmaster without a licence. Mr Murray is now licensed under CFM Tree Surgery and Forestry.

RCS Resources Ltd

Location: Haddington

Principal Authority: John Friel

Date of decision: 8 March 2011

Reason for decision: connected to business that had gone into liquidation.

Outcome: business did not appeal.

RTO Solutions Limited

Location: Airdrie

Principal Authority: Alistair Munroe

Date of decision: 25 July 2011

Reason for decision: connection to Pure Recruitment Ltd; Mr Munroe was not considered a competent person.

Outcome: appeal withdrawn after business went into liquidation.

Primo Executive Recruitment Ltd

Location: Motherwell

Principal Authority: Mr A Devine

Date of decision: 1 March 2012

Reasons for decision: connected with a person the GLA considers not fit and proper; issues with worker and labour user contracts.

Outcome: business did not appeal. Individuals involved in business also issued with Procurator Fiscal warning for acting as a gangmaster without a licence.

Appendix A

Written Ministerial Statement by Jim Paice MP, Minister of State, Defra, 24 May 2012

The Gangmasters Licensing Authority (GLA) has been considered under the employment theme of the Government's red tape challenge. Last December, we announced that the red tape challenge ministerial star chamber had endorsed the need for the GLA to continue to enforce protection for vulnerable workers, while requiring it to look at reducing burdens on compliant operators. The GLA has been further considered within the red tape challenge and I am today announcing the outcome of that process.

The GLA has done a great deal of valuable work since it was formally constituted on 1 April 2005 with cross-party support. Seven years on, it is a good time to see where improvements can be made so that the authority can become more focused on the worst excesses in the areas it regulates and work more closely with other agencies that tackle crime. I therefore propose to bring forward measures, including where necessary legislation, subject to public consultation, which will:

- Ensure GLA targets suspected serious and organised crime by working more closely with the Serious Organised Crime Authority and other specialist law enforcement agencies;
- Ensure that evidence of worker exploitation by unlicensed gangmasters or licence holders will contribute effectively to continued successful investigation and prosecution of organised crime groups and assist in the earlier identification of the victims of human trafficking;
- Reduce the burden on compliant labour providers and labour users and focus forensically on gross abuse of workers by unscrupulous gangmasters—whose crimes include tax evasion, trafficking, health and safety negligence and other serious crimes;
- Streamline the process for issuing licences and remove the general requirement for an application inspection and associated fee, aim to reduce fees and charges and extend the licensing period from twelve months to two years or more for highly compliant businesses;
- Remove from scope of the GLA, activities or sectors which are low risk, including:
 - apprenticeships;
 - forestry;
 - cleaning contractors;
 - land agents; and
 - voluntary workers.
- Provide for those with exclusive rights to use the seashore for shellfish cultivation to be able use their workers to grade and gather shellfish stock without needing to be licensed as a gangmaster. This measure would leave fully in scope of the Act activities such as the gathering of cockles from public shellfish beds;

- Introduce administrative fines and penalties for low-level and technical minor offences, including a measure similar to a repayment order to achieve rapid reimbursement to an exploited worker of wages or other payment which has been removed;
- Adopt an approach in respect of a labour user who uses an unlicensed gangmaster proportionate to the circumstances of the offence, for example the financial advantage gained and whether or not there has been abuse of the workers; and
- Amend the structure of the board of the GLA and introduce a smaller board to provide clear strategic leadership and direction to the GLA.

These changes will free up resources within the GLA to provide for greater effort to be focused on identifying and eliminating criminality in those sectors and activities covered by the authority, such as food processing, where exploitation of the most vulnerable workers is known to exist. In addition it will remove an estimated 150 current licence holders from the scope of the GLA, saving around £60,000 a year, and potentially reduce annual inspection charges from £300,000 a year to zero.

Appendix B

Licence Statistics

Number of licence holders	1,199 <i>Includes 23 with ALCs and 7 allowed to continue trading while they appeal against revocation</i>
In Scotland	183 <i>Includes 3 with ALCs and 1 allowed to continue trading while they appeal against revocation</i>
In England	904 <i>16 with ALCs, 6 in appeal</i>
In Northern Ireland	25 <i>1 with ALCs</i>
In Wales	34 <i>2 with ALCs</i>
Based outside the UK	53 <i>1 with ALCs</i>

Licence Holder by size of turnover in the GLA regulated sectors	
£10 million or more	19 (1 in Scotland)
£5 million to £10 million	28 (1 in Scotland)
£1 million to £5 million	152 (14 in Scotland)
Less than £1 million	1000 (167 in Scotland)
Current applications	48
Scotland	5
England	36
Northern Ireland	3
Wales	2
Overseas	2

Number of revocations	180
2007	29
2008	39
2009	30

2010	25
2011	40
2012	17
* Average number of days between the date applied for a licence and the date the revocation took effect is 912.	
Scotland	12 <i>1 in 2007</i> <i>4 in 2008</i> <i>2 in 2009</i> <i>2 in 2010</i> <i>1 in 2011</i> <i>2 in 2012</i>
England	161 <i>28 in 2007</i> <i>35 in 2008</i> <i>27 in 2009</i> <i>21 in 2010</i> <i>37 in 2011</i> <i>13 in 2012</i>
Northern Ireland	2 <i>1 in 2010</i> <i>1 in 2012</i>
Overseas	5 <i>1 in Bulgaria (2009)</i> <i>1 in Lithuania (2011)</i> <i>2 in Poland (2010 and 2011)</i> <i>1 in Republic of Ireland (2012)</i>

Revocations by turnover in the GLA regulated sectors	
£10 million or more	2
£5 million to £10 million	5
£1 million to £5 million	44
Less than £1 million	129 (12 in Scotland)

Number of refusals	151 <i>Includes 6 appealing the decision</i>
2006	18
2007	13
2008	18
2009	26
2010	24
2011	28

2012	24
Scotland	9 <i>2 in 2006</i> <i>1 in 2007</i> <i>1 in 2008</i> <i>2 in 2011</i> <i>3 in 2012</i>
England	128 <i>15 in 2006</i> <i>12 in 2007</i> <i>16 in 2008</i> <i>22 in 2009</i> <i>23 in 2010</i> <i>24 in 2004</i> <i>16 in 2012</i>
Northern Ireland	3 <i>3 in 2012</i>
Wales	3 <i>1 in 2006</i> <i>2 in 2012</i>
Overseas	8 <i>1 in 2008</i> <i>4 in 2009</i> <i>1 in 2010</i> <i>2 in 2011</i>

Appendix C

Convictions against GLA offences

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
29/04/2008	Fiona Clark		6 Braeken Brae, Perth	Tayside Sheriff Court	Guilty plea, sentenced to 18 months probation and 140 community service	12(1)	Fiona Clark was initially refused a licence for various reasons, including failing to accurately calculate and pay tax and NICs. She supplied workers to pick, process and pack potatoes without a licence. The farmer received a written warning in relation to the se13 offence.
07/05/2009		Soul Recruitment Ltd	Unit 7, Newington Business Centre, Dalkeith Road, Edinburgh	Edinburgh Sheriff Court	Guilty plea, £200 fine	12(1)	Supplied workers to a West Lothian meat processor. The labour user received a written warning.
01/09/2009	Harold Benson		29 Market Street, Flookborough, Preston	Preston Crown Court	Guilty plea, £600 fine £4000 costs	12(1)	Used workers to gather shellfish without a licence.
01/12/2009		All Needs Recruitment Ltd	Stevenston, Ayrshire	Ayr Sheriff Court	Procurator Fiscal warning letter	12(1)	Supplied workers to shellfish industry. Labour user issued with a written warning.
15/12/2009		Xltec	Registered	Airdrie Sheriff	Guilty plea, sentenced on	12(1)	Supplied workers to a bakery

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
		Recruitment Ltd	company address: Queens House, 29 St Vincents Place, Glasglow G1 2DT	Court	9/03/10 to £1000 fine reduced from £1,500 due to early admission of guilt		without a licence. Labour user issued with a written warning.
30/12/2009	Zuber Mohammed and Kuldip Singh		Beverley Close, Hull	Hull Crown Court	Guilty plea, 6 months suspended sentence for 2 years	12(1)	
22/01/2010		David Leslie Soft Fruits Ltd	Scones of Lethendy, Perth	Perth Sheriff Court	Guilty plea, £500 fine	13(1)	Supplied 250 workers to pick strawberries by an unlicensed gangmaster based in Bulgaria. Bulgarian labour providers issued with a written warning.
23/02/2010	Jagit Singh	Saphire Trading Ltd	348 Portswood Road, Southampton	Southampton Magistrates Court	Guilty plea, sentenced to 200 hours unpaid work as part of a 12 month Community Order and costs of £10,902.59 12 month Community Order & 200 hours unpaid work	18(1)	Obstructed a GLA officer by not disclosing full of accommodation he provided. Accommodation was deemed too dangerous for human inhabitation. Saphire Trading Ltd's licence was also revoked.
15/04/2010	Ian Cooper	Swift Recruitment (Eastern) Ltd	97 Norfolk Street, Wisbech	Peterborough Magistrates Court	Guilty plea, £300 fine reduced from £500 due to plea. £15 victim Surcharge	12(1)	Continued to supply two horticultural labour users after Swift Recruitment (Eastern)

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
					and costs £250 (full costs of £850 sought but not awarded due to his means)		Ltd's licence had expired. Labour users received a written warning.
20/05/2010		Major Industrial Recruitment Ltd	Bradford Road, Cleckheaton	Bradford Magistrates Court	Guilty plea, £3500 fine and £3500 costs	12(1)	Supplied fruit packers without a licence. Labour user issued with a written warning.
08/06/2010		Recruitment Solutions Wales Ltd	2 Alexander Gate, Ffordd Pengam, Rover Way, Cardiff	Abertillery Magistrates Court	Guilty plea, £800 fine, £15 victim surcharge and costs £800	12(1)	Continued to supply workers to a bakery in Brigend, Mid Glamorgan after Recruitment Solutions Wales Ltd's had expired. Business now relicensed. Labour user received a written warning.
07/07/2010	Dean Mitchell	Freelance Poultry	24 McLaren Court, Hawick	Peebles Sheriff Court	Guilty plea, £450 fine	12(1)	Using workers to provide a chicken catching service without a licence. Labour user issued with a written warning.
14/07/2010	Abrar Ul Haq	Rapier Recruitment Ltd	Farnham Road, Slough, Berkshire	Bracknall Magistrates Court	Guilty plea, sentenced to 300 hours community service and £5000 costs	13(1)	Used an unlicensed gangmaster based in Poland to supply workers to pick cabbages.

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
14/07/2010	Gary Richards	Rapier Recruitment Ltd	Savoy Gardens, Bristol	Bracknall Magistrates Court	Guilty plea, sentenced to 200 hours community service and £3000 costs	13(1)	See above
15/10/2010	Christopher Murray		Netherhome House, Kirton, Dumfries	Dumfries Sheriff Court	Guilty plea, £2500 fine	12(1)	Using workers to provide a forestry service without a licence. Now licensed under CFM Tree Surgery and Forestry. Labour user issued with a written warning.
27/07/2010		O'Kane Poultry	Larne Road, Ballymena	Ballymena Magistrates Court	2Guilty pleas, Absolute Discharge and £46 costs	13(1)	Used the services of an unlicensed chicken catcher. The gangmaster was issued with a written warning.
23/11/2010		Gallagher Meat Contractors Ltd	Gortin Road, Omagh, Northern Ireland	Omagh Magistrates Court	Guilty plea, £750 fine plus costs	12(1)	Supplied workers to a meat processor without a licence. Labour user issued with a written warning.
05/08/2010	Linda and Sean McPherson	Right Staff (Scotland)	52 Thornwood Drive, Glasgow	Glasgow Sheriff Court	Procurator Fiscal warning letter	12(1)	Supplied workers to a bakery. Labour user issued with a written warning.
07/12/2010	Harsh Shukla	Hi Flyers / R	4 Glovers Court,	Fleetwood	Guilty plea, £2000 fine and	Two 12(1)	Supplied workers to a food

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
		& G Services	Preston	Magistrates Court	£3850 costs. £15 Victim Surcharge	offences	processor. Two periods of illegal trading. Labour user issued with a written warning.
13/12/2010	Ronald Shennan		138 Southwick Road, Dalbeattie, Dumfries	Dumfries Sheriff Court	Guilty plea, £450 fine	12(1)	Using workers to provide a forestry service without a licence. Mr Shennan previously had a GLA licence revoked. Labour user issued with a written warning.
13/12/2010		Total Recruitment	16 School Wynd, Paisley	Paisley Sheriff Court	Procurator Fiscal warning letter	12(1)	Supplied workers to a farmer. Farmer issued with a written warning.
09/09/2011	John Devine	Primo Executive Recruitment Ltd	10 Thorntree Drive, Coatbridge	Hamilton Sheriff Court	Procurator Fiscal warning letter	12(1)	Supplied workers to food production. Labour user issued with a written warning.
09/09/2011	Anthony Devine	Primo Executive Recruitment Ltd	10 Thorntree Drive, Coatbridge	Hamilton Sheriff Court	Procurator Fiscal warning letter	12(1)	Supplied workers to food production. Labour user issued with a written warning.
09/09/2011	Alanna	Primo	8 South Caldean	Hamilton	Procurator Fiscal warning	12(1)	Supplied workers to food

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
	Maxwell	Executive Recruitment Ltd	Road, Coatbridge	Sheriff Court	letter		production. Labour user issued with a written warning.
24/10/2011		Barnett and Partners	Astrop Farm, Brize Norton, Oxon	Swindon Magistrates Court	Guilty plea, 6 months Conditional discharge and £1000 costs	13(1)	Dairy farmer supplied workers by an unlicensed gangmaster. Gangmaster currently being prosecuted.
23/11/2011		Source Recruitment Ltd	12 Pitcliffe Way, Bradford	Bradford Magistrates Court	Guilty plea, £1615 fine and £2600 costs	12(1)	Supplied workers to food packaging. Labour user issued with a written warning.
23/11/2011		Mailway Packaging Solutions Ltd	12 Pitcliffe Way, Bradford	Bradford Magistrates Court	Guilty plea, £715 fine and £1275 costs	12(1)	Supplied workers to food packaging. Labour user issued with a written warning.
04/01/2012		Summers Poultry	Cank Farm, Tanworth	Solihull Magistrates Court	Guilty plea, £2000 fine and £2870 costs	13(1)	Supplied with labour for work in the poultry industry. Gangmaster was prosecuted (James Hindmarsh).
29/02/2012	James Hindmarsh	Aadept Recruitment Services Ltd	Duncan Street, Leeds	Leeds Magistrates Court	Guilty plea, £600 fine and £4440 costs. Mr Hindmarsh disqualified as director 2 years	12(1)	Supplied workers to poultry farm. Farmer was prosecuted.
27/03/2012		Moss and Sons	Hurst Farm, Hurst, Slimbridge,	Swindon Magistrates	Pleaded non-guilty. Found guilty, Absolute Discharge	13(1)	Dairy farmer supplied workers by an unlicensed gangmaster.

