Blacklisting in Employment: Final Report

Seventh Report of Session 2014–15

Report, together with formal minutes relating to the report

Ordered by the House of Commons to be printed 18 March 2015
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.

Committee staff

The current staff of the Committee are Rebecca Davies (Clerk), Jyoti Chandola (Clerk), Phil Jones (Second Clerk), Alasdair Mackenzie (Committee Specialist), Helena Ali (Senior Committee Assistant) and Annabel Goddard (Committee Assistant).

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Conclusions and recommendations

The Construction Workers Compensation Scheme

1. While we are critical of the scheme and cast doubt over the motivations behind it, we acknowledge that only the eight companies who set up the scheme (out of the 30 who used the services of TCA) appear to have taken any steps at all to remedy the sins of the past. We do not accept the excuses made from the other companies for their non-participation and interpret this as evidence of their unwillingness to self-cleanse. (Paragraph 9)

2. It is difficult to conclude that the letter and press notice which announced the launch of TCWCS was anything other than a deliberate attempt to mislead. It is almost inconceivable that the legal teams of the eight companies would not have improved such ambiguous drafting unless it was intended to be ambiguous in order to misrepresent the situation. To mislead MPs is a serious issue but to attempt to mislead blacklisted workers and their families, by, at the very least, implying that the trade unions were in agreement with the scheme, is both callous and manipulative. (Paragraph 24)

3. We recognise that only eight of the companies implicated by the ICO’s investigation have stepped up to provide this compensation, and have acknowledged their responsibility to blacklisted workers in a way which other companies have not. However, we conclude, with some regret and disappointment, that the unilateral launch of the scheme and the eight companies’ behaviour in the context of the launch letter and press notice demonstrates a lack of good faith and a parsimony of spirit on the part of those companies—and raises significant doubts as to the sincerity of their motivations and the real extent to which they may or may not have ‘self-cleansed’. (Paragraph 25)

4. Our disappointment with the fact that the scheme was launched without the agreement of the trade unions, and the scheme’s attempt to mask that fact, is compounded by some of the features of the scheme: the low levels of compensation being offered; the fact that those participating in the High Court litigation are not eligible to access the scheme; and the scheme’s failure to incorporate any type of positive action measures to upskill and re-employ the victims of blacklisting. This directly contravenes our previous recommendations that the key principles of apology, adequate compensation and employee assistance for those still of working age should form key parts of any agreed scheme. (Paragraph 35)

5. In line with the recommendations of our previous reports, and as noted in paragraph 22 of this report, we conclude that the unilateral introduction of a compensation scheme was an act of bad faith by those involved, likely to be motivated by a desire to minimise financial and reputational damage rather than being a genuine attempt to address the crimes of the past. (Paragraph 36)
6. Despite the grave flaws in the scheme, our main concern is that the victims of blacklisting receive at least some measure of compensation. We therefore recommend that the ICO redouble its efforts to find and contact as many of the individuals whose names who were on the original TCA list as possible—including the families of those blacklisted workers who may have passed away. While we acknowledge the concerns the trade unions have in sharing data with the blacklisters, they should work with the ICO and the scheme to facilitate rather than obstruct this process. (Paragraph 43)

7. In order to maximise the number of victims who are compensated, we also recommend that the deadline for applications to the scheme be extended to allow more victims of blacklisting to access the scheme. (Paragraph 44)

An historic practice?

8. Given the denial and duplicitous practices we have encountered on the part of many of the companies who were complicit in blacklisting, we have no confidence in the sector to neither self-cleanse on a voluntary basis nor to take sufficiently robust steps to eradicate the practice of blacklisting in the future. A voluntary code of conduct for pre-employment vetting in the construction company is insufficient. A statutory code of practice is required. (Paragraph 50)

9. We are not in a position to comment on recent allegations in relation to police and security service involvement in blacklisting in the construction and other sectors. However, the allegations raise doubt as to whether all the information in relation to the full extent of the practice is the numbers of those affected is known, and is in the public domain. We recommend that our successor Committee should pursue this issue. (Paragraph 52)

Conclusion

10. Despite the progress and positive steps which have been taken during the course of our inquiry, in this final report we have identified that many questions in relation to the practice of blacklisting remain unanswered. We are specifically concerned as to whether the extent and breadth of the practice is fully known, and whether this odious practice is ongoing within the construction industry. We are convinced that the only way to fully answer these questions is through a full Public Inquiry. We recommend that the Government take immediate steps to launch such an inquiry as a matter of priority in the new Parliament. (Paragraph 61)
1 The Committee’s Inquiry

1. The Committee launched its inquiry into Blacklisting on 27 June 2012, and published its first interim report Blacklisting in Employment on 16 April 2013. That report focused specifically on the work of The Consulting Association (TCA). It also considered the issue of compensation for those workers who had been blacklisted. Since the publication of that first report, significant progress has been made in highlighting and addressing issues relating to blacklisting: the Information Commissioner’s Office (ICO) has launched its own investigation, many victims of blacklisting are bringing individual cases to the High Court, and a new compensation scheme, the Construction Workers Compensation Scheme (TCWCS), for blacklisted workers has been launched by eight of the companies that used the services of TCA.

2. On 14 March 2014, we published our second interim report, Blacklisting in Employment: addressing the crimes of the past; moving towards best practice. The purpose of that report was to identify ways of moving forward, both by addressing the crimes of the past and by identifying rules and structures to prevent such widespread and systematic exclusion of workers from employment from ever happening again. It focused on two key areas. First, we considered the historical practice of blacklisting and assessed how those who had participated in this practice should make amends for what they had done, and how victims of blacklisting should be compensated. Second, we set out examples of best practice initiatives in both the public and private sectors to eradicate blacklisting in the construction industry once and for all. In conclusion, we briefly raised the question of whether legislative reform or new legislation is required to eradicate blacklisting.

3. We published our third report in this inquiry Blacklisting in Employment-update, on 19 May 2014. This report included the publication of the UK Government’s response to our second interim report, in the form of a letter from Jenny Willott MP, Minister for Employment Relations and Consumer Affairs, received on 30 April 2014. Responses from the Scottish Government and Welsh Governments were also published with that report.

4. In this final report on the inquiry we provide a brief update on key developments - in particular the Construction Workers Compensation Scheme (TCWCS) which was launched on 4 July 2014. We took oral evidence from Trade Union representatives on 14

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1 Ninth Report of Session 2012-2014, HC 1071
2 Para 24
3 http://ico.org.uk/for_the_public/topic_specific_guides/construction_blacklist
4 http://www.building.co.uk/blacklisting-high-court-cases-put-back-to-spring/5064382.article. The full case is expected to take place later in 2015.
5 The scheme was formally launched on 4 July 2014.
6 Sixth Report of Session 2013-14, HC 543
7 Thirteenth Report of Session 2013-14, HC 1291
8 We received a letter from Nicola Sturgeon MSP, then Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities, on 17 March 2014, and from Jane Hutt AM, Minister of Finance, Welsh Government, on 7 May 2014.
July, and representatives of the TCWCS on 16 July. Here, we outline the detail of the scheme, the response to it, and its progress to date in making payments to victims.

