



House of Commons
Scottish Affairs Committee

Blacklisting in Employment: Interim Report

Ninth Report of Session 2012–13

The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the internet at www.parliament.uk/scotaffcom. A list of Reports of the Committee in the present parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

Committee staff

The current staff of the Committee are Eliot Wilson (Clerk), Duma Langton (Inquiry Manager), Gabrielle Hill (Senior Committee Assistant) and Ravi Abhayaratne (Committee Support Assistant).

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Summary

We live in an age in which conspiracy theories abound—but the blacklisting of building workers by big construction companies via the Consulting Association was no theory—it actually was a real live conspiracy.

The companies set up a structure which allowed them to submit names and details of workers they deemed to be unsuitable to a central list and to check prospective employees, or the employees of subcontractors on their sites, against this list.

The emphasis throughout was on secrecy, with telephone access to sensitive information restricted to only a few, with lists of names submitted destroyed at the end of each working day and no acknowledgement that such a system existed.

As a result of this process, workers were denied employment without explanation, financial hardship was caused, lives were disrupted and sometimes ruined. There was no right of appeal or challenge to the information held or the decisions made, and those affected, though they may have had their suspicions, had no evidence that they were being discriminated against in such a systematic and methodical way.

All this was done by companies who benefitted as a result, since industrial relations or health and safety disputes on site could result in delays to contracts, penalty clauses being invoked and financial loss.

We believe that most of the companies involved are genuine in their regret at having been caught—however, we are not convinced that the process would have been halted had it not been detected. We also completely reject the verbal gymnastics of some companies which asserted that, because not everyone on the blacklist was automatically refused employment, the files did not constitute a blacklist. None of these records was compiled in order to assist any of the individuals involved in finding work.

We note that many of the entries on blacklisting files are little more than gossip, and that whole groups of employees were blacklisted *en masse*.

This is an interim Report, drawing attention to what we have found so far, and the Committee intends to continue examining what happened in the past.

However, we believe that is not sufficient, and we therefore wish to launch consultations on four further topics:

- Whether blacklisting continues;
- What compensation, how determined and from whom, should be provided to those individuals affected;
- Punishment—blacklisting was done for financial gain and latterly was illegal. Throughout the entire process it was morally indefensible, as most of those now caught have accepted. The defence for those individuals operating the system has been that they were simply following orders—should this be acceptable and, if so,

what of those who gave the orders and those who gained financially as a result;

- Whether changes in the law are required in relation to any of the above.

For the avoidance of doubt, we wish to make it absolutely clear that we believe, on the evidence that we have seen so far, that the process of blacklisting by a secret and unaccountable process was and is morally indefensible and that those firms and individuals involved in operating the system should have known this.

1 Introduction

1. Blacklisting is the practice of systematically denying individuals employment on the basis of information, accurate or not, held in some kind of database. It was an activity of which the Economic League, an organisation founded in 1919 to combat what its members saw as subversion and opposition to free enterprise, was accused in the 1980s. This led to media attention and an inquiry by the then-Employment Committee of the House of Commons. The accuracy of the information held by the Economic League and the use to which it was put came under intense scrutiny, and the League was disbanded in 1993.

2. Thereafter, an organisation called the Consulting Association (TCA) maintained information on individuals and supplied it to companies in the construction industry. TCA grew out of the Services Group, a membership organisation of construction firms, which had had links with the Economic League towards the end of its life. The Chief Officer of TCA was Ian Kerr, who had worked for the Economic League for many years. The Consulting Association was raided by the Information Commissioner's Office and closed down in early 2009. We return to TCA in more detail in the next chapter.

3. Following the raid on TCA by the Information Commissioner's Office, regulations were introduced by the previous government to strengthen the law against blacklisting. Denial of a job for discriminatory reasons such as trade union membership was made illegal and blacklisting was statutorily prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010. We consider whether these regulations are sufficient and whether there should be further legislative action later in this Report.

4. This Report was inspired by our previous inquiry into health and safety in Scotland. We heard accusations that workers who raised health and safety concerns, especially in the construction industry, were labelled as 'troublemakers', and likely to be denied further employment. This, added to the fact that the rate of fatal accidents in the workplace is higher in Scotland than in the rest of the UK, gave us significant cause for concern. We therefore decided to conduct an inquiry into the issue of blacklisting, both on grounds of health and safety, and for other activities.