Date of Conviction	Name of Individual	Name of Company	Address	Court	Outcome	Offence	Comments
			Gloustershire	Court	£1000 costs		Gangmaster currently being prosecuted.
28/03/2012		University of Reading	Cedar Hall Farm, Church Lane, Reading	Swindon Magistrates Court	Guilty plea, Absolute Discharge £300 costs	13(1)	Supplied by unlicensed gangmaster for dairy work. Gangmaster currently being prosecuted.
14/05/2012	Peter Lackey		Glaramara, Lakebank, Ulverston, Cumbria	Wirral Magistrates Court	Found guilty, £3740 costs and curfew between 9pm-7am for two months	12(1)	Used workers to gather shellfish without a licence.
14/03/2012	Jannicke Anderson		6 Iona Avenue, Peterhead	Aberdeen Sherriff Court	Guilty plea, £300 fine	12(1)	Supplied workers to the shellfish industry. Labour user issued a written warning.
14/03/2012		PPS Scotland Ltd	6 Iona Avenue, Peterhead	Aberdeen Sheriff Court	Guilty plea, £1000	12(1)	Supplied workers to the shellfish industry. Labour user issued a written warning.
14/05/2012	Vitalie Caciovshi		Portree, Isle of Skye	Portree Sheriff Court	Guilty plea, sentenced to 200 hours Community Order to be completed within 9 months	12(1)	Supplied workers to shellfish industry.

Pending Prosecutions

	Pending prosecutions (at court or summons issued)	Being considered by the prosecuting authority (Crown Prosecution Service, Procurator Fiscal, Public Prosecution Service in Northern Ireland)
England and Wales	21	3
Northern Ireland	0	2
Scotland	2	1
Total	23	6

August 2012

Written evidence from Carillion

Introduction

1. Carillion plc welcomes the opportunity to provide a written submission to the Scottish Affairs Committee enquiry into blacklisting in Scotland. Carillion plc does not condone or engage in blacklisting and takes such accusations very seriously.
2. In order to put our comments into context, it may be helpful to outline briefly our role across the UK.
3. Carillion plc was created in 1999 by a demerger from Tarmac plc. Headquartered in Wolverhampton, Carillion operates internationally, employing 45,000 people globally and 20,000 in the UK.
4. We provide:
 - a. All the facilities management, maintenance and other services needed to keep buildings, particularly large, complex property estates, fully operational for public and private sector customers.
 - b. Energy efficiency services for domestic, commercial and public sector customers. We provide asset management and maintenance services for road and railway infrastructure and for utilities, including telecommunications, water, electricity and gas.
 - c. Public Private Partnership projects (PPP) for schools, hospitals, prisons, defence and other Government accommodation, and also for roads and railways.
 - d. A strong and selective construction services capability, which plays a key role in providing integrated solutions for PPP projects and for our support services customers.
 - e. Carillion is the largest employer of apprentices in the construction sector, and one of the largest in the UK, with over 2,000 apprentices being trained at any one time. With a UK network of 13 construction apprentice training centres, we are also one of the largest training providers, and provide courses not only to employees but to the wider community.
 - f. Since 2008, Carillion Training Services has worked in partnership with TIGERS (Training Initiatives Generating Effective Results in Scotland) to create more than 400 modern apprenticeships for young people in the construction industry. In the past year, Carillion has also worked on a major capital project to design and re-build a new prison (HMP Low-Moss), with the Carillion Craft Centre in Bishopbriggs, East Dunbartonshire supplying up to 20 apprentices at any one time during the peak rebuilding period.
5. After the demerger, Carillion plc acquired a number of other companies, including Mowlem plc (2006), Alfred McAlpine plc (2008) and eaga plc (2011).

6. Carillion plc is strongly committed to embodying its values in every aspect of its work. These are: openness; collaboration; mutual dependency; professional delivery; innovation; and sustainable profit growth. The decision to make this submission to the Scottish Affairs Committee was taken in part because of Carillion's strong commitment to openness, honesty and transparency.

Submission response

7. Testimony previously supplied to this committee has made a number of allegations about Carillion's historic involvement with the Consulting Association ("the CA"). These are addressed in this submission. Carillion is grateful for the opportunity to clarify the facts and make its position a matter of public record.
8. Carillion is offering this information and detail to the Scottish Affairs Committee in the hope that it will assist the Committee with its inquiry. This submission provides factual information about what Carillion plc knows about the CA and about the interaction between a Carillion subsidiary and the CA database until early 2004.
9. It is important that this submission explains that what Carillion can tell the Committee is constrained by privilege attaching to documentation Carillion has seen in an Employment Tribunal by Mr Dave Smith, heard earlier in 2012. Mr Smith obtained, without any objection from Carillion, an order of the Tribunal requesting disclosure by the Information Commissioner's Office ("ICO") of extracts from the CA database, strictly for the purpose in which the order was made. To use extracted data for any purpose of the proceedings other than those Tribunal proceedings may be a contempt of court.
10. In any event, we would stress that Carillion has not seen the full Consulting Association database.
11. As much as Carillion desires to refer the Committee to detailed data it has seen via the Tribunal proceedings - especially given that it has been used by others to present misleading claims to this Committee - it cannot abuse the legal privilege attached to this data. At the present time our submission is therefore limited by this constraint on what we can legally say.
12. Carillion would therefore urge the Committee to seek access to the full database held by ICO (redacted as may be deemed appropriate). If the Committee is able to gain access to and share the full database, we will be able to make a more complete response to the Committee's enquiries. Until then, Carillion cannot address questions about the detailed content of the database, and what that shows about the nature and use of the data.

13. The submission also offers perspectives about the historical context and the issues affecting the construction sector in the late 1990s and early 2000s. These issues are described later in this submission.

The Consulting Association

14. In 2009, a raid by the ICO on the premises of the CA uncovered a manually operated database containing data concerning 3,212 people.
15. It is understood that for a fee, members could access a range of CA services. One of these services allowed members to cross-reference names of potential workers with CA's database.
16. Information about potentially disruptive behaviour (including criminal offences such as theft, violent or threatening behaviour, and unlawful strike activity) was recorded in the database. Carillion's understanding is that that information contained in the database was not generally focused on union affiliation, but rather on the identification of disruptive and/or unlawful behaviour.
17. Membership of a trade union was emphatically **not** a reason to avoid employing a worker. Every worker with the relevant Carillion subsidiary business unit during the period in question was required to be Joint Industry Board ("JIB") registered. Under the JIB agreement, most, if not all, JIB registered tradesmen were understood to be trade union members.
18. The CA also organised periodic meetings for members to network and discuss best practice in various industry sectors. Such meetings were unrelated to the database or to allegations of blacklisting.

Blacklisting and the law

19. After the ICO investigation, legislation was brought into force to make blacklisting on the basis of union membership illegal (Employment Relations Act 1999 (Blacklists) Regulations 2010). These Regulations do not have retrospective effect.
20. The practice of sharing personal data with third parties was an offence by the Consulting Association under the Data Protection Act ("DPA") 1998 (but the DPA restrictions were not fully extended to manually operated databases such as that generated by the CA until 2001).
21. It was (and remains) unlawful to refuse employment or subject to any detriment on the grounds of trade union membership (Trade Unions and Labour Relations (Consolidation) Act 1992).

Carillion and the Consulting Association

22. Carillion plc was not involved with the CA. Senior management was not aware of any use of the CA's database. If it had been, then the practice would have been banned. However, following on-going internal investigations since 2009, when the ICO investigation brought the referencing database to light, Carillion can confirm that one of its then business units, Crown House Engineering ("CHE") used the database until early 2004. A subsidiary of another business (Mowlem plc) used the database **before** Carillion acquired the group in 2006.
23. We understand that CHE stopped using the CA database almost a decade ago because it was felt to be wrong. Carillion categorically denies the assertion that it made use of CA blacklists until the date of the ICO raid in 2009. This claim is based on a single invoice for £56.46 for attendance at a CA security meeting to discuss site security issues in May 2008. This was not connected in any way with blacklisting activity.
24. Carillion's investigation of events indicates that CA security meetings were a forum for managers from a number of construction companies to discuss general security issues on site and how to combat them (for example, spates of thefts from sites in particular locations, or how to make sites more secure). Carillion understands that companies did **not** share information about specific individuals at such meetings.

Crown House Engineering

25. Carillion business unit, CHE, subscribed to the Consulting Association. CHE was a business unit within Carillion Construction Limited ("CCL"). The CA's relationship was with Crown House managers. This subscription was proactively stopped in early 2004 by a Mrs Liz Keates, who was uncomfortable about using it.
26. CHE was a Mechanical and Electrical Engineering ("M&E") business acquired by Tarmac in 1992 and which became part of Carillion through the demerger of Tarmac in 1999. It was a separate and distinct business. The five geographical divisions of CHE also operated independently of each other to a significant extent. CCL sold CHE in 2004 to the newly incorporated company, Crown House Technologies Limited, part of the Laing O'Rourke Group. Any renewed involvement by CHE with the CA after the 2004 sale is of no relevance to Carillion.
27. Mrs Liz Keates, currently Head of Employee Relations at Carillion plc, was one of the employees responsible for accessing the CA database at CHE to obtain referencing information when it was owned by Carillion. During the period in question, Mrs Keates was an Employee Relations Manager at CHE and inherited responsibility for consulting the database from a superior, Mr Kevin Gorman.

28. By 2004, Mrs Keates was concerned as to the CA's methods and how it acquired information covertly. She decided that the referencing service should no longer be used.
29. CHE used the CA referencing service to check the backgrounds of potential workers during the period in question. The nature of CHE's work meant that the company's Labour Managers needed to source large numbers of qualified M&E tradesmen on a weekly basis. The Labour Managers' forecasts for their staffing requirements were submitted in advance, and actual requirements often differed substantially from original estimates. Carillion understands that many more names were therefore cross-referenced with the CA database than would ever have been required or employed by CHE.

Why did the blacklist exist and why did Crown House use it?

30. The M&E industry had serious employment relations problems concerning electricians during the period in question.
31. At the time, the separate divisions of CHE in England and Scotland had large, directly employed workforces of tradesmen, particularly electricians. In Scotland, CHE specialised in delivering small-scale, complex projects and more maintenance projects than the other four geographical divisions. As a result, Carillion's internal investigation has produced little evidence that CHE used the database in Scotland. It appears that the database was primarily consulted in England and Wales, where CHE undertook larger projects.
32. A number of militant electricians, where employed in significant numbers and on big projects, were engaging in unlawful, costly and damaging walkouts/industrial action. The Committee will probably not be surprised that in relation to such unofficial action, perpetrated without the authority or approval of recognised trade unions, there was suspected or actually reported sabotage, threatening behaviour and intimidation. Such disputes could cost millions of pounds in contractual penalties, and of course impacted workers who may have been victims of intimidation. Such behaviour was obviously of serious concern to companies across the construction sector.
33. CHE's use of the database was emphatically **not** to deny trade union members and activists employment. Carillion was **not** part of an anti-union conspiracy, nor does it believe that there was such a conspiracy. Carillion currently has national recognition arrangements in place with a number of unions, including UNISON, Unite, RMT, and the TSSA, and enjoys constructive working relationships with them.
34. There is evidence to suggest that at least one union was aware of the CA database and may also have supplied information to it, indicating that they condoned its use to screen out extremist elements operating without official union sanction. The evidence

of Mr Alan Wainwright, an ex-CHE employee, was influential in bringing about the ICO investigation into the CA in 2009. Mr Wainwright published the names of 500 individuals known to be on the CA database on his blog in 2006. Mr Wainwright said that he supplied this evidence to the General Secretary of Amicus (now Unite) in the same year.

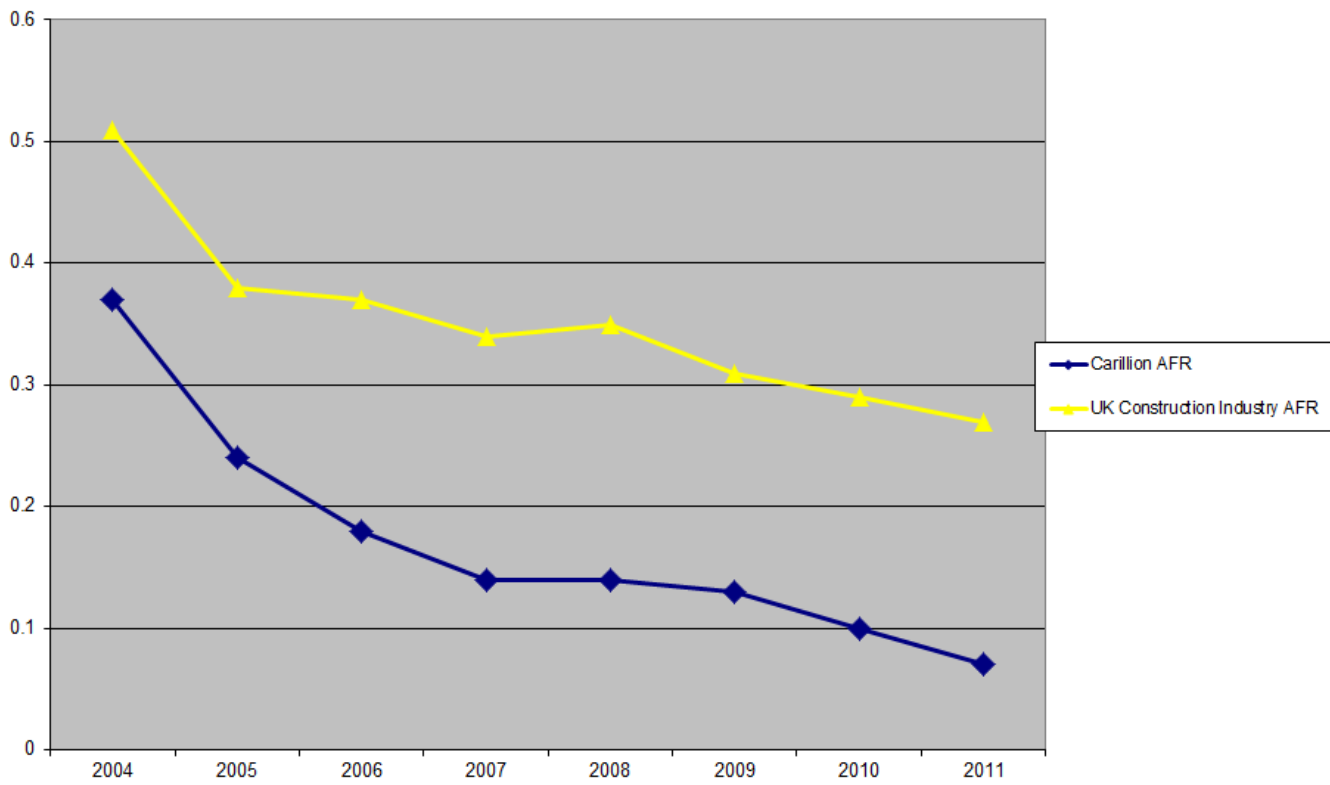
Carillion's response to evidence presented by Mr Dave Smith

35. Testimony presented to the Committee by Mr Dave Smith made several erroneous claims about Carillion plc. Detailed comment cannot be made as legal proceedings brought by Mr Smith are not yet concluded, however we would like to take the opportunity to clarify a number of key points as a matter of public record.
36. Mr Smith's assertions are linked to his attempt to claim against Carillion in employment tribunal (alongside approximately 22 other companies). His claims (and hence his personal experiences as related to the Committee) relate to Schal, a Tarmac company, and John Mowlem Construction plc, both relating to the period 1998-1999. This predates the creation of Carillion and is some eight years before Carillion acquired John Mowlem. Mr Smith withdrew his claim in that tribunal against Carillion itself.
37. Schal was a construction management company that supervised sites. It did not employ or supervise any tradesmen. Mr Smith has never been an employee of Carillion plc, its subsidiaries or its predecessor, Tarmac. However, Mr Smith took part in and helped to organise unlawful industrial action against Schal following his dismissal by the sub-contractor that engaged him. He cited health and safety concerns on the project, but did not have union endorsement for this action. Tarmac was concerned by this unlawful activity, including unofficial secondary picketing, on a Schal supervised site. He has never been a union safety representative for Tarmac or Carillion employees.