5. Finally, we reiterate the conclusions of our earlier reports, and while we identify that some progress has been made—in large part due to continued pressure and scrutiny by this Committee—we are gravely concerned that, in some areas at least, the practice of blacklisting appears to be ongoing—and many questions remain unanswered. We conclude by recommending that a full Public Inquiry is required in order to finally and fully address these unanswered questions, and to make sure that the practice of blacklisting in the construction industry is eradicated once and for all.

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9 We have also conducted a number of informal meetings with trade union and TCWCS representatives throughout the course of this inquiry.


2 The Construction Workers Compensation Scheme

Blacklisting in the construction industry

6. During the course of our inquiry, we have presented evidence which showed that a number of major construction companies had been members of The Consulting Association (TCA), and paid for the ‘name checking’ services provided by them. On 10 October 2013, eight of those companies, who are due to face litigation in the High Court (Sir Robert McAlpine, Balfour Beatty, Carillion, Costain, Kier, Laing O’Rourke, Skanska and Vinci), announced plans to develop a scheme that will pay compensation to those workers whose names were held by TCA. Andrew Ridley-Barker, Managing Director, VINCI Construction noted that the motivation for TCWCS “came partly from this Committee calling for the construction industry to come together and establish a compensation scheme”.

7. In January 2014, we wrote to all the companies that were implicated in using the services of TCA, but who had yet to sign up to the scheme to ask for the reasons why they had not signed up. Several companies replied, indicating that they are waiting for the final details of the scheme to emerge before making a decision. Others denied making any use of TCA’s blacklisting service, or were not contacted about signing up to the scheme. Copies of the replies received have been published on the Committee’s website.

8. To date, no further companies have joined the scheme. We therefore wrote to the non-participating companies again on 25 February 2015, and expressed our concern at their lack of willingness to participate in the scheme. We asked that the companies outline their reasons for their non-participation and to detail what steps had been taken to remedy the previous behaviour of the company in relation to blacklisting. For example, NG Bailey Group Ltd indicated that they had not ruled out joining the TCWCS, while Amec Foster Wheeler PLC and Bam Nuttall Ltd cited the ongoing litigation and the lack of trade union

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10 Our previous report listed these companies: Amey, AMEC, BAM Nuttall, B Sunley and Sons, Balfour Beatty, Ballas, CB&I, Cleveland Bridge UK Ltd, Costain, Crown House (Carillion/Tarmac), Diamond M&E, Dudley Bower & Co Ltd, EMCOR (UK) plc, Haden Young, John Mowlem Ltd, Lovell Construction Ltd, Miller Construction Limited, Morgan Sindall, Morrison Construction Group, N G Bailey, Renew Holdings plc, Shepherd Engineering Services, Sias Building Services, Spie Matthew Hall, Sunley Holdings plc, Taylor Wimpey, Turiff Construction, Tysons Contractors, Walter Llewelyn and Sons, Whessoe, Wilmott Dixon Ltd, and Vinci

11 http://www.building.co.uk/major-contractors-launch-blacklisting-compensation-scheme/5061950.article

12 Q 482

13 BAM Nuttall, EMCOR, NG Bailey

14 Amey, Shepherd Group, Whessoe, Renew Holdings, AMEC, Miller Construction, Galliford Try (on behalf of Morrison Construction Group), Spie Matthew Hall, Taylor Wimpey

15 Willmott Dixon

16 http://www.parliament.uk/documents/commons-committees/scottish-affairs/Blacklisting%20Compensation%20Scheme%20Correspondence.pdf
support for the scheme as reasons for their current non-participation. Copies of the replies received have been published on the Committee’s website.  

9. In the rest of this chapter we evaluate the TCWCS, and express concerns about its content, the manner in which it was announced, and the progress which has been made in contacting those who may be eligible to participate. While we are critical of the scheme and cast doubt over the motivations behind it, we acknowledge that only the eight companies who set up the scheme (out of the 30 who used the services of TCA) appear to have taken any steps at all to remedy the sins of the past. We do not accept the excuses made from the other companies for their non-participation and interpret this as evidence of their unwillingness to self-cleanse.  

The Scheme

10. The details of the proposed Construction Workers Compensation Scheme (TCWCS) were announced in November 2013 as follows:

- Compensation payments are anticipated to start from a base of £1000 per person up to a maximum of £100,000 per person.
- There will be no admission of liability by the companies involved in the scheme.
- Workers taking part will be required to drop all other legal claims.
- There will be a ‘twin track approach’, with the fast-track offering workers fixed amounts depending on the information contained on their blacklisting file. A longer review would examine losses suffered by the worker. The latter process is intended for more serious cases.
- There is no intention to hold hearings into blacklisted workers’ claims. The majority of cases will be resolved on paper.  

A spokesperson for the scheme claimed that it was designed to “provide affected workers with a genuine and preferable alternative to High Court action by removing many of the hurdles that would be faced through litigation and offering much faster access to compensation payments”.  

17 Ibid.
18 We note in paragraphs 51 and 52 of this report our previous recommendation that self-cleaning was an important step as it places responsibility on contractors to demonstrate how they have changed, and to make amends for their past blacklisting activity. We not only recommended that firms that have been involved in blacklisting should be required to demonstrate how they have self-cleaned before being allowed to tender for future public contracts, and took the view that that firms which do not participate fully in an agreed compensation scheme after having been caught using the blacklisting service of the TCA or any similar conspiracy, should be deemed not to have ‘self-cleaned’.
19 http://www.building.co.uk/ucatt-slams-blacklisting-compensation-scheme/5063110.article
20 Ibid.
11. Representatives of the Blacklist Support Group and a number of trade unions representing construction workers reacted angrily to the details of the proposed scheme.²¹ Steve Murphy, General Secretary, UCATT, described it as “a complete travesty of justice” on the grounds that the levels of compensation suggested were inadequate and that the companies involved refused to accept liability.²² Phil Whitehurst, National Officer for Construction, GMB, told us that “[contractors] are after a cheap package to vindicate what they have done”.²³ Bernard McAuley, National Officer for Construction, Unite, commented that the way that the construction companies have “tried to exclude the trade unions and deal directly with individuals clearly shows contempt”.²⁴

12. On 3 February 2014, the first full round table talks between TCWCS and legal representatives for the trade unions took place. No agreement was reached at these talks.²⁵

13. In our previous reports, we welcomed the principle of the scheme- and set out our conclusions and recommendations as follows:

We welcome the steps taken by the eight construction companies who have set up a compensation scheme for victims of blacklisting. We understand that discussions are underway between interested parties so will not comment on either the details of the scheme or the progress of the negotiations at this stage. However, we would expect that the key principles of apology, adequate compensation—not only for possible loss of earnings—and employee assistance for those still of working age, will form key parts of any agreed scheme.