5. This is an interim Report. Although we have held a large number of oral evidence sessions and have received a considerable amount of written evidence, we have by no means concluded our inquiry. The purpose of this Report is to draw the attention of the public to the evidence we have taken so far, to comment on the situation as we see it now, and to seek further information to establish the truth of the matter. Although this Report concentrates on historic incidents of blacklisting and the activities of the Consulting Association, we remain unconvinced that the practice is purely an historic one, and we will continue to seek evidence as to whether individuals are still being blacklisted, as well as consider what further work can be done to eradicate the practice.

6. We are grateful to all the witnesses who have appeared in front of the Committee in the course of this inquiry so far, and to those who have submitted written evidence. As will be discussed later, we have heard testimony which could charitably be described as conflicting. We are far from certain that all of our witnesses have told us 'the truth, the whole truth and nothing but the truth', despite many of them being under oath. We reserve

the right to call some of our witnesses back to give further evidence and clarify issues which we regard as being confused or uncertain. We have also encountered varying levels of cooperation from some of the construction firms with whom we have dealt, and we are grateful to those who have approached this inquiry in a spirit of helpfulness and full disclosure. We regret, however, that this has not universally been the case.

7. We note that Mr Kerr passed away shortly after he gave evidence to us. We offer our condolences to his family, and are grateful to him for his candour and to Mrs Kerr for her continuing assistance.

8. We are also aware that some of the witnesses from whom we have heard evidence are subject to imminent or ongoing litigation. We have been careful to respect the House's *sub judice* resolution and avoid commenting directly on matters before the courts, and we have no wish to prejudice any cases. Again, some witnesses have been more open than others. However, we firmly believe that the issue of blacklisting is an important one and requires wider scrutiny than can be pursued by specific legal actions.

2 The Consulting Association

9. Ian Kerr worked for the Economic League from 1969 until its demise in 1993. In the latter stages of the League's life, he was responsible for the Services Group, an association of construction companies who collated data on potentially disruptive individuals and which was physically housed on the premises of the Economic League. Jack Winder, formerly Director of Research at the League, explained:

The Services Group companies therefore provided the information and added to it. It was put into the Services Group file, which was separate from the League file, and then regurgitated only to those companies.¹

10. Mr Kerr expanded on the purpose of the Services Group:

Within the Economic League there was a group known as the Services Group, which was composed of the construction company members who were already, for the most part, members of the Economic League. Because of the problems that the industry perceived it had—I am going back to the early '70s, before my involvement in these matters—the industry decided it wanted to take steps to cover itself because of the national strike it had had in the early '70s, so that it would not be caught in that way again. Subsequently, for a further subscription, those companies wished to form what was called the Services Group. That was operated within the Economic League on behalf of the construction companies. Economic League staff were given an additional role—or a role—which was to look after the construction companies' needs, which were very wide-ranging.²

11. When the Economic League was wound down in 1993, many of the companies which had been involved in the Services Group decided that the purpose of the group was still valid and sought to carry it on in another form. Mr Kerr told us that he was approached to become 'Chief Officer' of a new organisation, which became the Consulting Association, and that a number of construction companies were involved in its inception. He named them as Amey, Balfour Beatty Civil Engineering, Balfour Beatty Construction, Ballast Wiltshier, Edmund Nuttall, Higgs and Hill, John Laing, John Mowlem, Kier Group, Morrison Construction, Norwest Holst, Sir Robert McAlpine Ltd, Tarmac, Taylor Woodrow, Trafalgar House, Walter Llewellyn and Willmott Dixon.³ In the early days of TCA, Mr Kerr told us that Bovis and G. Percy Trentham were also involved, but quickly dropped out.⁴

12. The Consulting Association was set up with a Chairman and a Vice-Chairman, drawn from the subscriber companies. The first Chairman was Cullum McAlpine, a director of Sir Robert McAlpine Ltd, and the Vice-Chairman was Tony Jennings, of John Laing.⁵ The

1 Q 1724

2 Q 1045

3 Qq 1054-55

4 Q 1065

5 Q 1048

main purpose of TCA was to provide ‘reference checks’ on individuals. Cullum McAlpine confirmed to us that the motive behind TCA was that “It was going to provide a reference service to and from the members.”⁶ For this, subscriber companies paid an annual fee, initially £3,500, and paid an additional charge for each name they submitted for checking.⁷ The transaction in information was two-way: as well as submitting names for checking to TCA’s database, the subscriber companies would also supply information on individuals to be added to the database.