Carillion's commitment to health and safety

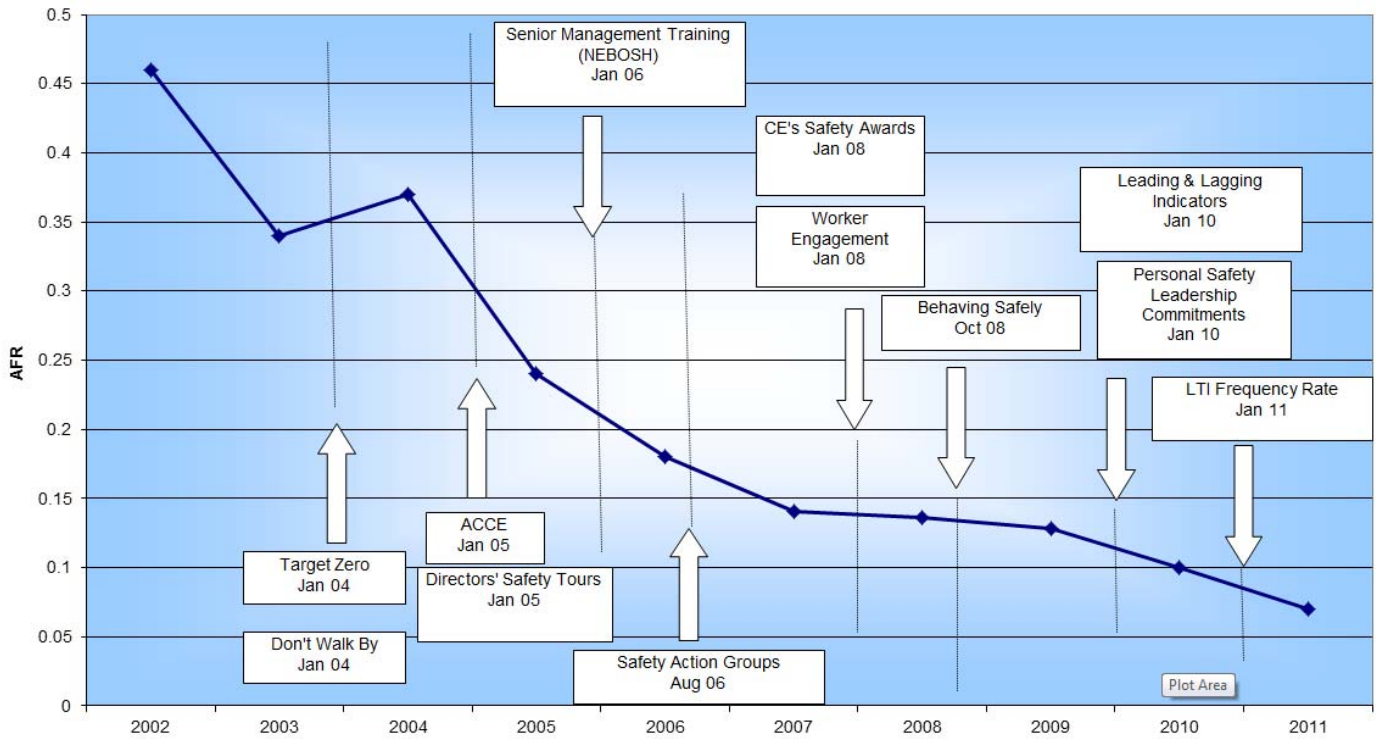
38. One of the gravest concerns is the allegation against Carillion's Health and Safety performance. Carillion plc is, and has always been, very strongly committed to maintaining the highest standards of health and safety. Carillion has one of the best Health & Safety records in the construction industry. Within our construction business, Carillion policies and frameworks have contributed to a culture of continuous improvement.
39. For example:
- a. All businesses and contracts have Safety Action Groups, with members drawn from the workforce, which review local safety performance and recommend changes to improve and promote safety.
 - b. We currently work with approximately 600 Carillion Health and Safety representatives across our UK construction businesses, including approximately 60 in Scotland.
 - c. Carillion's *Don't Walk By* engagement programme encourages awareness and openness, with workers prompted to spot things that are not as they should be and take direct actions themselves, or report it to Carillion. *Don't Walk By* has seen great success in identifying and addressing potential hazards and risks.
 - d. Each of Carillion's construction businesses in the UK has a weekly Health and Safety call involving the Managing Director of the business and other operational directors. These meetings review performance and any incidents occurring in the previous week, and determine steps to address any issues.
 - e. Monthly briefings are issued to all construction businesses, and are underpinned by specific action plans.
 - f. Occupational health services are provided for those whose jobs expose them to any significant health risks, to monitor health and ensure that the right precautions are being taken to protect health.
 - g. Senior managers are required to be qualified to a minimum standard of NEBOSH General Certificate. In 2012, 481 of our Senior Managers completed their NEBOSH qualification, including approximately 65 in Scotland.
40. According to statistics gathered by the Health and Safety Executive (HSE), in 2010/11 there were 50 fatal injuries to workers in the construction industry, compared to a five year average of 61 per year. Fatalities have fallen by two thirds over the last 20 years. Reported non-fatal injuries have fallen by more than a third over the past four years. It would therefore be a mistake to believe, as has been suggested, that health and safety conditions are deteriorating in the construction sector - they are actually improving. The HSE statistics are available at <http://www.hse.gov.uk/statistics/industry/construction/construction.pdf>.
41. Carillion's own Accident Frequency Rate (AFR) is significantly better than the industry average, as demonstrated by the chart below. We also enclose a timeline to show how the AFR has continued to fall in line with the initiatives outlined above.

42. Chart comparing Carillion AFR with industry average, 2004 - 2011



43. Timeline showing AFR decline, 2002-2011

The Journey



Concluding remarks

44. **Carillion does not tolerate blacklisting at any of our sites, nor does it engage in blacklisting.** To suggest otherwise is simply wrong, and any allegations of such practices are taken extremely seriously. Carillion does not condone the practice either within the company or its subsidiaries.
45. It has been eight years since the Consulting Association referencing service was last used by a business unit of a Carillion subsidiary, which acted as a user (rather than as a supplier) of data.
46. However, it is important to understand that any involvement with the referencing database was proactively and independently stopped **six years** before such activity became unlawful. The practice, although clearly not to be condoned, was a specific response to a very difficult industrial relations climate at the time, with unlawful disruption caused by a small minority outside official union channels in addition to bullying, coercion, and site sabotage.
47. The assertion that Carillion was at the centre of a blacklisting conspiracy, and that it was responsible for a significant amount of blacklisting activity is wholly untrue. The level of involvement was strictly limited and occurred many years ago - it deeply regrettable that it is being grossly exaggerated to suit unconnected agendas.
48. This submission has been produced to the best of our knowledge and is based on information derived from our own factual research and from observation. Upon discovering links to the CA, Carillion has made every possible effort to investigate what they amount to, as they run counter to its very strong values and ethics.
49. Carillion has sought to supply this information to set the record straight, set out the facts as we understand them, and explain the background and context to the use of the Consulting Association database in the past. Carillion hopes that this information is useful to the House of Commons Scottish Affairs Committee. We are happy to provide further information or clarification upon request.

September 2012

Written evidence from Alan Wainwright

A Wainwright - Employment History

1979 – 1989 – Mac Electrical – Apprentice Electrician/Electrician
1989 – 1993 – TES Recruitment – Owner (Supply Crown House)
1993 – 1994 – Carillion (Tarmac) – NCS (Mechanical & Electrical Manager)
1995 – 2000 – Carillion (Tarmac) – Crown House (National Labour Manager)
2000 – 2000 – Emcor Drake & Scull – Business Improvement Director
2001 – Leave the industry
2004 – 2005 – Haden Young Ltd (Balfour Beatty plc) – Regional Production & Resources Manager
(Sick leave June 2005 to resignation in Jan 2006)
2006 – (Aug - Sept) – Carillion – HR Business Partner
2007 – Self employed from mid to late 2007 in other industry

Chronology of Events

Carillion

1997 – I set up the Crown House Central Labour Department in Manchester office to provide a central control of all agency labour recruitment for all UK sites with electronic time and attendance systems, incentive/bonus schemes for full workforce.

Tarmac HR Director Frank Duggan instructs me (via Kevin Gorman) to meet Ian Kerr and introduce his checking system.

Meet Ian Kerr in Manchester.

1. Ian Kerr shows me computerised records of blacklisted workers (Excel spreadsheets)
2. Informed that system was fully functional with Carillion and other major construction companies
3. Now rolling this out to the mechanical and electrical sector and Crown House were to be the first

System implemented, but revised after a few weeks to go via Group Personnel Director, Frank Duggan's office via his PA, Anne Johnson.

1. Agency labour frequently move contracts for better hours/pay so turnover was high. 30 to 40 agency workers checked weekly between 1997 and 2000.
2. To the best of my recollection, no more than five workers were rejected in this time. The system was in its infancy in M&E sector and we had robust legitimate reference checking procedures with our three preferred recruitment partners.
3. Kevin Gorman informs me in passing conversation that two workers from a site in Grimsby had been "taken care of". **See appendix 2(n)**

2000 – Leave Carillion to join Emcor Drake & Scull

Emcor Drake & Scull

August 2000 – Sheila Knight (Group Personnel Director) distributes lists of electricians from Pfizer, Royal Opera House (Balfour Kilpatrick's projects) and Jubilee Line Extension (Emcor Drake & Scull / Sir Robert McAlpine Joint Venture) to Emcor Drake & Scull labour managers. **See appendix 4.**

I'm informed that these three projects had industrial relations problems.

Memo states "*please keep this information confidential and make your own enquiries thereafter*".

Many operatives from these lists show on the CA files. **See appendix 4(a) and 4(b).**

I leave Emcor Drake & Scull and the industry a month or so later.

Balfour Beatty & Subsidiaries, Haden Young & Balfour Kilpatrick

Mid 2004 – Join Haden Young Limited

January 2005 – Region start recruiting labour via agencies and I learn of checking procedure from Labour Manager, Neil Cappell. Checking procedure goes via Personnel Director, Prue Jackson's assistant, Frieda at Haden Young head office.

I discuss checking procedure with Personnel Director, Prue Jackson by telephone who confirms the checks are made via Ian Kerr.

February 2005 – Prue Jackson telephones to instruct me that an operative Michael Shakespeare (submitted on a list of names on 3 February 2004) should not be used on site. **See appendix 3(c)**

April 2005 – I make a protected disclosure to Personnel Director, Prue Jackson about my Regional Director, Alex Currie trying to cover up bonus scheme fraud by a 30-year service site supervisor. Prue Jackson arranges for Co-Director and 20 year colleague of Alex Currie, Lawson Elliott (who both originate from the same office in Glasgow) to investigate.

- Managing Director David Beck (who I later learn had taken the decision for Lawson Elliott to investigate) was also a long serving employee of some 40 years, again originating from the Glasgow office.

There's a distinct change in attitude toward me after this by my manager David Brindley and regional Director, Alex Currie with verbal abuse (including swearing and shouting at me), false accusations, constant criticism of my work, removal from training opportunities, and removal of my lodging allowance.

May 2005 – I report the matter to Balfour Beatty plc company secretary Chris Pearson (Disclosure Officer) and meet with him and group HR Director Paul Raby.

June 2005 – I continue to be treated badly which affects my health and I'm diagnosed with 'work related stress' by my doctor and signed off sick. My condition does not improve and I remain off sick for the next seven months until I resign. I am not receiving any pay for most of this period and lose in the region of fifteen thousand pounds in income.

17 July 2005 – I raise an official grievance in writing with Prue Jackson about the way I had been treated after making the disclosures and include an additional concern that I would now become a victim of their blacklisting procedure (I go into detail about the check sheets and our conversation about Michael Shakespeare).

22 July 2005 – Prue Jackson responds and agrees to grievance meeting, but does not refer to the blacklisting concerns raised.

29 July 2005 – I respond reiterating my concerns about blacklisting. I mention I have additional blacklisting information in relation to another Balfour Beatty subsidiary and that I may bring a trade union representative to the grievance meeting.

3 August 2005 – Prue Jackson responds by stating that the company has no blacklisting policy.

I contact Micky Tuff from the Amicus/Unite trade union around this time and explain the concerns I have about being blacklisted. We meet up and Mr Tuff arranges for me to immediately re-join the union. I had previously been a member of the union on and off since I was sixteen. Mr Tuff agrees to help me and agrees to attend my grievance meeting, during which he is aware he will come into possession of the Blacklisting evidence.

10 August 2005 – I respond by stating Micky Tuff from the Amicus union will accompany me at the grievance meeting and that I have to look at what she says in relation to there being no blacklisting policy with a degree of scepticism based on previous discussions we'd had about this.

12 August 2005 – Prue Jackson states that she is sorry I feel sceptical

25 August 2005 – Stage 2 Grievance meeting with Haden Young Director, Peter Barnes, Roy Bowdler (Haden Young), and Micky Tuff from Amicus/Unite.

I reiterate my concerns about being blacklisted by the company and produce the evidence in my possession. **See appendices 3 and 4.**

The subsequent notes Peter Barnes makes from his investigation into my grievances (disclosed for my tribunal) make no reference to any discussions or investigation into the blacklisting.

27 September 2005 – I write to Peter Barnes for an update, as it had now been ten weeks since I had first raised my grievances on 17 July 2005.

11 October 2005 – I write to Peter Barnes again as I have still not received a response to my grievances.

12 October 2005 – Peter Barnes responds stating that he is unable to uphold any of my grievances.

The relevant section in relation to the Blacklisting reads as follows:

“10. Fear that AW would be blacklisted with adverse affects on future employment prospects.

“AW said his grievance was about how he might be treated in the future. PB said he was aware the matter had been raised by AW with Prue Jackson, Personel Director who had written to AW assuring him there was no policy of blacklisting, he would not be blacklisted and would be fairly dealt with in regard to references. PB said whilst AW remained in the Company’s employment, as he presently did, no suggestion of unfair or improper treatment could arise in this regard and he could not consider a grievance in regard to a future eventuality. AW said he would like to explain the basis of his concerns and did so.

Conclusions

As stated in the meeting, it is not considered that there is a grievance to consider in regard to the matter raised. I do not find it possible for AW to raise a grievance as to what may happen in the future in circumstances where he has already been assured that his concern will not happen”

20 October 2005 – I respond in writing to Prue Jackson stating that Peter Barnes had ignored the conclusive proof I’d provided that the company operated a blacklisting procedure. I reiterate all the previous points I’d raised about the blacklisting procedure within the company and even mention that Id asked for Prue to be present at the grievance meeting to which Peter Barnes had taken the decision that she would not attend. Cc Micky Tuff (Amicus/Unite)

11 November 2005 – Stage 3 Grievance Meeting with Haden Young MD, David Beck, Barry Hyams (Haden Young), Micky Tuff (Amicus/Unite) and myself.

6 December 2005 – David Beck writes to me stating that he did not believe Peter Barnes acted unfairly in hearing my grievances and that he supported his conclusions.

He makes no reference to the blacklisting.

7 December 2005 – I respond and again make reference to the blacklisting. Cc Micky Tuff (Amicus/Unite).

9 December 2005 – I write to David Beck stating the following:

“You have also totally disregarded my serious concerns about the company’s procedure for blacklisting operatives and staff. This after I had provided conclusive proof to Peter that this takes place within the business”.

I go on to say:

“I have also lost considerable income during this time (approximately 15,000 and have feared returning to work for fear of reprisals from those I had made the allegations against”.

And further on:

“In effect, what you are really asking me to do is turn a blind eye to the following:

8. *That the company operates a blacklisting procedure against operatives and staff who are deemed to be troublemakers or have a background /history of industrial action and that I could be blacklisted under this for raising these matters.*

And further on:

“It is now apparent that you have no interest in uncovering the truth.