All the information available to us suggests that most of the firms involved would have continued to use TCA and its sinister and odious practices had they not been caught. This view was epitomised by the appalling performance at the Committee by Stephen Ratcliffe, Director, UK Contractors. In these circumstances, the onus lies with the construction firms involved to clearly and unequivocally demonstrate that their repentance is genuine. This will not be achieved by parsimony, whether of cash or of spirit.

We are also aware of fears that, in the event of a disagreement between the negotiators, there will be a unilateral introduction of a compensation scheme. We believe that, to be accepted as valid, any compensation scheme will have to be agreed between representatives of the sinners and representatives of the sufferers. We would regard any unilateral introduction of a compensation scheme to be an act of bad faith by those involved, likely to be motivated by a desire to minimise financial and reputational damage rather than being a genuine attempt to address the crimes of the past.

²¹ http://www.building.co.uk/blacklisted-workers-storm-out-of-compensation-talks/5063164.article
²² http://www.building.co.uk/ucatt-slams-blacklisting-compensation-scheme/5063110.article
²³ Q 3576
²⁴ Q 3577
²⁵ http://www.building.co.uk/news/no-deal-in-blacklisting-compensation-talks/5066282.article
We re-emphasised these conclusions in our third interim report on blacklisting, published in May 2014. We summarised as follows:

[…]. Negotiations about the scheme are ongoing, and to date, the final details of the scheme have not been announced. While we welcomed the steps taken by the eight construction companies who have set up this scheme, we emphasised our expectation that the key principles of apology, adequate compensation and employee assistance for those still of working age, would form key parts of any agreed scheme. We strongly opposed any unilateral introduction of a compensation scheme. We are therefore pleased to note that the UK Government Minister agreed that the compensation scheme “would only represent an effective sign of reform if it is voluntary”. Ms Willott continued that “it will be for the parties involved to agree on what form this should take and how it can be administered.

The launch of the Scheme

14. It was with some disappointment and surprise therefore that, despite failing to reach agreement with the trade unions, following eight months of discussions, the Construction Workers Compensation Scheme was unilaterally announced and launched on 4 July 2014. In its launch statement, the scheme administrators stated that “the process of engagement with unions and workers’ representatives has been ongoing since November 2013 and, throughout this time the companies have listened to the unions’ views and have made substantial changes to the terms of the scheme in line with their requests”. However, UCATT made it clear that “no agreement was reached with the trade unions or representatives of blacklisted workers prior to the scheme being launched”. In doing so, the scheme ignored our repeated recommendation that it was unacceptable for the companies involved in blacklisting to launch a unilateral scheme.

15. Richard Slaven, Partner, Pinsent Masons (the scheme architects and administrators) defended the decision to unilaterally launch the scheme. He rejected the description of the launch as being ‘unilateral’ as the phrase suggested that it was done by the companies without consultation, which he explained was “just not the case”. He explained that the decision to launch was reached when it became clear that “there was no further progress to be made” in the negotiations with the trade unions, and to do so before the House of Commons summer recess to ensure that this Committee was still sitting.

16. This lack of agreement with the trade unions was masked by the use of ambiguous language in the launch documentation. The scheme’s administrators wrote to members of the Committee, and indeed, to all MPs on 4 July 2014, to give notice of the scheme’s launch. The letter stated that “following eight months of discussions with unions and workers representatives, the scheme has now been finalised and is open to applications.
immediately”.28 This sentence was also used as the opening sentence of the press notice, which accompanied the letter.29 The notes to editors of the same press statement stated that “GMB, Unite and UCATT have called for the development of a scheme to compensate construction workers whose names were held on TCA records. The eight companies are confident that TCWCS meets the unions’ stated objectives for a compensation scheme”.

17. On 7 July 2014, Mr George Galloway MP tabled an EDM which welcomed the “introduction of the Construction Workers Compensation scheme through which workers blacklisted by the far-right organization the Economic League can claim a measure of recompense”. The EDM specifically pointed out that the scheme had “been agreed between trades unions and employers” and subsequently urged “all workers who were unfairly and illicitly blacklisted to claim under the scheme”.30

18. However, in giving evidence to us on 14 July 2014, representatives from Unite, GMB and UCATT made it abundantly clear that no agreement had been reached between TCWCS and the trade unions.31 When asked whether the details of the scheme met the trade unions’ stated objectives, Justin Bowden, National Officer, GMB, replied “there is a resounding no from all of us together”.32

19. On 16 July 2014, we heard evidence from representatives of the construction companies, who had set up the scheme, and the public relations and legal firm (Grayling and Pincent Masons), who were tasked with establishing, launching, publicising and administering the scheme. We directly confronted those present with the allegation that the TCWCS letter of the 4 July was deliberately designed to mislead MPs, and all of those in receipt of the press notice, and to imply that agreement had been reached between TCWCS and the trade unions. Indeed, as the text of the EDM tabled on 7 July in response to that letter illustrates, this had certainly been the outcome.

20. Richard Jukes, Managing Director, Public Affairs, Grayling stated that the letter and press notice were designed “to simply announce the fact that the scheme had been launched” and denied that it was “intended to mislead”.33 He further explained that the drafting was intended to convey that “we had had discussions” with the trade unions, and that “a number of changes to the scheme were made as a result of those discussions”.34

28 Letter sent to all MPs from TCWCS on 4 July 2014.
29 TCWCS Media announcement 4 July 2014.
30 The full text of the Early Day Motion is as follows: That this House welcomes the introduction of the Construction Workers Compensation scheme through which workers blacklisted by the far-right organization the Economic League can claim a measure of recompense; notes that under the fast-track process, where compensation is up to £20,000, applicants do not have to prove actual loss but only that their names were registered by the Economic League; further notes that the full review process, with compensation up to £100,000, is where there is evidence that employers used the League’s register to actively blacklist; points out that the scheme has been agreed between trades unions and employers; and urges all workers who were unfairly and illicitly blacklisted to claim under the scheme, which is independently arbitrated by a former High Court judge.
31 Qq 3666 and 3667
32 Q 3666. The trade unions objections to the scheme are outlined in paragraphs 28 to 33 of this report.
33 Q 3964 and Q 3966
34 Q 3968
21. Callum Tuckett, Group Finance and Commercial Director, Laing O’Rourke, (one of the companies participating in the scheme), asserted that while it was “absolutely” not intended to “mislead anyone,” into believing an agreement had been reached, he conceded that “when you read it cold, it does read that way”. Richard Slaven, Partner, Pinsent Masons accepted that the effect of the letter might have been to mislead but stated that was “absolutely not the intention”. Callum Tucket explained that “incompetence” rather than intent was behind the ambiguous drafting, while Nick Pollard, Chief Executive Officer Balfour Beatty apologised for the “inept drafting”. Andrew Ridley-Barker, Managing Director, VINCI Construction UK, reiterated that this was “not an attempt to deceive deliberately.”