13. Mr Kerr also drew our attention to two other functions which TCA performed. The first was organising meetings for subscriber companies to discuss areas of mutual interest. The second was the monitoring of journals and newspapers to keep members of TCA aware of developments among the ‘radical’ or ‘disruptive’ elements that concerned them. Mr Kerr explained:

I read—I obtained—I made it my business either by subscription or trawling around a lot of the very interesting, I have to say, radical bookshops that existed in London. There used to be a very good one in Camden, which closed, the Compendium. There was another one in Charing Cross and in Caledonian Road called Housmans. They used to be helpful. There was one in Leamington [...] I had a subscription to the Socialist Worker, The Socialist, Labour Research, which was a very good radical and statistical magazine, and to a lot of anarchist magazines, which kept coming and going by the nature of anarchy and anarchists. There was a whole range of fringe publications around then.⁸

14. The origin of the database from which TCA drew its information is still unclear to us. Mr Kerr told us that TCA inherited a core collection of files and reference cards from the Services Group and the Economic League.

At the time that the Consulting Association was being thought about, set up and considered, I was charged with finding officers, putting phone lines in and all that at this point. At that point, the construction names and cards were moved into the Birmingham offices of the Economic League, which is where I was based when I was with the company. The rest of the stuff, to the best of my memory, was still kept in London, or whatever else the League dealt with, be it cards or references. It was my job to go and take those to bring them across once the new offices had been set up, which was the old construction stuff that the companies which were then called the Services Group were party to and helped to generate, I suppose, in principle.⁹

15. Mr Cullum McAlpine, of Sir Robert McAlpine Ltd, confirmed that the information held by the Services Group, under the auspices of the Economic League, was purchased on behalf of TCA for £10,000. This was a controversial decision, according to Mr McAlpine; several of the subscriber companies had become sceptical of the purpose of the by then-

6 Q 1440

7 Q 1068

8 Qq 1089-91

9 Q 1299

defunct Economic League and regarded association with it as potentially damaging in reputational terms. Mr McAlpine told us:

Just as I became chairman, Ian Kerr told us that the construction databank from the Services Group had to be paid for and was going to cost £10,000. A number of the members were not happy about that, because they believed that some of the information in that databank was not the kind of information that they would have put on to their own references to various people. They were very mindful—concerned—that there were political and other references that were not part of what the Consulting Association wished to be involved with, so there was quite a discussion about whether this list should be purchased from the rump of the Economic League. At the end of the day, Mr Kerr persuaded us that it was the only potential database that was available at that time and that it would be under his guidance; he would edit it so that it would become reflective of what the members of the Consulting Association would expect to have contributed into the association themselves.¹⁰

16. It is logical that a database of information compiled on individuals regarded as ‘troublesome’ to the construction industry would be transferred by the Services Group to the Consulting Association. We note that Mr McAlpine confirmed that his company paid £10,000 for the information which had been held by the Services Group, to form the nucleus of the database from which TCA would operate.¹¹ Sir Robert McAlpine Ltd. also provided an additional £10,000 to cover the start-up costs of TCA, the money for the information from the Services Group having been a loan, which was paid back.¹²

17. However, at this point, the involvement of Sir Robert McAlpine Ltd. becomes somewhat more complex. If the information held by the Services Group was transferred to TCA, we heard that information on individuals held by the Economic League itself was destroyed when the League was disbanded in 1993. Mr Winder told us that the League’s records were destroyed by Securicor.

It was decreed by the chairman of the League that all these records should be destroyed. Securicor came to the Birmingham office and took away all the stuff for secure destruction. Stan [Hardy] and I had to sign a statement to that effect for the central council.¹³

There is a distinction to be drawn between information held by the Economic League and the files held by the Services Group. Mr Winder told us that, while the information he had collated for the League was destroyed, the database maintained by the Services Group was taken away by Mr Kerr, to form the core records of the Consulting Association.¹⁴

18. Mr Stan Hardy, the last Director-General of the Economic League, professed bafflement as to why there would have had to have been payment for the records of the

10 Q 1444

11 Qq 1050 and 1490

12 Qq 1490-91

13 Q 1717

14 Q 1723