Your failures to seriously consider and investigate the facts I have presented to you leave me with no alternative than to hand in my resignation”.

Cc Micky Tuff (Amicus/Unite) and Paul Raby (Balfour Beatty HR Director)

My Blacklisting Blog in 2006

I launch a website blog in March 2006, called ‘Q: ARE YOU A BLACKLISTED ELECTRICIAN?’, publishing the names distributed between Balfour Kilpatrick and Emcor Drake & Scull in relation to the Pfizer, Royal Opera House and Jubilee Line Extension projects. I call for people to contact me if they feel they may be blacklisted.

This can be viewed in greater detail via my current website blog but I would draw the committee’s attention to the entry about Steve Keevil.

Steve had been unable to find any work since leaving the Jubilee Line Extension project and provides one example where he is inducted at a Balfour Kilpatrick project, Pfizer, but then sent home later that day.

Appendix 2(o) details names of operatives (including Steve Keevil) supplied to the CA by source 3221 (most probably Emcor Drake & Scull) from the Jubilee Line Extension. There are entries for Michael Aird for Balfour Kilpatrick in 1998 and Liz Keates for Carillion’s Sky Blue agency in 2003.

Another entry on this website details a statement made to me by a supervisor Tony Willoughby at the Jubilee Line Extension project on 4 May 2006.

In this he states that the supervisors were taken to a room to complete a questionnaire on a number of key individuals singled out as troublemakers.

I speak to Tony Willoughby again on 10 May 2006 and he confirms that Gillian Hone is the Emcor Drake & Scull representative at the meeting. **See appendix 2(q)**

I go on to help other operatives on this blog gain compensation for the detriment they had suffered over the next twelve months.

Amicus/Unite and the Blacklisting Evidence

I write to Micky Tuff on 10 January 2006 to inform him that I've resigned and to ask for assistance in taking Haden Young to a Tribunal. He'd previously promised to write to head office to ask them to support a claim. I did not hear back and wrote to him again on 19 January and 6 February 2006.

I did not receive a response to either of these letters and contacted him in late February to say that I could not wait any longer as I was running out of time. I inform him that in the absence of a decision from the union, that I would have no other option that to seek private legal advice.

I did not hear back and therefore contact him again on 21 March 2006 to establish what progress he was making with the evidence I'd provided. He said they were holding back as requested until my grievance had been resolved. I inform him (as he well knew) that the grievance procedure ended on 6 December 2005 and that it was now 21 March 2006. His response was "no comment". **See appendix 2(p)**

To the best of my knowledge, I did not hear from or speak to Micky Tuff again.

In June 2006 I write to the General Secretary, Derek Simpson three times to ask for help. He does not provide any and does not appear to do anything with the evidence in his possession. I go into greater detail about the Amicus/Unite trade union and the Blacklisting on my blog.

Applications for Work in 2006 to 2007

I make approximately 150 – 200 unsuccessful applications for work in 2006 and 2007. One of these is to Murray Reed at NG Bailey. He does not reply.

I'm later informed by one of the electricians I've been in contact with over the last few years that MR appears on one of the blacklist files for NG Bailey. I do not have any evidence of this.

Working for Carillion in 2006

Around August 2006 I receive a call from a recruitment consultant who has noticed my previous seven years employment at Carillion. I attend an interview with a senior manager from Accenture (Carillion had outsourced part of their HR function to Accenture) in Carillion's office in Wolverhampton and I'm hired that day as HR

Manager for the Apprentice Training Division that Richard Howson makes reference to in his written submission to the committee.

All is well and I enjoy the work. I need this job. My employment suddenly ends a day (or two at the most) after bumping into Liz Keates at Carillion's head office. My contract is terminated immediately and I'm given no explanation as to why I've been released. I press the recruitment consultant for an explanation but he avoids taking my calls.

I'm aware that Carillion are advertising for HR Business partners on their website and immediately make an online application. I hear nothing until the following January when I receive a letter stating my application had been unsuccessful.

Again, I go into greater detail about these matters on my blog.

My Tribunal with Haden Young in November 2006

I attend my 10 day tribunal and learn the following March that I had lost. From evidence that has come into my possession very recently, I can now prove (what I knew back then) that those giving evidence at my Tribunal committed perjury. They blatantly denied any knowledge of a blacklist over long periods of questioning and if my memory serves me correct, it was only Peter Barnes who buckled under cross-examination to at most concede the points in 98.1 and 98.2 below.

We now know from the very limited evidence in Appendix 2 that the information was two way and that it did apply to staff positions as I was placed on Ian Kerrs blacklist in January 2007, a month or so after my Tribunal, with the reason given as providing evidence at employment tribunals.

My three-page file was redacted, so as yet, I do not know the source of this.

The following is the extract from the judgment that relates to the Blacklisting:

2.5 On 17 July 2005, the claimant wrote a grievance letter to Ms Jackson repeating most of the Exeter Schools allegations already raised, together with a list of the acts complained of which were said to comprise the detrimental treatment of him on the grounds that he had made the allegations. However, on this occasion, the claimant submitted that a new and additional disclosure was made. This was an allegation that the respondent maintained a 'blacklist' of construction workers. Initially, Section 137 Trade Union and Labour Relations Consolidation Act 1992 was relied upon by the claimant to demonstrate the illegality of the blacklist but, in closing arguments after the conclusion of the evidence, it was conceded on his behalf that there was no evidence that the supposed blacklist was restricted to, or in any way concerned with, trade union members and that it could not be said to be unlawful on that account. It was further conceded that it could not in any other way qualify as a protected disclosure according to the qualifying criteria in Section 43B(1). Consequently, that allegation was abandoned. Nevertheless, the claimant continued to rely on the respondent's proposed intention to include his name upon the blacklist as one of the detrimental acts he complained resulted from from the earlier disclosures and,

alternatively, as contributing to his lack of trust and confidence in the respondent entitling him to resign.

2.6 All the above allegations were repeated in similar form in the claimant's letter of appeal against the outcome of his grievance dated 20 October 2005.

The Grievance Meeting

98 There was, however, one new allegation, namely that the company operated a blacklist of employees and that it was Mr Wainwright's fear that it was the company's intention to place his name on it so that he would find it difficult, even impossible, to obtain new employment in the construction industry. As to this allegation, it emerged that it is the company's practice, in addition to taking up references, to submit the names of new starters to a third party trade organisation. The purpose was stated to be a "security check" as the organisation retained information on police convictions and the like. The respondent conceded, however, that the organisation's information would probably include the names of perceived troublemakers (although no one could define to us the degree of trouble one would need to cause in order to be entered on the list). What was apparent, and what led Mr Burgher to withdraw the suggestion that this was a disclosure qualifying as a protected disclosure, was that the list was not synonymous with trade union membership or activity. Mr Burgher was not able to allege that the blacklist was unlawful on any other ground. The respondent's witnesses did not accept the description of their practice as a "blacklist," although that question is probably one of semantics and we can understand why the claimant might describe it that way. More importantly, they also told us and, because we have found them generally to be reliable witnesses and there was no evidence to gainsay them, we accept:

98.1 the respondent does not submit information to the trade organisation in a two-way exchange, and

98.2 the listings related to site operatives only and not to staff of any grade, so it would not be possible to include Mr Wainwright's name, even if the company had been so minded.

There is no evidence of any detriment. At best, the claimant's case was that he was in fear of being subjected to one but even that, we find, was not a reasonable fear.

Alleged Detriments

134. As to the alleged blacklist, our finding is that none existed (at least in relation to the claimant's grade of employee) and Mr Wainwright's fear that he would be placed upon one had no sound basis other than his own, rather wild assumptions arising out of an increasing mistrust of his employer which he has been unable to show was in any way justified.

Meeting Bernard Carter (DTI) in January 2007

I met with Bernard Carter at a hotel in Chester on 12 January 2007. I have a report from him following this meeting should this be required.

Giving Evidence – Acheson & Others v Logic Controls in January 2007

I gave evidence at this Tribunal and the Chairman found in favour of Acheson & Others.

An interesting point about this Tribunal is that Logic were a very small sub contractor, with the main contractor being Balfour Kilpatrick. Logic's Counsel was the high profile barrister, Ronald Thwaites QC. I recall that his main line of questioning toward me tried to suggest that I had a vendetta against Balfour Beatty. I did not.

My witness statement for this Tribunal is available on my blog.

The ICO

David Clancy made contact with me in 2008 to say he was using the evidence from my Tribunal to expose the blacklisting.

I provided as much help as I could and believe that he tracked Ian Kerr down via information received from a meeting with Haden Young at their head office in Watford.

Politicians

I have contacted a number of politicians for help over recent years, including local MP's David Hanson and Stephen Mosley. They have written to senior Ministers, but the responses from Jack Straw and more recently Norman Lamb were along the lines of 'we brought in regulations in 1999 and that's it'.

Disturbing News

I've had many conversations with some of the people on these lists over the last few years but the most disturbing one was with Electrician Steve Acheson who informed me that he had learned that three electricians from the Jubilee Line Extension project had committed suicide.

I spoke to Steve today (5 November 2012) and asked him to reveal the source of this information. Steve confirmed that this was Steve Kelly who also worked on the project.

I asked Steve to contact his source, Steve Kelly to confirm this. Steve Acheson called me back ten minutes later to confirm that he had spoken to Steve Kelly and provided me with two names of operatives Mr Kelly had stated had committed suicide.

I have not published the names in this report, but can confirm that they are on the Emcor Drake & Scull list from the Jubilee Line Extension project.

Supporting Documents

Appendix 1 – Company structure charts

1(a) Carillion plc,

1(b) Balfour Beatty plc

Balfour Beatty plc subsidiaries, Haden Young Ltd and Balfour Kilpatrick Ltd rebrand to Balfour Beatty Engineering Services on 1 July 2009.

Appendix 2 – Consulting Association files

These Consulting Association files were provided to me on Friday 2 November 2012. They are not redacted.

The files are coded with company numbers and initials of those providing and accessing the information. I've therefore identified the people I strongly feel the initials are most to likely represent.

2(a) List of company codes from CA database

- 3271 – Carillion
- 3223 – Balfour Beatty
- 3223F – Balfour Kilpatrick Ltd (subsidiary of Balfour Beatty)
- 3223M – Haden Young Ltd (subsidiary of Balfour Beatty)

2(b) Carillion – FD – Frank Duggan (Carillion Group Personnel Director)

- Also Balfour Beatty contact from 1996 – JD (not known)

2(c) Carillion – FD – Frank Duggan

2(d) Carillion – JB – John Ball (Group HR Manager)

2(e) Carillion (NCS) – SP Sandy Palmer & DA Dave Aspinall

2(f) Carillion (NCS) – SP & DA again

A notable point here is the final line of entry relating to Ucatt Official, Barry Scragg.

2(g) Carillion – KG – Kevin Gorman (Crown House HR Manager)

2(h) Carillion (Sky Blue) – LK – Liz Keates (81 entries on CA files)

2(i) Carillion – RH – **Is this Richard Howson? (2004)**

2(j) Carillion – RH – **Is this Richard Howson? (2004)**

2(k) Carillion – RH – **Is this Richard Howson? (2004)**

- Richard Howson has held senior positions within Tarmac/Carillion for over fifteen years.

2(l) Balfour Kilpatrick – MA – Michael Aird – (Balfour Beatty subsidiary) provides details of 40 plus operatives from the Royal Opera House project (see also appendix 4). A * indicates ‘one of the main troublemakers’

Also PJ – Prue Jackson Haden Young (Balfour Beatty subsidiary) detailed on this record

2(m) Same as 1(l) with LK – Liz Keates accessing the information for Carillion’s in house agency, Sky Blue.

- Also Haden Young contact CM from 2007 (not known)

2(n) Carillion – KG – Kevin Gorman – Courtaulds Grimsby

I have previously made reference (in an earlier submission to the Committee Chairman) to Kevin Gorman and a project in Hull. I now believe that project was in Grimsby and this is the supporting document.

2(o) Balfour Kilpatrick – MA – Michael Aird and Liz Keates (Carillion) access names of operatives from the Jubilee Line Extension supplied by Company 3221.

I cannot establish company 3221 from the list of company codes but this will almost certainly be Emcor Drake & Scull.

Although only seven names can be identified from this CA record, the list is in alphabetical order starting at P (apart from Steve Keevil who has been typed on at the end), so this is most probably the second sheet of a two-page entry.

2(p) Emcor Drake & Scull and Amicus/Unite

Contemporaneous notes of telephone discussions with Sheila Knight (Emcor Drake & Scull Group Personnel Director) and Micky Tuff (Amicus/Unite) on 20 March 2006 and 21 March 2006 respectively.

2(q) Emcor Drake & Scull

Contemporaneous notes of telephone discussions with Supervisor, Tony Willoughby from the Jubilee Line Extension project.

Appendix 3 – Haden Young Blacklisting Check Sheets

Appendix 4 – Memo from Sheila Knight (Emcor Drake & Scull Group HR Director), which accompanied the lists exchanged between Balfour Kilpatrick and Emcor Drake & Scull

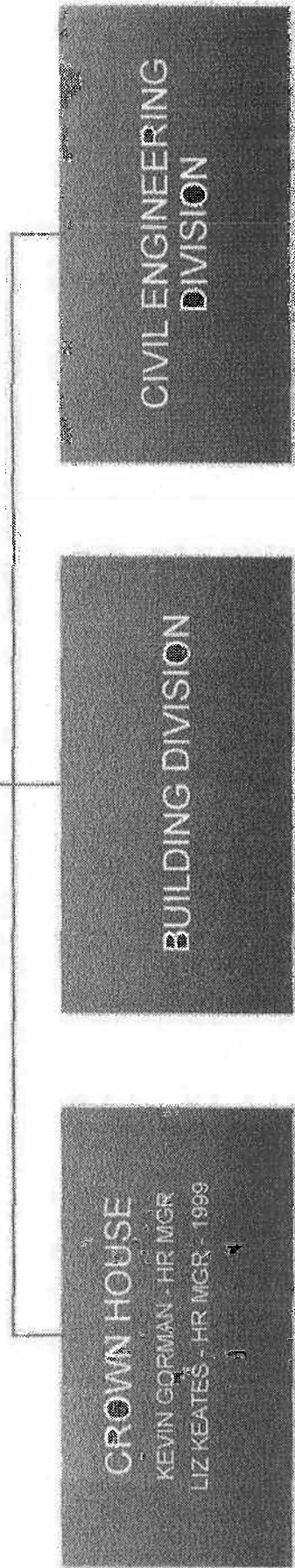
4(a) Operative data from appendix 4 also on CA files, provided by Michael Aird (Balfour Kilpatrick), accessed by Prue Jackson at Haden Young

4(b) Operative data from appendix 4 also on CA files, provided by Michael Aird (Balfour Kilpatrick), accessed by Liz Keates for Carillion Sky Blue business.

5 November 2012

CARILLION PLC
FRANK DUGGAN - GROUP PERSONNEL DIRECTOR
JOHN BALL - GROUP HR MANAGER

NCS LABOUR AGENCY
SKY BLUE (1998)
SANDY PALMER - GENERAL MANAGER
DAVE ASPINALL - MANAGER



19.

BALFOUR BEATTY PLC
CHRIS PEARSON - CO SECRETARY
PAUL RABY - HR DIRECTOR
HADEN YOUNG & BALFOUR KILPATRICK REBRAND
TO BALFOUR BEATTY ENGINEERING SERVICES
2009/2010



HADEN YOUNG LIMITED
DAVID BECK - MD
PRUE JACKSON - HR DIRECTOR
LAWSON ELLIOTT - DIRECTOR
PETER BARNES - DIRECTOR
ALEX CURRIE - DIRECTOR
DAVID BRINDLEY - MANAGER

BALFOUR KILPATRICK LIMITED
MICHAEL AIRD - LABOUR MANAGER

16.