22. Nick Pollard outlined the activities and actions of the eight companies in terms of the new policies and training which the companies had put in place to address blacklisting:

From our perspective, it is an unusual feature that in a very fragmented industry eight companies have come together, and committed and bound together legally to make reparation for the entire industry’s sins. There is no nit-picking about whether this was a Balfour Beatty name or VINCI name if you were part of that infringement called the Consulting Association, or the use of it. The eight have stood in the shoes of 40-odd, and that is so unusual. If that does not indicate sincerity and lack of cheese-paring, I am not sure what does.

He concluded that it was “desperately disappointing that we fail, because of some drafting, to convince you of the sincerity of those actions. I am so sorry”.

23. However, the sincerity of such comments must be bought into question, when it is clear that those acting on behalf of the scheme had the opportunity to correct the ‘misunderstanding’ of their letter. Mr Jukes acknowledged that, although he saw the EDM of 7 July which explicitly stated that the scheme had “been agreed between trades unions and employers”, he “did not take any steps” to correct that misunderstanding, as he “did not join the dots that he (Mr George Galloway) had drawn those conclusions from the letter”. Mr Jukes later apologized for this lack of response, and said that “it was not a conscious decision not to respond to it […] I should have given it further consideration and I did not”.

24. It is difficult to conclude that the letter and press notice which announced the launch of TCWCS was anything other than a deliberate attempt to mislead. It is almost inconceivable that the legal teams of the eight companies would not have improved

35  Q 3983 and Q 3982
36  Q 4075
37  Q 4075
38  Ibid
39  Qq4037 - 4038
40  Q 4039
such ambiguous drafting unless it was intended to be ambiguous in order to misrepresent the situation. To mislead MPs is a serious issue but to attempt to mislead blacklisted workers and their families, by, at the very least, implying that the trade unions were in agreement with the scheme, is both callous and manipulative.

25. We recognise that only eight of the companies implicated by the ICO’s investigation have stepped up to provide this compensation, and have acknowledged their responsibility to blacklisted workers in a way which other companies have not. However, we conclude, with some regret and disappointment, that the unilateral launch of the scheme and the eight companies’ behaviour in the context of the launch letter and press notice demonstrates a lack of good faith and a parsimony of spirit on the part of those companies—and raises significant doubts as to the sincerity of their motivations and the real extent to which they may or may not have ‘self-cleansed’.

Key features of the Scheme

26. While the final details of the scheme had not been agreed with the trade unions, the final details of the scheme did reflect some of the changes which the trade unions had called for. The main change to the initial proposals were to the compensation amounts, whereby the entry level amount to the scheme was increased from £1000 to £4000.

27. The scheme provides two options for accessing compensation—fast track and full review, as outlined below.

**Fast track**

28. Offering fixed levels of compensation, the fast track is designed for those looking for a fast payment against fixed criteria, or for those where only very basic information was held. Under fast track, successful applicants will receive payments starting at £4,000 when only very basic information, such as a name and region, is held rising to a maximum of £20,000 when there is evidence that the records had been accessed to the applicant’s detriment. Under the fast track process applicants simply need to be able to demonstrate they are the person listed on the records; they do not need to prove loss of earnings as awards are based solely on the information held. Once an applicant knows they are eligible and decides to join the fast track, they will receive their compensation payment within two weeks.

**Full review**

29. The full review process is an alternative process for those people where there is evidence that their records were accessed and who would prefer a more detailed investigation of their particular circumstances. The full review provides the opportunity to submit evidence of the impact of TCA records on the individual’s employment. These claims will be assessed by Sir Colin McKay, a retired High Court judge, who will review each application and determine compensation up to a maximum of £100,000 for any individual claimant. Under full review, TCWCS anticipates the assessment of the claim and
payment of compensation will be completed within three to six months. The press release described the scheme as being “significantly faster than the High Court process”.

30. Once an applicant has established that their name was held on TCA records, the scheme covers the cost of independent legal advice to help the applicant decide which option, fast track or full review, is best for their particular claim and circumstances. The announcement also noted that if an applicant already has a claim in the courts and would like to withdraw to join the scheme, TCWCS would also “cover reasonable legal costs accrued to date”.

**Response**

31. Ucatt identified several specific problems with the scheme as follows:

- Workers could receive just £4,000 in compensation.

- Any blacklisting activity which was undertaken by the Economic League—the predecessor to the Consulting Association (TCA)—would be excluded from any substantive claim, despite the TCA effectively being a continuation of the Economic League’s Services Group.

- Not all the companies who were involved in blacklisting construction workers are members of TCWCS.

- The compensation scheme would be a behind closed doors paper-based process which denies workers the opportunity to explain how blacklisting wrecked their lives.

- Under the schemes rules only a few workers would qualify for a so-called full review.

- If a worker agreed to enter the compensation scheme they would be effectively gagged and barred from taking further legal action against the blacklisters.

32. Justin Bowden, National Officer, GMB identified “the biggest single fault of the scheme” as being the amount of compensation that the schemes have been prepared to offer. He explained that, based on GMB analysis, the eight companies involved in the scheme have an annual turnover of approximately £34 billion, with pre-tax profits in excess of £1 billion. He concluded that “on our calculations the price they have placed on 15 years of systematic blacklisting, spying and lying is between the £15 million to £20 million mark”.

33. Mr Bowden identified further problems with the scheme: it excludes people with a pre-1993 (Economic League) file from claiming compensation; is time-limited through to June 2016; the fast track figures provide no payment for defamation or compensation for
distress and emotional harm; and, the scheme does not provide for disclosure of what
information is held on an individual and by whom.44

34. Steve Murphy, General Secretary of UCATT, described the scheme as “a deeply cynical
attempt by the blacklisting companies to try to prevent workers, who have had their lives
ruined, getting justice”.45 Assistant General Secretary, Unite, Gail Cartmail, said: “it is a
disgrace that even our modest demand that blacklisted workers should be provided a job
and upskilled has fallen on deaf ears … The compensation scheme launched by the
blacklisters is an empty gesture”.46

35. Our disappointment with the fact that the scheme was launched without the
agreement of the trade unions, and the scheme’s attempt to mask that fact, is
compounded by some of the features of the scheme: the low levels of compensation
being offered; the fact that those participating in the High Court litigation are not
eligible to access the scheme; and the scheme’s failure to incorporate any type of
positive action measures to upskill and re-employ the victims of blacklisting. This
directly contravenes our previous recommendations that the key principles of apology,
adequate compensation and employee assistance for those still of working age should
form key parts of any agreed scheme.

36. In line with the recommendations of our previous reports, and as noted in
paragraph 22 of this report, we conclude that the unilateral introduction of a
compensation scheme was an act of bad faith by those involved, likely to be motivated
by a desire to minimise financial and reputational damage rather than being a genuine
attempt to address the crimes of the past.

Update

37. The scheme officially launched in July 2014, but the inflow of applications did not
begin until late autumn 2014. Mr Slaven identified two reasons for this delay. First, he
explained that for approximately 12 weeks following launch, solicitors representing the
union group engaged in lengthy correspondence concerning the terms of the scheme,
which delayed any advice being given to their clients on joining the scheme. Second, and as
a direct result of the union group’s objection to the scheme administrator holding the
Consulting Association data for validation and compensation purposes, all enquiry forms
were delayed by initial ICO assessment against TCA data, a process which had been taking
up to 6 weeks.47

38. As of the end of February 2015, 444 formal written enquiry forms had been submitted
to TCWCS. Of these, 210 applicants were validated as eligible to join the scheme (i.e. that
their name appeared on the Consulting Association’s list), and have either joined or have

44 Q 3668
47 Letter from Mr Richard Slaven, 9 March 2015
been provided with the joining documents. 60 further individuals were still awaiting initial assessment by the ICO or their details were being held pending further enquiries to confirm identity. A total of 132 claims had been settled, and have either been paid (104) or were in the process of being paid (28).\textsuperscript{48} The detail of these awards are outlined in the table below.

\begin{table}[h]
\centering
\caption{Breakdown of the 132 awards that have been settled\textsuperscript{49}.}
\begin{tabular}{|c|c|}
\hline
Band 1 £4,000 & Band 2 £7,000 \\
\hline
Band 3 £8,000 & Band 4 £20,000 \\
\hline
Full Review* & \\
\hline
\end{tabular}
\end{table}

39. Mr Slaven described these figures as “encouraging”, especially in the context “considerable headwinds in communicating and administering the scheme” as outlined above.\textsuperscript{50}

40. Trade union representatives have indicated that 643 individuals are part of the action which is proceeding through the High Court, and that they have directed a further 37 individuals to the compensation scheme. Based on these figures, we estimate that approximately 1000 of the 3,213 (whose names were on TCA list) are currently in the system and seeking recompense. This means that somewhere in the region of 2000 individuals whose names were on the TCA list are neither part of the litigation nor part of the compensation scheme.

41. One of the main problems faced by the scheme was finding ways to contact the 3000 individuals whose names were on TCO list. While some individuals may have suspected they were being discriminated against while seeking employment, this was a secret list, and those whose names were on it were unaware of this fact, or indeed, that such a list existed at all. Given that much of the data is limited, and is now out of date, Mr Slaven indicated that contacting the victims of blacklisting had been a “major challenge”. The Information Commissioners Office (ICO) has access to the original list, and has worked with the DWP to find current addresses for approximately 1000 individuals by matching the national insurance numbers which were included on the TCA list. The ICO have contacted

\begin{flushleft}
\textsuperscript{48} Ibid.
\textsuperscript{49} Ibid. No applicant eligible to join the Full Review which requires proof of loss (maximum award £100,000) has yet chosen to do so.
\textsuperscript{50} No applicant eligible to join the Full Review which requires proof of loss (maximum award £100,000) has yet chosen to do so.
\end{flushleft}
approximately 1,700 individuals, and, as noted above, just under 1000 of these are ‘in the
system’.

42. Richard Slaven identified therefore that the single most important factor that will
prevent the scheme from compensating a greater percentage of the affected individuals “is
an absence of direct and repeated communication to those affected”.51 Unlike the union
group, TCWCS administrators do not have access to the historical TCA data which
contains past addresses and other information which might help identify and target
affected individuals, nor to the current addresses identified by the ICO. The ICO has,
under the direction of the court, conducted a limited exercise to communicate both the
litigation and the scheme to those for whom it holds current details, but Richard Slaven
argued that “this falls well short of the repeat direct communication the scheme
administrator would have conducted”.52

43. Despite the grave flaws in the scheme, our main concern is that the victims of
blacklisting receive at least some measure of compensation. We therefore recommend
that the ICO redouble its efforts to find and contact as many of the individuals whose
names who were on the original TCA list as possible— including the families of those
blacklisted workers who may have passed away. While we acknowledge the concerns the
trade unions have in sharing data with the blacklisters, they should work with the ICO
and the scheme to facilitate rather than obstruct this process.

44. In order to maximise the number of victims who are compensated, we also
recommend that the deadline for applications to the scheme be extended to allow more
victims of blacklisting to access the scheme.

Comparisons

45. It is difficult for us to assess the relative success of the scheme as there are no similar
comparators. Richard Slaven explained that statutory redress schemes for industrial
injuries, for example, are not helpful comparators because the population of affected
individuals is generally unknown.53

46. Voluntary redress schemes, such as the Voicemail Interception Compensation Scheme
introduced by News International in April 2011 (the redress scheme most similar to
TCWCS architecture) provided a choice of compensation through the scheme as an
alternative to a Court process. It has been reported that the News International scheme
over its entire life of two years, settled a total of 60 claims. That settlement figure is against

51 Letter from Mr Richard Slaven, 9 March 2015
52 Ibid.
53 One of the most recent redress schemes for those who purchased card and identity protection policies from CPP Group PLC is
reported by the FCA to have attracted take-up of 33.8% of eligible claimants over its life, despite those affected having been
contacted direct on several occasions.
250 applications and a total population of affected individuals estimated at between 1,000 and 4,000.54

54 Letter from Mr Richard Slaven, 9 March 2015
3 An historic practice?

Contemporary blacklisting

47. In July 2014, trade union representatives told us that they believed that the practice of blacklisting in the construction industry was ongoing. Justin Bowden identified Atlanco Rimec as a “contemporary blacklister”, and stated with “all confidence” that Atlanco Rimec has been undertaking blacklisting of workers in the extremely recent past. Atlanco Rimec was set up in 1994 as a recruitment agency in Ireland. It is now a multi-national organisation with offices in the UK, Denmark, Norway, Portugal, Spain, Cyprus and Poland. It consists of a “complex and sophisticated web of over 60 companies” throughout Europe, but is essentially an Employment Agency with a database of over 50,000 names.

48. Of particular concern to us was the allegation made by the trade union representatives that several of the companies who operated the Consulting Association database use Atlanco Rimec to provide labour for them. Justin Bowden claimed to have “uncovered an apparent crossover” between those two lists. Gail Cartmail suggested that “the spread of the effect of this [Atlanco Rimec] blacklisting is possibly wider than even those companies that subscribed to TCA”. We have not been in a position to explore these claims in greater detail, but suggest that this issue is pursued by our successor Committee in the new Parliament.

Code of Conduct

49. In our previous reports we noted that the real test of whether or not a company has self-cleansed included a number of elements, including a transparent employment policy and positive action measure to upskill and re-employ previously blacklisted workers. A TCWCS statement noted that:

all eight companies recognise that the activities of TCA were unacceptable and regret their involvement; they are sorry that information was held about individuals and for any hardship suffered as a result. To demonstrate their commitment to ensuring that such activity remains firmly in the past, the companies intend to sign up to the voluntary code of conduct that is being developed by the Chartered Institute of Personnel and Development to ensure full transparency in pre-employment vetting processes.