2a.

	3221F	(3221F) (7000)	Amec Facilities Ltd
	3221J	(3278) (7058)	Amec Process & Energy Ltd
	3221M		ROKANN EST
<u>EX. MEMBER</u>	3221X	(3250XA) (7039) SPIS	Matthew Hall
	3221W		Amec International Div
	3223	(7003)	Balfour Beatty
	[REDACTED]		Balfour Kilpatrick
	3228	(7008)	Hadley Young
			Costain UK Ltd
	3230	(7500)	H.B.C. Construction BAM CONSTRUCT
	3231	(7011)	Kier Ltd
	3233	(7013)	Leung Limited WATNB, CPRO
<u>EX. MEMBER</u>	3235	(7015)	Walter Llewellyn & Sons Ltd
<u>EX. MEMBER</u>	3236	(7016)	Lovell Construction (UK) Ltd
	3239	(7019)	Sir Robert McAlpine Ltd
	3245	(7025)	NACI AC Harrogate Group
	3246	(7026)	Edmund Nuttall Ltd BAM NUTTALL
<u>EX. MEMBER</u>	3248	(7028)	Taylor Woodrow Construction Ltd
	3252	(7032)	SIKANSKA Kier Construction House plc
<u>EX. MEMBER</u>	3253	(7035)	Tyson's Contractors
<u>EX. MEMBER</u>	3257	(7037)	Ballast Construction plc
<u>EX. MEMBER</u>	3258	(7038)	G Wimpey Ltd
<u>EX. MEMBER</u>	3260	(7040)	Dudley Bower & Co Ltd
<u>EX. MEMBER</u>	3267	(7047)	B Sunley & Sons
	[REDACTED]	(7051)	[REDACTED] Crown House Technologies
<u>EX. MEMBER</u>	3272	(7052)	Miller Construction Ltd
<u>EX. MEMBER</u>	3276	(7059)	Turner Construction Ltd
<u>EX. MEMBER</u>	3280	(7060)	John Mowlem plc
<u>EX. MEMBER</u>	3282	(7062)	Morrison Construction Group
<u>EX. MEMBER</u>	3283	(7036)	Willmott Dixon
<u>EX. MEMBER</u>	3284	(7002)	Arney Construction
<u>EX. REF</u>	3285		Cleveland Bridge plc Ltd
	3286		EMCOR DRIPS AND SCULL
	3287		SHEPARD ENGINEERING SERVICES
	3288		M.A. BAILEY
	3289		WESSON OIL & GAS
	3290		C.B.L.I.
	3293		EMCOR RAIL
	3294		DIAMOND M.C. SERVICES
	3295		MORRIS AGENTS
			SIR'S BUILDING

Francis

1997 March 18th : Applied to 3271/A via subcontractor N G Bailey, Main Contact (F.D. via B.A.) given details. Also details to D.W. with request for employment decision and current reference.

Note: 3271/A received application from David MUNRO on same date, also via N G Bailey. F. with N G Bailey from October 1996.

1997 March 24th : Above was already on site and employment has continued with sub-contractor N.G. Bailey made aware of previous history.

1997 April 15th : Above remained on site and has caused no problems to date.

SOURCE: 3271/A (D.W.)

Date not known : Aldermaston Raddies!!
Last emerged September 1989. Possible EPIU.

1996 October : Date information received from source : 3228 (G.B.)
NOTE: 3228 (G.B.) may hold further details.

Do not divulge any of above - refer first.

Safety rep victimised

The Socialist
9-7-99

CONSTRUCTION FIRM

Schal Tarmac have agreed to go to the arbitration service ACAS with building union UCATT over the sacking of a safety rep on their site at Brentwood, Essex. A picket line has been maintained on the site, and other Schal and Tarmac sites have been visited for support.

Tarmac have also refused to recognise a safety rep on a road construction site in Dagenham. Building workers are injured or killed on sites every day. Last week a worker was crushed to death by a skip on a site in central London. He was working for Cosgrove.

1999 July 20 :Co. is seeking an agreement with Dave [redacted], involving payment. D. [redacted] wants this to be paid by Co. as a donation. Co. resisting this & only prepared to consider a payment to D. [redacted] which he then can donate as he wishes. Out of court settlement being sought whereby D. [redacted] agrees to drop all claims against the co, no longer pickets the site, & agrees not to talk about the terms of the settlement. Ron [redacted] of UCATT would also be party to the agreement, bound by its conditions. Amount is several £100's.

1999 Nov 22nd: Understood to have been a carpenter before training as an engineer. SOURCE: 3371 (JB)

1999 Sept: Very friendly with Tony [redacted] (see ref) of CSC.

EMPLOYMENT APPEAL TRIBUNAL - LONDON

At the Tribunal on 25th May 1999, Judgement delivered on 29th November 1999.
APPELLANTS Costain Building & Civil Engineering

RESPONDENTS 1) Mr D [redacted]
2) Chanton Group plc

JUDGEMENT CONCLUDES :

25 "We therefore allow Costain's appeal and discuss the applicants claim of unfair dismissal".

For copy of full transcript : See file : JSC

2000 April : Last viewed holding banner supporting sacked UCATT representative [redacted] at Pic-APak (part of City Electrical Factors) Believed to have a bricklaying ticket (as well as Electricians & Carpenter's).

2000 June : Attended UCATT Conference, Killarney, w/c 5th June and used his platform time to criticise Geo. Brumwell. D. [redacted] states he is not working at present - believed to be not wholly correct, and that he is registered on the books of twelve agencies.

1998 March 6th : Enquiry to verify information from 3271/35 N.C. (D.A.)

1998 May 11th : 3271/35 Main Contact (S.P.) states above is in employment of 3221/M at Manchester 2nd Runway and has been elected as a steward on site. Problems have arisen since.

1999 July 22nd : Applied to 3221/M at Manchester Airport Second Runway. Main Contact (A.H.) given details. Above is already on site.

2000 Feb 9th : Employment recently finished with 3271/35 in Manchester. Described as a problem wherever he has been over issues he creates. Becomes involved at the sign of any change in practices. Will bring in a trade union rep. rather than talk to site management. Can be expected to behave in a similar manner wherever he goes.

SOURCE: 3271/35 N.C. (SP)

2000 Nov 28: Applied to 3239 via sub-contractor N. West to sub-contractor A.J.Woods at Imperial War Museum North contract. Main Contact (DC) given details. Co has employed and no problems have arisen.

2e.

[redacted] John
1995

DOB: [redacted]
NI: [redacted]
Occ: Steelfixer

Kirkby

1995 June : Involved in dispute at Connah's Quay, Deeside, April - May 1995.
Union Activity.
Active in strike at Connah's Quay.

SOURCE: Main contacts : S.P./D.A. 3271/35

Connah's Quay Power Station.
Dispute centred originally on Llanesville, the labour supply agent to
construction management contractor Henry Boot. Whereas the men returned to
work on agreement to pay them W.R. rates the attention is now turning to
3271/35 who are on site with a self-employed workforce. Little is known
about Llanesville, thought to be a Southern England-based company with
little more than a book of names and telephone numbers. Two sources state
that Henry Boot have on site a number of militants from the North West.
UCRM official Barry Spring, rather than being their or negotiator
finding them a hindrance

- 1998 June 19th : Applied to 3271/81 via Agency NCS at Strand PA.PA. contract. Main contact DR given details. Company will not employ. AG states that the above worked for them previously between 1990 & 1993 at SELLFIELD where he was one of a group who took the Co. to an Industrial Tribunal. Although above was not necessarily a member of EPIU, this union was involved at the time in these events. Because of these actions 3271/81 would not re-employ.
- 1999 September 24th : Applied to 3223/F at Pfizer contract, Sandwich, Kent via agency Merson's of Manchester. Co. has not employed.
- 2000 Sept 22nd : Applied to 3223/F via agency NRL at Marks & Spencer site, Warrington. Main Contact (AG) given details. Co has not employed.
- 2005 July 28 : Applied to 3271/81 at Paradise St Project, Liverpool. Main contact (DE) given details. Co has not employed.
- 2005 Aug 19 : Applied to 3271/81 at Paradise St. Project, Liverpool. Main contact DR given details. Co has not employed.
- 2005 Aug 20 : Applied to 3271/81 at Paradise St. Project, Liverpool. Main contact D.H. given details, noting 2 previous applications. Co. has not furthered.
- 2005 Oct 11th : Applied to 3221/X directly for Heathrow Terminal 5 Project. Main Contact (NS) given details. Co. has not furthered application.

2000 June 21: In addition, the following were not re-employed by 3223/F following the unofficial action at Pfizer, Sandwich between mid April and mid May 2000 :- These were regarded as followers, rather than leaders of the unofficial action :-

- Albert [redacted] Stephen [redacted] Gavin [redacted] Neil [redacted] Michael [redacted] [redacted] John [redacted]
- Mark [redacted] Colin [redacted] *Jill [redacted] Aiden [redacted] David [redacted] *Stephen [redacted] David [redacted] Scott [redacted]
- [redacted] John [redacted] William [redacted] Terence [redacted] Eric [redacted] Iain [redacted] *Derek [redacted] *Frank [redacted]
- *John [redacted] *Stuart [redacted] *James [redacted] *Michael [redacted] John [redacted] Russell [redacted]
- Greg [redacted] James [redacted] Michael [redacted] Shaun [redacted] *Ian [redacted] Ian [redacted] Jonathan [redacted]
- Alan [redacted] William [redacted] John [redacted] *Stuart [redacted] David [redacted] Stanley [redacted] Roy [redacted] Edward [redacted]
- Mark [redacted] Paul [redacted] *Nathan [redacted] (see refs)

SOURCE 3223/F (MA)

* One of the main troublemakers during the dispute

2003 April 29: Applied to 3271/81 via [redacted] agency SkyBlue. Site not specified at this stage. Main contact (LK) given details. SkyBlue & therefore co has not employed.

[redacted] Paul

2.

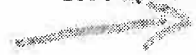
2000 June 21: In addition, the following were not re-employed by 3223/F following the unofficial action of Pfizer, Sandwich between mid April and mid May 2000 - These were regarded as followers, rather than leaders of the unofficial action:

- Albert [redacted], Stephen [redacted], Gavin [redacted], Neil [redacted], Michael [redacted], Michael [redacted], John [redacted]
- Mark [redacted], Colin [redacted], Jill [redacted], Aidan [redacted], David [redacted], Stephen [redacted], David [redacted], Scott [redacted]
- [redacted], John [redacted], William [redacted], Terence [redacted], Eric [redacted], Iain [redacted], Derek [redacted], Frank [redacted]
- [redacted], John [redacted], Stuart [redacted], James [redacted], Michael [redacted], John [redacted], Russell [redacted]
- Greg [redacted], James [redacted], Michael [redacted], Shaun [redacted], Ian [redacted], Ian [redacted], Jonathan [redacted]
- Alan [redacted], William [redacted], John [redacted], Stuart [redacted], David [redacted], Stanley [redacted], Roy [redacted], Edward [redacted]
- [redacted], Mark [redacted], Paul [redacted], Nathan [redacted] (see refs)

SOURCE: 3223/F (MA)

[redacted] One of the main troublemakers during the dispute

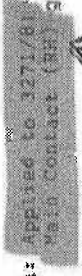
2004 April 27th: Applied to 3271/81 for Heathrow T5. Main contact (AM) given details. Co has not employed.



2j.

2002 Oct 9th : Applied to 3285 for Wembley or Tinsley Viaduct, Sheffield contracts. Main contact (Lb) given details. Co has not employed.

2004 March 17th: Applied to 1271/8 on a speculative basis.
Main Contact (Lb) given details. Co. has not employed.



Eric [REDACTED]

2.

2001 July 5th: Applied to 3252/A34 at MOD Whitehall, London Contract via agency, MALLA. Main Contact (SQ) given details. Co has not employed.

2004 Feb 27th: Applied to 3271/8 via agency Skyline. Site not specified at this stage - probably a Scottish site. Main contact (RH) given details. Skyline and therefore C. has not employed.

2004 Feb 18th : Applied to 3239 via subcontractor 3223/M at Dudley PFI Hospital Project. Main Contact (DC) given details. Above was already on site and is going off site on Feb 20th 2004.

2005 Oct 11th : Applied to 3221/X directly for Heathrow Terminal 5 project. Main Contact (N.G.) given details. Co. has not furthered application.

22.2.2008: Applied to 3223/F via agency NRL for Sellafield, Cumbria site. Main contact E.G. given details. Co has not furthered.

2k.

2000 June 21: In addition, the following were not re-employed following the unofficial action at Pfizer, Sandwich between mid April and mid May 2000. These were regarded as follows rather than leaders of the unofficial action:

- Albert [redacted] Stephen [redacted] Gavin [redacted] Neil [redacted] Michael [redacted] Michael [redacted] John [redacted]
- Mark [redacted] Jill [redacted] Aiden [redacted] David [redacted] Stephen [redacted] David [redacted] Scott [redacted]
- John [redacted] William [redacted] Terence [redacted] Eric [redacted] Ian [redacted] Derek [redacted] Frank [redacted]
- Greg [redacted] John [redacted] James [redacted] James [redacted] Michael [redacted] John [redacted] Russell [redacted]
- Alan [redacted] William [redacted] Michael [redacted] Stuart [redacted] Ian [redacted] Jonathan [redacted]
- [redacted] Mark [redacted] Paul [redacted] Nathan [redacted] David [redacted] Stanley [redacted] Roy [redacted] Edward [redacted]

SOURCE: 3223F (NA)
[redacted]

- 2007 5th April: Applied to [redacted] for Liverpool Arena contract. Main site. Co has not furthered.
- 2007 27th July: Applied to 3271/81 for Gorton Education Village, Manchester site. Main contact (M.H. for D.H.) given details. Co has not furthered.

2L.
+ 4a.

2m.
+ 4b

2.

2000 June 21: In addition, the following were not re-employed by 3223/F following the unofficial action at Pfizer, Sandwich between mid April and mid May 2000. - These were regarded as followers, rather than leaders of the unofficial action:-

- Albert [redacted] Neil [redacted] Michael [redacted] John [redacted]
- Mark [redacted] David [redacted] Stephen [redacted] David [redacted]
- Colin [redacted] Terence [redacted] Eric [redacted] Ian [redacted] Scott [redacted]
- John [redacted] James [redacted] Shaun [redacted] Ian [redacted] Frank [redacted]
- Greg [redacted] Stuart [redacted] John [redacted] Stanley [redacted] Roy [redacted]
- Alan [redacted] John [redacted] David [redacted] Edward [redacted]
- Mark [redacted] Paul [redacted] Nathan [redacted] (see refs)

SOURCE 3223/F (A)
[redacted]

2003 Jan 31: Applied to [redacted] via agency Options Employment to agency SkyBlue. Site not specified at this stage. [redacted] given details. SkyBlue & therefore co has not employed.

2007 26th Nov: Applied to [redacted] via agency Vital Resources for Liverpool Arena Project. Main contact [redacted] given details. Co. has not furthered.