Peter Cheese, Chief Executive of the CIPD (the professional body for HR and people development) confirmed that he had been contacted by the schemes administrators in December 2013 to produce a Code of Conduct on Pre-Employment vetting specifically for

55 Q 3703
56 GMB written evidence. (BIE0003)
57 Ibid
58 Q 3708
59 www.tcwcs.co.uk
the construction sector. Given the attitude of the majority of the companies complicit in this practice in the past, and the concerns noted above that the practice of blacklisting may be ongoing, Gail Cartmail identified the need for a “statutory code of practice”.

50. Given the denial and duplicitous practices we have encountered on the part of many of the companies who were complicit in blacklisting, we have no confidence in the sector to neither self-cleanse on a voluntary basis nor to take sufficiently robust steps to eradicate the practice of blacklisting in the future. A voluntary code of conduct for pre-employment vetting in the construction company is insufficient. A statutory code of practice is required.

**Police and Security Service involvement**

51. During the timeframe of our inquiry, there have been regular allegations in the press in relation to police and security service involvement in blacklisting. We did not pursue this issue - as it detracted from the main focus on the two main issues of seeking redress for blacklisted workers and recommending changes in term of procurement and best practice in employment in an attempt to eradicate the practice of blacklisting in the construction industry. In early March 2015, UCATT published a statement which stated that “the union was infiltrated by the Metropolitan Police’s Special Demonstration Squad (SDS). The revelation creates fresh questions about the police’s role in the blacklisting of trade unionists and their covert manipulation of working class organisations”.

52. We are not in a position to comment on recent allegations in relation to police and security service involvement in blacklisting in the construction and other sectors. However, the allegations raise doubt as to whether all the information in relation to the full extent of the practice is the numbers of those affected is known, and is in the public domain. We recommend that our successor Committee should pursue this issue.

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60 Letter from Mr Peter Cheese, 13 March 2015
61 Q 3673
62 http://www.ucatt.org.uk/ucatt-exposes-infiltration-police. On 12 March 2015, Neil Findlay MSP submitted motion number S4M-12653to the Scottish Parliament which highlighted the issue of security service involvement. The motion read as follows:That the Parliament welcomes the launch on 12 March 2015 in the House of Commons of the book, Blacklisted, by Dave Smith and Phil Chamberlain; notes that the book exposes what it argues is an illegal blacklisting scandal orchestrated by some of the largest multinational construction companies in the UK; understands that it uncovers previously unseen documentary evidence about the role of undercover police spying units in colluding with this and exposes the way in which ordinary men and women were believed to be systematically denied employment simply for standing up for their basic rights, and further understands that across Scotland and the rest of the UK these companies are still being awarded publicly-funded contracts despite never admitting wrongdoing nor apologising and paying compensation to the workers affected
4 Conclusion

53. The odious practice of blacklisting has blighted the working lives of many people in Scotland and elsewhere in the UK. The extent of this practice, the measures required to stop it, and to make amends for the consequences of its use in the past, have already been the subject of three interim reports by this Committee during this Parliament. We stand by and reiterate the conclusions and recommendations of those reports.

54. In our second report on this matter, *Blacklisting in Employment: addressing the crimes of the past; moving towards best practice*, we welcomed the Welsh Government’s pioneering approach to tackling blacklisting through public procurement.\(^{63}\) One of the key elements of that approach was that companies who have participated in blacklisting should undertake self-cleaning before being allowed to bid for future public contracts.\(^{64}\) We concluded that self-cleaning was an important step as it places responsibility on contractors to demonstrate how they have changed, and to make amends for their past blacklisting activity. We not only recommended that firms that have been involved in blacklisting should be required to demonstrate how they have self-cleaned before being allowed to tender for future public contracts, we were also of the view that firms which do not participate fully in an agreed compensation scheme after having been caught using the blacklisting service of the TCA or any similar conspiracy, should be deemed not to have ‘self-cleaned’.\(^{65}\) We welcome the Welsh Government’s recent announcement (11 March 2015) which bans the use of false self-employment umbrella payroll contracts on public works contracts.\(^{66}\)

55. In our previous reports we also concluded that the UK and devolved Governments should recognise the absolutely crucial role that they play as client or funders of the vast majority of construction work in the UK; and that the role of the client, properly exercised, allows enormous control, not only over the construction companies but also their subcontractors and suppliers.\(^{67}\) As noted above, we recommended that firms that have been involved in blacklisting should be required to demonstrate how they have self-cleaned before being allowed to tender for future public contracts, and those who have not self-cleaned should not be allowed to tender for public contracts.

56. A central theme of our inquiry throughout has been to seek adequate redress for the victims of blacklisting and for their families. We have not made comment on the Group Litigation which is currently proceeding through the High Court, as this would not be appropriate. However, we have made regular comment on the Construction Workers Compensation Scheme, initially in an attempt to facilitate agreement between the scheme

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63 HC 543 para 30  
64 HC 543, paras 28-32  
65 Para 31  
66 http://www.constructionenquirer.com/2015/03/12/welsh-slap-ban-on-umbrella-payroll-firms/  
67 HC 543, Para 54 and HC 1291, para 7
and the trade union workers in order to guarantee the most robust scheme and best possible outcome for the victims of blacklisting and their families.

57. This report focuses on that scheme. We are disappointed that agreement was not reached between the scheme and the trade unions and that the scheme was subsequently launched unilaterally. Despite lack of agreement, the material produced to launch the scheme- including a letter to all Members of Parliament- implied that agreement had been reached. This misleading wording has cast doubt on the sincerity and motives of the companies behind the scheme. Our disappointment was further compounded by some of the details of the scheme: the low levels of compensation being offered; the fact that those participating in the High Court litigation are not eligible to access the scheme; and the scheme’s failure to incorporate any type of positive action measures to upskill and re-employ the victims of blacklisting.

58. Despite the flaws in the scheme, our main concern is that the victims of blacklisting receive at least some measure of compensation. We therefore call on the ICO to redouble its efforts to find and contact as many of those names who were on the original TCA list as possible. While we acknowledge the concerns the trade unions have in sharing data with the blacklists, they should work with the ICO and the scheme to facilitate rather than obstruct this process. Our key concern is that whether through litigation or through participation in the compensation, workers, the victims of blacklisting and their families are compensated. This is why we recommend that the deadline to the scheme be extended to allow those participating in the litigation to also access the scheme.

59. While we have been critical of the scheme, the amounts of compensation offered and the motivations of the companies behind the scheme–we acknowledge they have at least taken a small step to acknowledge their past behaviour and make amends. Other companies have not stepped up to the mark–and have neither acknowledged their complicity in blacklisting not taken any steps to eradicate this practice in the future. This attitude, combined with inadequate voluntary codes of best practice in terms of recruitment in the sector does not provide us with a sufficient guarantee that the practice of blacklisting is an exclusively historic one.

60. Our concerns in this area have been exacerbated both by recent allegations in relation to the employment practices of Atlanco Rimec, and the dubious practices of bogus self-employment/umbrella companies as highlighted in our Zero hours contracts in Scotland report. We stand by our previous recommendations that direct and transparent recruitment practices are by far the best way of eradicating blacklisting in the construction industry, and that such practices should be standard for all public sector contracts in the construction industry.

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68 10th Report of Session 2013-14, Zero hours contracts in Scotland: Interim Report, HC 654, 14 April 2014, paras 111-113
69 HC 543, para 42-48 and HC 1291, para 11
70 HC 543 para 45 and HC 1291, para 11
61. Despite the progress and positive steps which have been taken during the course of our inquiry, in this final report we have identified that many questions in relation to the practice of blacklisting remain unanswered. We are specifically concerned as to whether the extent and breadth of the practice is fully known, and whether this odious practice is ongoing within the construction industry. We are convinced that the only way to fully answer these questions is through a full Public Inquiry. We recommend that the Government take immediate steps to launch such an inquiry as a matter of priority in the new Parliament.
Appendix 1: Letter to all MPs, from John Taylor, The Construction Workers Compensation Scheme, 4 July 2014

The Construction Workers Compensation Scheme (TCWCS)

You will recall that I wrote to you on 8 October 2013 advising that a number of construction companies were developing a scheme to compensate construction workers whose names were on The Consulting Association (TCA) database and I wanted to provide you with the details of that scheme, which was launched this morning.

Following eight months of discussions with unions and workers representatives, the scheme has now been finalised and is open to applications immediately. It will remain open for two years.

The Compensation Scheme

The scheme provides two options for accessing compensation – fast track and full review.

Offering fixed levels of compensation, the fast track is designed for those looking for a fast payment against fixed criteria, or for those where only very basic information was held.

Under fast track, successful applicants will receive payments starting at £4,000 when only very basic information, such as a name and region, is held rising to a maximum of £20,000 when there is evidence that the records had been accessed to the applicant’s detriment.

Under the fast track process applicants simply need to be able to demonstrate they are the person listed on the records; they do not need to prove loss of earnings as awards are based solely on the information held. TCWCS anticipates that the entire fast track process, from first enquiry to payment of compensation, should be completed within eight weeks.

The full review process is an alternative process for those people where there is evidence that their records were accessed and who would prefer a more detailed investigation of their particular circumstances. The full review provides the opportunity to submit evidence of the impact of TCA records on the individual’s employment. These claims will be assessed by Sir Colin McKay, a highly respected retired High Court judge, who is completely independent of the TCWCS and the eight companies. Sir Colin McKay will review each application and determine compensation up to a maximum of £100,000 for any individual claimant. TCWCS anticipates that the full review process, from first enquiry to the payment of compensation, should be completed within seven months, which is significantly faster than the High Court process.

Once an applicant has established that their name was held on TCA records, the scheme covers the cost of independent legal advice to help the applicant decide which option, fast track or full review, is best for their particular claim and circumstances. If an applicant
already has a claim in the courts and would like to withdraw to join the scheme, TCWCS will also cover reasonable legal costs accrued to date.

The scheme is being run by an independent administration specialist. The application and claims handling process has been made as simple as possible with online, postal and telephone services available.

In addition to compensation payments, the companies are committed to offering refresher training where necessary to ensure that the skills, knowledge and certification of scheme applicants are up to date and are not an impediment to future employment.

Finally, all eight companies have confirmed their intention to sign up to a new code of conduct being produced by the Chartered Institute of Personnel and Development (CIPD).

I attach a copy of the full press release which I hope is helpful and, should you have any questions or issues you wish to raise, I hope you will feel free to contact me via Richard Jukes.
Appendix 2: Media Announcement – The Construction Workers Compensation Scheme Launches, 4 July 2014

The Construction Workers Compensation Scheme (TCWCS) announced today that, following eight months of discussions with unions and workers’ representatives, the scheme has now been finalised and is open to applications immediately. The scheme will remain open for two years.

- Providing financial compensation to those whose names were held on The Consulting Association (TCA) records, those whose names were on the Economic League records that were also held by TCA, or the estates of those whose names were held but who have since died

- Compensation levels significantly higher than those through the High Court

- A much faster route to compensation than a lengthy court process

- Applicants don’t need to prove actual loss to access compensation, nor do they need to prove they have been the victims of unlawful activity

- Paper-based submissions remove the stress of court appearances

- Legal costs covered by the scheme – free to applicants

- A choice of two processes for accessing compensation - fast track and full review

- Fast track applicants do not need to prove actual loss. Compensation is set at predetermined levels, starting at £4,000 for those where minimal information was held, and rising to £20,000 where there is evidence that records had been accessed

- The full review process is an alternative for those where there is evidence their records were accessed and who would prefer a more detailed investigation into their particular circumstances. An adjudicator will assess claims and set compensation up to a maximum of £100,000

The process of engagement with unions and workers’ representatives has been ongoing since November 2013 and, throughout this time the companies have listened to the unions’ views and have made substantial changes to the terms of the scheme in line with their requests.

All eight companies recognise that the activities of TCA were unacceptable and regret their involvement; they are sorry that information was held about individuals and for any hardship suffered as a result. To demonstrate their commitment to ensuring that such activity remains firmly in the past, the companies intend to sign up to the voluntary code of
conduct that is being developed by the Chartered Institute of Personnel and Development to ensure full transparency in pre-employment vetting processes.

The Compensation Scheme

The scheme provides two options for accessing compensation – fast track and full review.

Offering fixed levels of compensation, the fast track is designed for those looking for a fast payment against fixed criteria, or for those where only very basic information was held.

Under fast track, successful applicants will receive payments starting at £4,000 when only very basic information, such as a name and region, is held rising to a maximum of £20,000 when there is evidence that the records had been accessed to the applicant’s detriment.

Under the fast track process applicants simply need to be able to demonstrate they are the person listed on the records; they do not need to prove loss of earnings as awards are based solely on the information held. Once an applicant knows they are eligible and decides to join the fast track, they will receive their compensation payment within two weeks.

The full review process is an alternative process for those people where there is evidence that their records were accessed and who would prefer a more detailed investigation of their particular circumstances. The full review provides the opportunity to submit evidence of the impact of TCA records on the individual’s employment. These claims will be assessed by Sir Colin McKay, a highly respected retired High Court judge, who is completely independent of TCWCS and the eight companies. Sir Colin McKay will review each application and determine compensation up to a maximum of £100,000 for any individual claimant. Under full review, TCWCS anticipates the assessment of the claim and payment of compensation will be completed within three to six months. This is significantly faster than the High Court process.