Paul

at 25.1.07

DOB: [redacted] at 2.2.98

NI No: [redacted]

Occ: Rigger/Erector at 2.2.98
AEFU

See ref. for [redacted]

1997 Summer : Was employed by 3271/81 via NCS at Courtauld's site, Grimsby.

1997 August 6th : Systematically disruptive during the term of engagement, in a period of 3 - 4 months by misleading the workforce and raising minor grievances into major disputes by the use of unofficial union channels which resulted in 4 - 5 unofficial stoppages on site. Subsequently - 1 week strike Wednesday 29th October 1997 until return on Tuesday 4th November 1997 over company's demanning procedure for agency men. [redacted] and [redacted] (first to go?) caused 1 week strike. Believed that in the background were 3 - 4 other "bullet-makers". Additional Notes: Site Director at Courtauld's, Grimsby thinks [redacted] and [redacted] are cause of problems on site over bonus targets initially

1998 Feb 2nd : Applied to 3271/81 via own agency. [redacted] (K.G.) are given details. Co. will not employ. Concern expressed by [redacted] as to why own agency still has above on their books.

*NOTE: This is 3271/81's own M & E agency.

2n.

Edward [redacted] Daniel [redacted] Kevin [redacted] Frankie [redacted]
Averell [redacted] and [redacted]
SOURCE: 3221E(D.C.)

1988 April 28th : Applied to 3221E at Royal Opera House, Covent Garden, site. Company has not employed.

2003 Jan 31st: Applied to 3221E via agency NRL Personnel Services to agency SkyBlue. Site not specified at this stage. [redacted] contact (DW) given details. Co. has not employed.

STELLA KNIGHT [REDACTED]

2 p.

20/03

INFORMED STELLA IN POSSESSION OF LIST
AND MEMO RE BLACKLISTING.

SHE INFORMED ME THAT IAN COATES WOULD
NOW DEAL WITH THAT

MENTIONED MIKE AIRD AS PERSON PASSING
ON INFORMATION.

21/03

MICK TUFF

INFORMED MICK THAT I WAS CONCERNED
UNION HAD BLACKLISTING INFO FOR 7 MONTHS
AND APPEARED TO BE DOING NOTHING ABOUT IT.

MICK SAID WERE HOLDING BACK AS REQUESTED
UNTIL GRIEVANCE HAD BEEN RESOLVED

INFORMED MICK THAT GRIEVANCE PROCEDURE
EVIDEN ON 6 DECEMBER - NOW 21 MARCH.

NO COMMENT.

LIZ [REDACTED] ACAS

HILARY [REDACTED] [REDACTED] [REDACTED]

29.

TONY WILLOUGHBY 1/5. [REDACTED]

TONY INFORMED THAT A NUMBER OF SUPERVISORS AT JLE WERE TAKEN INTO A ROOM AND ASKED TO COMPLETE A QUESTIONNAIRE ON A NUMBER OF KEY INDIVIDUALS SINGLED OUT AS PROBLEM MAKERS.

TONY ALSO INFORMED ME THAT CHRIS RAVEN HAD EMAILED A NUMBER OF PEOPLE ON 3 MAY DENOUNCING ANY INVOLVEMENT WITH THE LIST.

[REDACTED]

S/S [REDACTED]

TONY WILLOUGHBY 4/5 CONT.

THEY WERE LOOKING FOR SUPERVISION TO POINT THE FINGER.

TONY WILLOUGHBY 10/5 12-40

CONFIRMED GILLIAN HONE PRESENT AT MEETING.

Haden Young

Fax Transmission

To: Freda

Fax number: Auto

Date: 3/2/04

From: Neil Cappell

Total Number of pages (including this one): 3 4

**Haden Young Limited
Midlands and Southern**

Amington House
Galena Close
Amington
Tamworth
B77 4AZ

3

Tel: [REDACTED]
Fax: [REDACTED]

[REDACTED]
www.hadenyoung.co.uk

Security Checks

Please can you check the following.

Thanks

Neil

Haden Young
Midlands and Southern

* AMENDED -
 RELACEMENTS *

Agency Labour Enquiry Report

ID 3
 Agency Name **EURONATIONAL**

Project **COVENTRY** Originator **Mark Sisson** Req **12** Trade **Electrician** Date Req **07/02/2005**

Name	N / Number	Start Date	App	Leave Date	DNG	2 Days
JAMES	[REDACTED]	7/2/05				
PAUL	[REDACTED]	7/2/05				

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02 February 2005 PLEASE FAX AVAILABILITY OF OPERATIVES TO PRODUCTION SUPPORT ON [REDACTED]

Haden Young

Middlelands and Southern

Agency Labour Enquiry Report

ID 3

Project **COVENTRY** Originator **Mark Sisson** Req **12** Trade **Electrician** Date Req **07/02/2004** Agency Name **EURONATIONAL**

Name	N I Number	Start Date	App	Leave Date	DNG	2 Days
PETE	[REDACTED]	7/2/05				
JOHN	[REDACTED]	7/2/05				
JOHN	[REDACTED]	7/2/05				
COLIN	[REDACTED]	7/2/05				
TOM	[REDACTED]	7/2/05				
BERNARD	[REDACTED]	7/2/05				
BARRY	[REDACTED]	7/2/05				
DANNY	[REDACTED]	7/2/05				

02 February 2005

PLEASE FAX AVAILABILITY OF OPERATIVES TO PRODUCTION SUPPORT ON [REDACTED]

36

Haden Young

Midlands and Southern

Agency Labour Enquiry Report

ID 3

Agency Name

EUCONATIONAL

Project: COVENTRY

Originator: Mark Sisson

Trade: Electrician

Date Req: 07/02/2005

Req: 12

Name

N1 Number

Start Date

App

Leave Date

DNG 2 Days

PETER	[REDACTED]	[REDACTED]	7/2/05					
MIKE SHAVESPEAR	[REDACTED]	[REDACTED]	7/2/05					
STUART	[REDACTED]	[REDACTED]	7/2/05					
WILMOTT	[REDACTED]	[REDACTED]	7/2/05					

02 February 2005

PLEASE FAX AVAILABILITY OF OPERATIVES TO PRODUCTION SUPPORT ON [REDACTED]

30

Drake & Scull Group Ltd
Registered and Head Office
1 Thameside Centre, Kew Bridge Road
Kew Bridge, Middlesex, TW8 OHF
Telephone: [REDACTED]
Facsimile: [REDACTED]
Email: [REDACTED]



4

Memorandum

To: Bill Watters, Alan Wainwright, Dick Pooley, David Bailey

From: Sheila Knight

Date: 8th August 2000

Re employee information

Further to my earlier e mail message, I enclose lists of those employed on JLEP, the Opera House and Pfizer. Please keep this information confidential and make your own enquiries thereafter.

Regards

A handwritten signature in black ink, appearing to read "Sheila Knight".

Written evidence from UCATT

UCATT was asked to provide information about Employment Tribunal claims and why they were unsuccessful. Full details, as provided by UCATT's solicitors, are given below.

1. UCATT members that were provided with copies of their blacklist files by the ICO found that the entries rarely contained evidence of actual discrimination, sufficient to support an Employment Tribunal claim.
2. Most blacklist entries made reference to the member's activities on site. There were references to industrial action, agitation and alleged troublemaking. Some entries also contained copies of newspaper articles either relating to or written by the subject of the entry. This included articles from union journals.
3. Many of the entries related to trade union membership or activities. Others referred to wider political activism, all of which were legal. Many of the entries went back 20 or 30 years or more. Some entries referred to events in the 1970s. Others were more recent.
4. Many cases were lodged on behalf of blacklisted members. In the absence of any legislation outlawing blacklisting per se, claims had to be brought under the Trade Union & Labour Relations (Consolidation) Act 1992 (TULRA). The minority of claims supported by UCATT concerned members who had been denied employment on grounds of their trade union membership or activities contrary to Section 137. These claims were based upon entries on the blacklist showing that their name had been checked by a specific company.
5. Other claims related to the suffering of a detriment under Section 146. Others too, related to dismissal or more usually, selection for redundancy contrary to Sections 152 and 153.
6. These claims were lodged with the Employment Tribunal. There were however a number of problems:

a. Time limits

The normal time limit for pursuing a claim of this nature is 3 months from the date of the behaviour complained of. That was clearly impossible in this case as most of the members concerned had not become aware that they had been discriminated against on grounds of their trade union membership or activities until they read the blacklist entries. The Employment Tribunal generally took the view that the 3 month time limit did not run from the date of discovery of the blacklist entry. Instead they applied the time limit in Sections 139 and 147 TULRA by accepting that it was not reasonably practicable for the complaint to be presented within 3 months of the conduct complained of, and allowing a further reasonable period to lodge a claim. The time limit applications were applied stringently. Over a series of cases, it became clear that the individuals who waited 3 months from the date of obtaining his/her blacklist entries could well find their case ruled out of time. This approach allows employers to raise several time limit arguments: that the individual concerned had taken too long to apply to the ICO for his/her blacklist entries; that the individual concerned had waited too long from obtaining the blacklist entries to instruct a solicitor; that the individual and/or his/her solicitor had waited too long before lodging the claim with the Employment Tribunal. A number of claims were struck out by the Tribunal on the grounds that they were out of time.

b. Employers

Many potential claims proved difficult to pursue on the grounds that the employer who committed the act of discrimination had ceased to exist. Even where the employer had been identified, it was often difficult to pursue a claim. Some employers e.g. the various Crown House or Laings companies raised complex defences that the company sued as their successor in title was not in fact the original company that had accessed the blacklist. This resulted in considerable research and complex arguments on the identity and provenance of the successor company to the one that accessed the blacklist.

c. Legislation

Most of the legislation on which claims relating to detriment, dismissal or

redundancy were based, had come into effect in the mid 1970s. This meant that any member who wanted to pursue such a claim could do so subject to providing evidence in support (see below). A problem arose with regard to cases relating to refusal of employment on grounds relating to trade union membership contrary to Section 137. That particular piece of legislation did not come into effect until 1991. The Employment Tribunal was quick to strike out cases involving alleged refusal of employment relating to blacklist entries prior to 1991. This was on the grounds that there was no law against refusal of employment on trade union grounds up to that date.

d. Evidence

With the burden of proof on the claimant, it was necessary to obtain evidence to show that the individual concerned had been refused employment or suffered detriment or dismissal as a result of the blacklist entries. As many of the events that had occurred had taken place, years or even decades before, it was simply impossible for individuals to provide evidence to prove the fact that they had been refused employment and were subjected to a detriment or even dismissed as a result of blacklist entries. Employers were never slow to argue that there was no proof. Claimants had to rely upon the blacklist entries themselves and other materials such as their Inland Revenue employment history to support their arguments. Very few of these claims survived the Pre-Hearing Review stage.

8 November 2012

Written evidence from the Information Commissioner's Office

Following my evidence session at your Committee on 16 October, please find as promised, further information below and enclosed. Having read the transcript of my evidence, I believe that this covers all the information the Committee requested.

ICO knowledge of Caprim or any other blacklisting databases

I have researched our records and can confirm that at no stage have we been provided with evidence on which to base an investigation into any blacklists other than the one held by the Consulting Association.

With regards to Caprim specifically, since our investigation into the Consulting Association database, we have been contacted by two individuals expressing concern about the existence of a database held by Caprim Limited. These concerns were raised in March 2009 shortly after our press release regarding the Consulting Association. They did not go into details about the nature of any information allegedly held by Caprim Ltd or provide us with enough of a basis from which to start a full investigation at that time. The suspicion raised was that Caprim were using information from the Economic League. From our investigation into the Consulting Association, it appeared that it was in fact the Consulting Association that had this information. These letters were therefore treated as intelligence and there was no further investigation. No further concerns have been raised with us since. Having checked the register with Companies House, it appears that Caprim Ltd was in fact dissolved on 11 August 2009.

There was just one investigation that we did conduct into a potential blacklist held by a company from August 2010 to June 2011. This investigation has since been closed after it was concluded that the alleged blacklist was no more than information held by the company's HR department in accordance with the provisions of the DPA.

Companies we wrote to and those that were issued with Enforcement Notices

I enclose a list of all the companies we wrote to on 11 March 2009 following the execution of the search warrant on the Consulting Association (see Annex 1). All these companies appeared on the database as members of the Consulting Association though this did not necessarily mean that they had access to the database itself. The names of these companies had been confirmed by us in a press release on 6 March 2009 (see Annex 2). Some of these names differ slightly from the names that we actually wrote to. This is because, following further investigation, they were found to have been taken over by other companies or officially known by another name. The press release also confirms, in the list of companies, those who were known at the time to be ex members who may not have existed in 2009 or may no longer have availed themselves of Kerr's service.

You asked if we could provide details of those who accessed the database and those who did not. This is unfortunately not an easy task due to the complexity of the records. It is right to say that the companies that we are certain accessed the database are those that were issued with enforcement notices. A list of these companies is enclosed at Annex 3. I can confirm that none of the companies against which enforcement notices were issued had denied involvement.

Responses to the letters by the companies

You asked if we could supply you with the responses of the companies that we wrote to. As I explained to the Committee on 16 October, I am unable to provide this information to you. This is because of section 59 of the DPA. This makes it an offence for us to disclose information, without lawful authority, that relates to an identifiable business and that has been obtained by or furnished to us for the purposes of the DPA. I am, however, able to provide you with our Enforcement Recommendation Report on which our analysis as to which companies were to be issued with enforcement notices was based (see Annex 4). We have made one redaction in this document because of section 59 DPA. I cannot disclose the names of the companies to which each of the reasons relates but I can tell you that, in the order in which reasons appear in the report, the number of companies covered by them are 11,6,7 and 6 respectively.

Clarification of points raised at our appearance before your committee

Having read the transcript of the evidence given by David Clancy and me to your committee on 16 October, I would just like to put clearly on the record that although, when executing the search warrant on Kerr's premises, we were not specifically searching for evidence that employment blacklists existed in other industries we did not come across any such evidence. Furthermore, contrary to some suggestions in the press, we did not find any evidence to suggest that the number of construction workers blacklisted went beyond the 3,213 workers whose details we secured. In relation to the scope of our investigation I enclose a copy of information we provided in support of our application for a search warrant (Annex 5) and the search warrant that was granted (Annex 6).

I would also like to take this opportunity to clarify part of my explanation into how the DPA applies (at Q685). I stated that Kerr had an electronic index. In fact we do not know with certainty whether this was the case or not. The information we seized on which we based our further action consisted of a ring binder index in paper form. It was, however, apparent from the format of the information seized that the index had been processed electronically at some point. Essentially it was a print out. It nevertheless gave us sufficient evidence to confirm that the offence of processing of personal data without being notified had been committed. I can only apologise if I misled the Committee. This was certainly not my intention.

I trust that this answers the Committee's questions. Please do contact me though if we can be of any further assistance. In particular, if it would be helpful to your inquiry, we would, subject to the necessary assurances of confidentiality, be more than happy to allow you, as Chair of the Committee, to attend our office and view, with your own eyes, all the information that we seized from Kerr's premises. Please do let me know if you would like to take up this offer.

8 November 2012

Table of Annexes

Annex Number	Description
Annex 1	List of companies that were subscribed to the Consulting Association who we contacted on 11 March 2009
Annex 2	Press Release of 6 March 2009
Annex 3	List of companies issued with Enforcement Notices
Annex 4	Enforcement Recommendation Report
Annex 5	Information in Support of Application for Search Warrant
Annex 6	Search Warrant

Companies that were subscribed to the Consulting Association who we contacted on 11 March 2009

- AMEC Process & Energy Limited
- AMEC Building Limited
- AMEC Construction Limited
- AMEC Facilities Limited
- Amey Construction Limited
- Awa Homes Limited
- BAM Construction Limited
- BAM Nuttall Limited
- Balfour Beatty PLC
- Balfour Beatty Civil Engineering Limited
- Balfour Beatty Construction Scottish & Southern Limited
- Balfour Beatty Construction Northern Limited
- Balfour Beatty Infrastructure Services Limited
- Balfour Kilpatrick Limited
- Carillion PLC
- Costain Construction Limited
- Crown House Technologies Limited
- CB&I Constructors Limited
- Cleveland Bridge UK Limited
- Diamond Mechanical & Electrical Engineering Services Ltd
- Dudley Bower & Co. Limited
- Emcor Engineering Services Limited
- Emcor Rail Limited
- George Wimpey Limited
- Haden Young Limited
- John B Sunley & Sons Limited
- John Mowlem & Company Limited
- Kier Limited
- Laing O'Rourke Services Limited
- Miller Construction (UK) Limited
- Miller Construction Limited
- Morgan Est Plc
- Morgan Ashurst Plc
- Lovell Partnerships Limited
- Morrison Construction Limited
- NG Bailey Limited

Annex 1 - List of companies that were subscribed to the Consulting Association who we contacted on 11 March 2009

- Shepherd Engineering Services Limited
- SIAS Building Services Limited
- Sir Robert McAlpine Limited
- Skanska UK Plc
- Spie Matthew Hall Limited
- Taylor Woodrow Construction
- Turriff Construction Limited
- Tysons Construction Limited
- Vinci Plc



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Press Release

Strictly embargoed until 00.01 on 6 March 2009

ICO seizes covert database of construction industry workers

An investigation by the Information Commissioner's Office (ICO) has uncovered a database containing details on 3,213 construction workers which was used by over 40 construction companies¹ to vet individuals for employment. The information includes sensitive personal information such as construction workers' personal relationships, trade union activity, as well as people's employment history.

The information has been seized by the ICO during a raid in Droitwich, West Midlands. Ian Kerr, the owner of a firm known as the Consulting Association, appears to have run the database for over fifteen years. The ICO has uncovered evidence at Kerr's premises that named construction firms subscribed to Kerr's system for a £3,000 annual fee. Companies could add information to the system and pay £2.20 for details held on individuals. Invoices to construction firms for up to £7,500 were seized during the raid.

The ICO has served an Enforcement Notice ordering Mr Kerr to stop using the system. Mr Kerr is to cease trading by the end of this week and he now faces prosecution by the ICO for breaching the Data Protection Act.

Deputy Information Commissioner, David Smith, said: "This is a serious breach of the Data Protection Act. Not only was personal information held on individuals without their knowledge or consent but the very existence of the database was repeatedly denied. The covert system enabled Mr Kerr to unlawfully trade personal information on workers for many years helping the construction industry to vet prospective employees. The Data Protection Act

¹ List of companies available in notes to editors

clearly states that organisations must be open about how they process personal information, and in most cases those processing personal information must register with the ICO – Mr Kerr did not comply with the law on either count.

“On raiding Mr Kerr’s business premises we discovered an extensive operation involving household names in the construction industry. Kerr held information on thousands of construction workers and profited by checking names against his database.

“We will prosecute Mr Kerr and we are also considering what regulatory action to take against construction firms who have been using the system. I remind business leaders that they must take their obligations under the Data Protection Act seriously. Trading people’s personal details in this way is unlawful and we are determined to stamp out this type of activity.”

From 16 March the ICO will operate a dedicated enquiry system for people who believe personal information about them may be held on the database. Members of the public are advised not to contact the ICO until 16 March.

ENDS

If you need more information, please contact the ICO press office on 020 7025 7580 or visit the website at: www.ico.gov.uk

Notes to Editors

The table below lists the companies that subscribed to the Consulting Association. The use of brackets indicates where companies have undergone a change of name or where subsidiaries have been absorbed by parent companies. Ex members may no longer exist or no longer avail themselves of Kerr's service.

Amec Building Ltd
Amec Construction Ltd
Amec Facilities Ltd
Amec Ind Div
Amec Process & Energy Ltd
Amey Construction – Ex Member
B Sunley & Sons – Ex Member

Annex 2

Balfour Beatty
Balfour Kilpatrick
Ballast (Wiltshire) PLC – Ex Member
Bam Construction (HBC Construction)
Bam Nuttall (Edmund Nutall Ltd)
C B & I
Cleveland Bridge UK Ltd
Costain UK Ltd
Crown House Technologies
(Carillion/Tarmac Const)
Diamond M & E Services
Dudley Bower & Co Ltd – Ex Member
Emcor (Drake & Scull) - 'Ex Ref'
Emcor Rail
G Wimpey Ltd – Ex Member
Haden Young
Kier Ltd
John Mowlem Ltd -Ex Member
Laing O'Rourke (Laing Ltd)
Lovell Construction (UK) Ltd – Ex Member
Miller Construction Limited – Ex Member
Morgan Ashurst
Morgan Est
Morrison Construction Group –Ex Member
N G Bailey
Shepherd Engineering Services
Sias Building Services
Sir Robert McAlpine Ltd
Skanska (Kaverna/Trafalgar
House Plc)
SPIE (Matthew Hall) - Ex Member
Taylor Woodrow Construction Ltd – Ex Member
Turriff Construction Ltd –Ex Member
Tysons Contractors – Ex Member
Walter Llewellyn & Sons Ltd - Ex Member
Whessoe Oil & Gas
Willmott Dixon – Ex Member
Vinci PLC (Norwest Holst Group)

1. The raid on Mr Kerr's business premises in Droitwich was conducted on 23 February 2009
2. We understand Mr Kerr has ceased trading and has vacated his business address.
3. This is the first case where the ICO has used issued an Enforcement Notice with a seven day compliance condition. Ian Kerr breached the Data Protection Act by

unfairly and unlawfully processing personal information. He failed to notify the ICO as a data controller.

4. The ICO's action follows an article, entitled *Enemy at the Gates*, published by The Guardian newspaper on 28 June 2008.
5. The ICO promotes public access to official information and protects personal information. The ICO is an independent body with specific responsibilities set out in the Data Protection Act 1998, the Freedom of Information Act 2000, Environmental Information Regulations 2004 and Privacy and Electronic Communications Regulations 2003.
6. For more information about the Information Commissioner's Office subscribe to our e-newsletter at www.ico.gov.uk

Companies Issued with Enforcement Notices

- Balfour Beatty Civil Engineering Limited
- Balfour Beatty Construction Northern Limited
- Balfour Beatty Construction Scottish & Southern Limited
- Balfour Beatty Engineering Services (HY) Limited
- Balfour Beatty Engineering Services Limited
- Balfour Beatty Infrastructure Services limited
- CB&I UK Limited
- Emcor Engineering Services Limited
- Emcor Rail Limited
- Kier Limited
- NG Bailey Limited
- Shepherd Engineering Services Limited
- SIAS Building Services Limited
- Whessoe Oil & Gas Limited

Annex 4 - Enforcement Recommendation Report

Enforcement Recommendation Report

Possible enforcement action against construction companies

Background

The Commissioner was informed that companies in the construction industry would ask Mr Ian Kerr trading as the Consulting Association ("TCA") to check the names of potential staff against a list held by Mr Kerr who would then advise the companies of intelligence information in relation to those named on that list.

During the execution of a search warrant by RAD Investigations on Mr Kerr, the Commissioner obtained evidence that such a system was indeed operating within the construction industry. Certain information was seized, such as a ring binder containing 3,213 entries in relation to individuals which had been processed on electronic media, and a comprehensive card index system constituting an intelligence database.

The database contained, amongst other things, sensitive personal data relating to the trade union activity of an individual, his employment conduct together with any information that the individual may pose a threat to industrial relations between an employer and its employees. It was clear that the database was maintained in a covert manner.

On 2 March 2009 the Commissioner's office served a final Enforcement Notice ("EN") on Mr Ian Kerr trading as TCA who was the data controller.

The EN stated that the Commissioner was satisfied that there had been a breach of the first data protection principle in that, amongst other things, he had processed personal data unfairly by failing to provide the individuals whose names are on the list with the information referred to in paragraph 2(3) at Part II of Schedule 1 DPA.

The EN also contained an Urgency Notice under section 40(8) DPA and required Mr Kerr to refrain from obtaining, using or disclosing any of the personal data (unless the disclosure is necessary for the purpose of complying with any obligation under the Act; obtaining legal advice or for the purpose of, or in connection with, any legal proceedings) and to refrain from altering, erasing or destroying any personal data.

The latter requirement was included so that individuals who were concerned that their names were on the list could still exercise their rights of subject access under section 7 DPA against Mr Kerr. Subsequently RAD Investigations were informed that Mr Kerr had ceased trading so the Commissioner's office took the unusual step of setting up an internal process whereby the Commissioner adopted the mantle of data controller so that, on a short term basis, individuals could make subject access requests to the Commissioner's office instead.

This would enable individuals to consider whether they had any further claim under DPA and/or anti-discrimination laws against either Mr Kerr or the

construction companies themselves. So far the Commissioner's office has received approximately 60 such subject access requests from individuals. As far as we know Mr Kerr has complied with the terms of the EN and decided not to appeal to the Information Tribunal.

Subsequent action

During the execution of the search warrant referred to above, RAD Investigations also seized the identity of companies within the construction industry who may have obtained the information held in the database following contact with Mr Kerr. RAD Investigations also seized copies of invoices from Mr Kerr to companies for services provided, for example, employment checks on individuals.

On 11 March 2009 the Commissioner's office sent a letter to approximately 48 construction companies who appeared to have subscribed to the service provided by Mr Kerr. The letter asked for certain information on a voluntary basis from the construction companies within 28 days to enable the Commissioner to determine whether each company has complied with the data protection principles.

The information required by the Commissioner was an explanation as to the relationship between each construction company and Mr Kerr and an indication of the amount each construction company has paid to Mr Kerr during the last 5 financial years to present, if known, or an indication as to the nature and volume of the services provided by Mr Kerr.

We have now received a response to the letter dated 11 March 2009 from each of the construction companies we wrote to (apart from one company in liquidation and one that is now dormant). Therefore we don't need to consider formally requesting this information by way of an Information Notice under section 43 DPA (unless we need additional information to that requested in our letter in order to make a decision about enforcement).

I have now prepared the attached form summarising all of the responses we have received from each of the construction companies listed alphabetically together with a column in italics suggesting a possible course of action we might take in each case.

I have also taken into account Richard's view as set out in his email dated 8 March 2009 that, subject to the evidence and legal analysis, we should serve an EN on each company that obtained information from Mr Kerr and not use Undertakings.

You will note that I have made a recommendation of "no further action" in the attached form in respect of 30 of the construction companies in total. The reason for this varies in each case but is either due to the fact that:

- the company is no longer existence, mistaken for another legal entity or is now operating under a new guise and has not obtained any information from Mr Kerr since it was formed, or;

- there is no evidence that a company has made any/minimal use of Mr Kerr's services in the last 5 years or longer, or;
- the company expressly denies ever processing information by means of electronic media or recording the information received from Mr Kerr, the procedure being based on telephonic oral exchanges of "yes" or "no" responses with Mr Kerr, or;
- the company expressly denies using Mr Kerr's reference checking services. For example, there are some instances where companies claim to have just used Mr Kerr's services for the purpose of industry networking by attending meetings arranged by Mr Kerr and subscribing to the news clipping service.

This assumes that we take the construction companies version of events at face value rather than verify what we have been told in correspondence by them. But it will be resource intensive to investigate this matter any further when balanced against the fact that Mr Kerr has now ceased trading following service of the EN so there is no longer the same potential for damage or distress to individuals.

Any enforcement action against the construction companies will be more of a public relations exercise rather than necessary to achieve compliance with DPA. The power to issue monetary penalties may have been more appropriate if it had been in force. It also looks as though this issue will now be dealt with at a higher level by way of the Government introducing new regulations to prevent union members from being denied employment in this way. Even if we decide not to take any further action against the construction companies I have highlighted in the attached form, they have already been subject to media exposure and possible reputational damage and any future breaches in this respect are unlikely.

In any event, in accordance with Richard's instructions I believe that we have better evidence to justify preliminary enforcement action on the remaining 18 construction companies that I have highlighted in the attached form based on the information they have volunteered to us. In all of these cases the construction companies admit to using Mr Kerr as a vetting service in the last 5 years. They have each paid Mr Kerr between approximately £4,000 and £160,000 for services including vetting. These construction companies do not mention, however, whether the information they received from Mr Kerr was ever recorded so as to be "data" under the DPA.

Because of the informal system of oral exchanges of information that appears to have been in operation between Mr Kerr and some of the construction companies, it is possible that the information they obtained from Mr Kerr is not covered by DPA. At the same time the remaining 18 construction companies have not expressly raised this as a defence so far although many of them received legal advice. One (NG Bailey Limited) has implied by its response that it does hold data covered by DPA. It is also conceivable from our point of view that these companies did, for example, record the information they received from Mr Kerr in their HR files. For the same reasons as stated above there is little to be gained by investigating this issue further.

Instead I am of the view that we should serve a Preliminary Enforcement Notice on each of the 18 construction companies and wait to receive their representations before proceeding to final EN's if we are satisfied this is not an issue that will be raised by each of the construction companies. This will also help to ensure that we don't get involved in any appeal proceedings to the Information Tribunal involving further resource to no great end. Effectively we can negotiate the terms of any final Enforcement Notice with the construction companies before we serve it.

Terms of the Preliminary Enforcement Notice ("PEN")

Most of the 18 construction companies are silent about the issue of whether they have disclosed information about their employees or their contractors to Mr Kerr although a few of the companies have expressly denied it. It is clear that Mr Kerr has been provided with information from some construction companies about their employees and/or contractors otherwise he wouldn't have had a list to operate. Again I don't think we should pursue this issue with the construction companies given that Mr Kerr has ceased trading.

None of the companies against whom we are considering possible enforcement action have confirmed that they have destroyed the information. One has confirmed that they will not now use the information they obtained from Mr Kerr unless it is necessary to comply with legal obligations but the rest of the construction companies are silent on this issue.

If possible it would be more straightforward and consistent if all of the PEN's are in the same terms. It is also clear from the similar responses that there has been some consultation between the construction companies in responding to the Commissioner's letter so they will also be expecting similar treatment.

I can't see any reason at the present time to justify different terms in the PEN subject to any representations in response, for example, that they have already erased or destroyed the information. If the response is that they have never recorded the information they received from Mr Kerr then we will have to reconsider taking enforcement action at all for the reasons previously stated.

I suggest that the PEN should allege that the 18 construction companies are in breach of the first data protection principle in that they have unfairly obtained information from Mr Kerr, for the same reasons as set out in the EN served on him.

The PEN should require them to refrain from obtaining, using or disclosing any of the personal data (unless the disclosure is necessary for the purpose of complying with any obligation under the Act; obtaining legal advice or for the purpose of, or in connection with, any legal proceedings) and to refrain from altering, erasing or destroying any personal data for the same reasons as the EN served on Mr Kerr.

Annex 4

Finally we should include a requirement that the 18 construction companies should, with immediate effect, ensure that when any personal data is obtained from another data controller that the data subject is provided with, or has made readily available to him, the information specified in paragraph 2(3) at Part II of Schedule 1 DPA either before the relevant time (as defined by paragraph 2(2) at Part II of Schedule 1 DPA) or as soon as practicable thereafter.

CLD
13 May 2009

in case of recruitment of
recruitment of
data subject
to DS II
provide it
or so

↓
restrict to be
recruitment of employees.

→ In other cases -
Same info to be
data subject

Restrict a summary
describing you don't want a
access to
data or write to other employees.
Case? → JP Note

Supplementary Enforcement Recommendation Report following representations from construction companies in response to the Preliminary Enforcement Notice dated 18 June 2009

Possible final Enforcement Notices against construction companies

Following my previous Enforcement Recommendation Report dated 13 May 2009 we have served Preliminary Notices on 17 construction companies.

The 17 construction companies had until 20 July 2009 to make their representations to the Commissioner. None of the construction companies have asked for an oral hearing with the Commissioner and any representations have been made in writing. I attach a copy of a collated response form for ease of reference. Please let me know if you want to see any of the written representations in full.

The purpose of this Supplementary Report is to make further recommendations in relation to the service of final Enforcement Notices against 14 of those 17 construction companies having taken into account any representations.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SECTION 44
SECTION 59
DPA

[REDACTED]

- SECTION
42
FOIA

Any enforcement action against the construction companies is important in sending out a powerful message that this type of behaviour will not be tolerated but there is no point in engaging in detail if the end result will be the same.

[REDACTED]

- SECTION
42 FOIA

[REDACTED]

SECTION
42 FOIA



-SECTION 46 FGA
SECTION 59 DPA

CLD

27 July 2009

Annex 5 - Information in support of application for search warrant



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Information in Support of Application for Search Warrant.

The premises at 4 High Street
Droitwich
WR9 8EW

An operating address of Mr I A Kerr trading as
The Consulting Association

The Information Commissioner is the independent regulator responsible for overseeing the application of the Data Protection Act 1998 (the Act). The Act is underpinned by the eight data protection principles which are enforceable rules of good practice in relation to the processing, by organisations, of personal information relating to living individuals.

These principles are outlined in Schedule 1 of the Act (appendix 1) and relate to the information, amongst other things, being processed fairly and lawfully, being processed for limited purposes, being adequate relevant and not excessive, being accurate and up to date, being kept for only as long as is necessary and being processed in accordance with the rights of the individuals.

The rights referred to in Schedule 1 include the individuals right of access to information held by an organisation about them (section 7) the right to prevent processing likely to cause damage or distress (section 10), the right to compensation for failure to comply with certain requirements under the Act (section 13) and the right to rectification, blocking, erasure and destruction (section 14) (I attach a copy of these sections as appendix 2).

It has been brought to the attention of the Commissioners office that there is a blacklist operating within the construction industry, especially in relation to electricians, whereby individuals who are on the list will not be employed by the major construction companies, or their sub-contractors, on major construction projects within the UK. The operation of the blacklist is described in a witness statement submitted to an Employment Tribunal by Alan Wainwright who was employed, at a senior level, within the construction industry (appendix 3).

A brief description of the process being that sub-contractors would be faxed a list of personnel requirements for a particular project, they would identify potential staff and then fax the names and national insurance numbers back, these would then be passed on to a third party who would check the names against the blacklist and advise who should or should not be employed. The third party, who Wainwright calls Ian/Iain Kerr has never been identified.

To evidence this process I attach a copy of a number of fax transmissions. These originate from [REDACTED] and were sent to Haden Young Limited in Tamworth. The faxes were then sent on to fax number 01923295109 this being identified as being at the address in Watford as outlined above (appendix 4)

Mr Wainwrights statement makes reference to lists of electricians employed on various major projects, the Pfizer project, Jubilee Line Extension and the Royal Opera House. These lists are comprised of the names and national insurance numbers of individuals (I attach a sample as appendix 5) and the first person on the Pfizer list [REDACTED] has confirmed to me that he has struggled to gain employment in the construction industry since he was sacked from the Pfizer project in 2000 along with over 200 other electricians. I attach an article from www.building.co.uk the online magazine for construction professionals, this article from 2000 outlines the sacking of the electricians from the Pfizer project (appendix 6)

All this appears to clearly indicate that there is in operation a blacklist within the construction industry and that this blacklist is being conducted in such a manner as to ensure that individuals on that list do not gain employment within the industry. Individuals are not told that their information will be placed on the list which is a breach of the 1st and 2nd principles, it is not known exactly what information is held by the organisation who maintain the list therefore there are issues relating to the adequacy, relevance (3rd principle), the accuracy of the data cannot be checked (4th principle), it is not known how long the information is kept (5th principle) and finally the individuals cannot assert their rights under the Act if the list is operated in a covert manner (6th principle).

The issue of blacklisting on the grounds of trade union membership or activity was covered in section 7 of the Employment Relations Act 1999 (appendix 7); however, this section was never enacted. In a review of this legislation in the Department for Trade and Industry could find no evidence to prove the operation of such a blacklist and again this section was not enacted.

In light of the above an application was made, before Judge Atherton, at Manchester Crown Court on the 18th August 2008 and a search warrant was granted under Schedule 9 of the Act to enter the premises of Haden Young Limited, 42-44 Clarendon Road, Watford, Hertfordshire WD17 1DR.

On execution of the search warrant evidence was recovered which indicated that the access to the blacklist was via Haden Young was gained in the following manner. Staff at Haden Young's regional offices would email [REDACTED] a request for the suitability of prospective new employees (I attach copies of emails evidencing this as appendix 8). The names and national insurance numbers would then be faxed to the following number 01905 796977 (verbally provided to Diana Shields, Investigating officer, by [REDACTED] an employee of Haden Young (statement of Diana Shields attached as appendix 9). The procedure was such that this would be followed up by a telephone call from the recipients of the fax who would advise the staff at Hayden Young whether or not to employ the individuals.

Enquiries have established that the fax number 01905 796977 has been rented to the subscriber Mr I A Kerr trading as The Consulting Association since 5th April 1993, the number is also shown to be installed by the service provider at the address of 4 High Street, Droitwich WR9 8EW.

In light of the above I am of the opinion that further evidence of the operation of the blacklist can be found on the premises at 4 High Street along with other information which would identify other construction companies who seek to use the blacklist.

We request that consideration be given to granting a search warrant under Schedule 9 of the Act to enter the premises at 4 High Street, Droitwich WR9 8EW an address used by Mr I A Kerr to trade as The Consulting Association.

We require entry to the premises for the following purposes;


- To inspect and seize any documentation that may provide evidence of the existence and operation of the blacklist in breach of the data protection principles
- Inspect and seize any documentation or materials relating to telecommunications service providers whose systems may have been used to facilitate the transmission of communications relating to the blacklists

- To inspect and seize any electronic media that may contain evidence of the operation of the blacklist

A warrant is required in this case. Should the occupier refuse to grant access, under paragraph 2(1) of Schedule 9, to the premises this may result in the loss or destruction or removal of evidence and giving notice under paragraph 2(2) of Schedule 9 would therefore defeat the object of entry.

Signed 

David Clancy
Investigations Manager

Signed 

Mick Gorrill
Assistant Commissioner

WARRANT OF ENTRY, SEARCH AND INSPECTION

PURSUANT TO SECTION 50 AND SCHEDULE 9 OF THE DATA PROTECTION ACT 1998

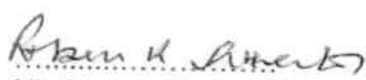
MANCHESTER CROWN COURT

To: David Clancy and all the Officers and Staff of the Information Commissioner

On being satisfied by Information on Oath supplied by David Clancy that there are reasonable grounds for suspecting that an offence under the Data Protection Act 1998 has been or is being committed and that evidence of the commission of an offence is to be found at premises specified in the Information namely 4 High Street, Droitwich WR9 8EW being the trading address of The Consulting Association and that the notice requirements of paragraph 2(1) of schedule 9 of the Data Protection Act 1998 have not been complied with as under paragraph 2(2) they do not apply, because compliance with those provisions would defeat the object of entry.

This Warrant is issued to authorise the Information Commissioner or any of his Officers or Staff at any time within the next seven days of the date of this Warrant to enter the premises at 4 High Street, Droitwich WR9 8EW to search them, to inspect, examine, operate and test any equipment found there which is used or intended to be used for the processing of personal data and to inspect and seize (which includes taking a copy) any documents or other material found there which may be such evidence as is mentioned above.

The Information Commissioner or any of his Officers or Staff also have the powers set out in schedule 9 paragraph 10 of the Data Protection Act 1998 (copies of which are attached hereto).

Signed: 
His Honour Judge Atherton

Sitting at the Manchester Crown Court
Crown Square
Manchester
M3 3FL



Dated this 20th day of February 2009

THIS WARRANT WAS EXECUTED AT
12-35 ON THE 23/2/09 BY

OFFICER OF THE INFORMATION COMMISSIONER'S
OFFICE.

EVIDENCE RELATING TO OFFENCES AND
PROVISIONS OF THE DATA PROTECTION ACT 1998

David Clancy

DAVID CLANCY
INVESTIGATIONS MANAGER

Written evidence from Ian Kerr

My Background

1967-69 Primary school- teacher in Warley, West Midlands.

1969-93 the Economic League.

1993-2009 The Consulting Association.

I was never employed at any time in a police or security role.

Formation of The Consulting Association.

1. The Consulting Association (TCA) was started out of the Services Group (SG), operated by and within the Economic League (EL). A Steering Committee of key people in construction companies of the SG drafted a constitution. Key operating features of TCA were decided by representatives of the major construction companies, who were the original members. I was asked to become its salaried Chief Officer and I signed a Contract of Employment to this effect. I was employed from its inception in April 1993 until closure by the ICO in February 2009, to oversee the services its member companies wanted. I was not the owner of TCA and I never sold information.
2. TCA was originally funded by a £10,000 loan from Sir Robert McAlpine Ltd in 1993, later repaid out of TCA income.
3. It was agreed by TCA's original committee that payment should be made for the intellectual property (IP) relating to construction names which, up to its demise, was part of the EL's bank of names. The actual details of how this £10,000 was determined I do not know, except to say that I believe it would have been a matter between either EL and TCA's committee or between EL's liquidator and Caprim. A payment of £10,000 was made to the directors of Caprim funded by a further loan to TCA from Sir Robert McAlpine Ltd. The two directors of Caprim were the Ex Director General of EL and the Ex Director of Information and Research of EL. This loan was repaid by TCA when subscription income started to come in. I do not know what happened to the rest of the EL's IP. It was of no further interest to TCA.
4. TCA was a non-profit making, unincorporated trade association. It was funded by annual subscriptions paid by all member companies plus quarterly charges for an amount determined by the use each company, and their subsidiaries, made of the reference-checking part of the service. Over time, some companies ceased their membership while new companies joined. Prospective new companies were put forward by existing members and had to be approved by the remainder. At any given time there were approximately 20 member companies paying an annual subscription.

5. Membership of TCA enabled companies to access information held on their behalf. Information sources were the construction industry member companies themselves. Member companies were national contractors and used the service for checking potential employees applying to their major contracts. These ranged from airport runways, govt buildings such as Portcullis House, Admiralty, MOD Whitehall, GCHQ, also Power stations, Liquid Natural Gas terminals, The Jubilee Line, Millennium Dome, PFI Projects – Hospitals & Schools, 2012 Olympics, Road & Rail contracts, Shopping Precincts, Media Centres, Wembley Stadium, Army Barracks etc.
6. My role was to facilitate the exchange of the information between members that they themselves had provided. If TCA held information about a potential employee I simply read out over the phone what was on the reference card to one nominated senior representative of the enquiring company and recorded their employment decision which was either:
 - Not employed.
 - Employed but will take up references and monitor.
 - Employed.

Reasons for decisions ranged from how serious the enquiring company viewed the reason for inclusion, how near to finishing the contract, how short the supply of skill in that trade was, the age of the information etc.

7. The TCA services were threefold and complementary to each other

- (i) A central reference service, allowing member companies to access their own and other member's information.

The Consulting Association (TCA) acted as a central resource, which member companies could access via their unique reference number. Company directors and senior managers provided all the information that was recorded on the cards. I had no part in deciding what information was kept neither about individuals nor on the outcome of their job applications. Any inputs to the body of information were recorded exactly as the main contact dictated, with the co ref and main contact's initials to identify the person who inputted the information. Comments in the press quoting from reference cards were neither my comments nor were they judgements made by me.

The next time a name came up via another company's enquiry, I simply read out what was on the reference card, with neither interpretation nor additional comment to one nominated senior representative of the enquiring company and recorded their subsequent employment decision with their co ref number and main contact initials, and so on. This enabled member company's main contacts to refer directly to them if they wanted further or updated information that, for whatever reason, had not been communicated to me, in order to make a balanced decision regarding suitability for employment. Main contacts knew each other from TCA meeting forums and from numerous other industry platforms so would be able to gauge their colleagues' reasons for someone's inclusion into the system from their personal knowledge, track records and management styles.

The database was not a 'blacklist'. I would never have taken the job on if I had been required to run a system based just on a list of names of people not to be employed. Simply being

named on the database did not mean that an individual would automatically be denied employment. In an average year there would be between 38,000 and 40,000 names referred by member companies to TCA for checking. Of these about 100 would be 'positive', that is, information was known about them. In general, about half of these applicants would be employed and half would not. Employment decisions, together with the initials of the person who made the decision, were recorded on the card. The information held on behalf of the membership was weeded out on a rolling basis.

(ii) Meetings Platforms, specifically for

- General Industrial Relations Matters.
- Environmental Issues.
- Facilities Management.

These ran at eight per year, held in South East, North of England and South Midlands in the main and helped in a large part to foster and develop an effective network within the industry. These enabled managers to discuss trends in the construction industry such as new legislation, implementation of national wage negotiations, skilled labour shortages, health and safety matters and training. These agenda items came from main contacts. Only main contacts attended these and were senior managers or at director level. All had expertise and experience in industrial relations, human resources and union liaison.

(iii) Press Cutting Services

These covered, separately:

- General Industrial Relations.
- Environmental Matters.
- Facilities Management.

These were intended to enhance and expand on meeting discussion topics and were taken mainly from radical press publications and websites.

8. During the second meeting between me, the Chairman of TCA and the ICO I was served with a notice to cease trading or register with the ICO as a data controller. The Chairman told David Clancy of the ICO that TCA would stop trading immediately. David Clancy informed us that there would be a prosecution for failure to register under the Data Protection rules and he said that he had to fire this at someone. That someone turned out to be me. In the presence of the Chairman of TCA I signed a form accepting responsibility. I now believe I was the wrong person to prosecute.

9. Evidence from ICO to Scottish Affairs Committee.

The ICO returned copies of all the information they seized during the initial raid of TCA offices. After the Crown Court prosecution I burned everything. There has been speculation in the press that names are still circulating. I can categorically say that I am

in no way involved in whatever these may be. The ICO took all the lists. The 90-95% of what was left behind consisted of

- Construction Union cards detailing head and regional office addresses, names of officials and the area covered by each one – all public domain information.
- Organisations of interest to construction – all taken from public domain.
- The remaining information consisted of copies of previously sent mail outs, files relating to some key projects – all public domain information.
- Past Meetings files.
- Admin files per member company – copies of invoices.
- Admin files relating to office running costs.
- Stationery
- Some filing cabinet draws were empty.

TCA was set up, funded and controlled by construction companies for their own purposes. There would have been no point served by keeping information on other industries and this was not done.

10. Evidence from Alan Wainwright to SAC

- (i) Initial meeting with him in Tarmac's Manchester Offices.

Mr Wainwright made an assumption that the example I showed him indicated that all the information was computerised. This was not the case. The computer was simply used as a word processor.

- (ii) Mr Wainwright's time at Drake & Scull.

He telephoned TCA office to say he had just started at this company as HR Manager and he was going to recommend to his MD that the company become a TCA member. He needed to know membership charges and procedures for acceptance and after speaking he would get back to me. I undertook to ask the other members' main contacts for their approval (this was the procedure outlined in TCA Constitution). Mr Wainwright did not get back to me and I later heard that he had ceased employment with them.

- (iii) Mr Wainwright's comments regarding other lists.

Mr Wainwright suggested that construction member companies might start compiling their own lists of names that were flagged up by TCA in order to save money. The suggestion was made by him that this would mean TCA would need to branch out into other industries in order to generate funds. This is incorrect. Even if companies were

compiling their own lists, it would have been cheaper and more efficient to send all names through their own system, TCA, rather than attempt to filter their lists themselves.

This statement is true and accurate to the best of my knowledge.

23 November 2012