Once an applicant has established that their name was held on TCA records, the scheme covers the cost of independent legal advice to help the applicant decide which option, fast track or full review, is best for their particular claim and circumstances. If an applicant already has a claim in the courts and would like to withdraw to join the scheme, TCWCS will also cover reasonable legal costs accrued to date.

The scheme is being run by an independent administration specialist. The application and claims handling process has been made as simple as possible with online, postal and telephone services available.

In addition to compensation payments, the companies are committed to offering refresher training where necessary to ensure that the skills, knowledge and certification of scheme applicants are up to date and provide no impediment to future employment.

Contacting TCWCS or making an initial enquiry

Full details of the terms of the scheme – from the application process to levels of compensation - can be found at www.tcwcs.co.uk. Any construction worker, or the family of a deceased construction worker, who believes they may have been affected by TCA records can download an initial enquiry form which is also available from the TCWCS
free-phone helpline on 0800 980 8337. The helpline will be open on Saturday 5 and Sunday 6 July from 9am-5pm in addition to the normal weekdays opening hours.
Appendix 3: Letter to Chair from Richard Slaven, Partner, Pinsent Masons LLP, 9 March 2015

Dear Mr Davidson

The Construction Workers Compensation Scheme

You have asked for us to provide an update to the committee on the Construction Workers Compensation Scheme (the “Scheme”).

Although the Scheme officially launched in July 2014 two factors ensured that the inflow of applications did not commence until, effectively, late autumn 2014.

First, for approximately 12 weeks following launch, solicitors representing the Claimant/union group engaged in lengthy correspondence concerning the terms of the Scheme, which appears to have delayed any advice being given to their clients on joining the Scheme. Second, and as a direct result of the Claimant/union group’s objection to the Scheme Administrator holding the Consulting Association data ("TCA data") for validation and compensation purposes, all enquiry forms were delayed by initial ICO assessment against TCA data. That process had been taking up to 6 weeks although we have continued to work on solutions to reduce this delay. The effect of these factors is that a sizeable majority of applications to the Scheme have been submitted only in the last 4 months or so.

The Scheme statistics for the period up to the end of February 2015 are as follows:

- **444** formal written enquiry forms have been received.
- **210** applicants have been validated as eligible to join the scheme and have either joined or have been provided with the joining documents for execution.
- **60** further individuals are still awaiting initial assessment by the ICO or are being held pending further enquiries to confirm identity.
- **132** claims have been settled and have either been paid (104) or are in the process of being paid (28).
In addition, you have asked for a breakdown of the 132 awards that have been settled. The position is set out in the table below.

*No applicant eligible to join the Full Review which requires proof of loss (maximum award £100,000) has yet chosen to do so.

To put the above figures in context, we understand that as at the end of February 2015 there were 325 Claimants involved in the group litigation, parts of which have been underway for at least three years.

Whilst these early Scheme figures are encouraging, they have been achieved despite considerable headwinds in communicating and administering the Scheme. This will, inevitably, have negatively impacted take-up. Notwithstanding these extrinsic obstacles, the Scheme has been widely advertised at a local and regional level, with information also provided to media outlets to raise awareness. Very few applications, however, have resulted from this activity. As we have emphasised to your Committee in the past, the Scheme is attempting to reach 3,000 or so affected individuals as against a wider UK population of 62 million. Many of those that the Scheme is trying to reach are of retirement age and will have left work.

As we have sought to explain throughout, it remains clear that the single most important factor that will prevent the Scheme from compensating a greater percentage of the affected individuals is an absence of direct and repeated communication to those affected. The ICO has, under the direction of the court, conducted a limited exercise to communicate both the litigation and the Scheme to those for whom it holds current details, but this falls well short of the repeat direct communication the Scheme Administrator would have conducted.

Unlike the Claimant/union group the Scheme Administrator does not have the benefit of current or past members contact information. Further, as a result of objections from the Claimant/union group, the Scheme Administrator does not have access to the historical TCA data which contains past addresses and other information which might help identify and target affected individuals. Finally, the Claimant/union group has also prevented the Scheme gaining access to the current addresses of some 1,100 individuals which were
matched by the Department of Work and Pensions, from National Insurance numbers held on TCA data. These objections have been made despite the fact that the Scheme provides that all applicants receive legal advice so that they can make an informed decision on whether to join the Scheme.

You have asked whether it is possible to compare take up of the Scheme by reference to other redress schemes. As we highlight above the Scheme operation is still in its early stages. You will also understand that all schemes must be seen in their specific context: Statutory redress schemes for industrial injuries for example are not helpful comparators because the population of affected individuals is generally unknown. Schemes such as FCA-supervised consumer redress schemes (under s404 FSMA 2000) have the ability to contact affected individuals. One of the most recent redress schemes for those who purchased card and identity protection policies from CPP Group PLC is reported by the FCA to have attracted take-up of 33.8% of eligible claimants over its life despite those affected having been contacted direct on several occasions.

Voluntary redress schemes, such as the Voicemail Interception Compensation Scheme introduced by News International in April 2011 (the redress scheme most similar to our Scheme in architecture) provide a choice of compensation through the scheme as an alternative to a Court process. It has been reported that the News International scheme over its entire life of two years, settled a total of 60 claims. That settlement figure is against 250 applications and a total population of affected individuals estimated at between 1,000 and 4,000.

I hope the information contained in this letter is helpful to the Committee and I would be happy to provide further information or clarification if required.

Yours Sincerely

Richard Slaven

Partner

Pinsent Masons LLP
Appendix 4: Letter to Chair from Peter Cheese, Chief Executive, CIPD, 12 March 2015

Dear Mr Davidson

Thank you for inviting me to make a further written submission to you in relation to the SAC’s Blacklisting Inquiry.

Pre-employment Vetting

When I gave evidence to the Committee in September 2013, I informed you of our intention to publish employer guidance on pre-employment vetting, taking into account developments in social media and the increased availability of information online. The report, Pre-employment checks: an employer’s guide, was published in December 2013 (see below link for your reference) http://www.cipd.co.uk/hr-resources/guides/pre-employment-checks.aspx

The report is intended to provide advice and guidance to employers across all sectors on how to conduct pre-employment checks in a responsible and ethical way. It clearly underlines the illegality and of using blacklists in employment and their inappropriateness in any context.

Following the publication of our pre-employment checks guidance, I was contacted in December 2013 by the Construction Workers Compensation Scheme (CWCS), inviting the CIPD to produce a Code of Conduct on Pre-employment Vetting specifically for the construction sector. We produced a draft code in discussion with the employers and trade unions and have handed this draft over to the CWCS to progress in collaboration with the relevant trade unions.

In addition to promoting our own specific guidance on pre-employment checks, we have also been working with the Recruitment and Employment Confederation (REC) to promote its Good Recruitment Charter, which describes nine key principles for good practice in relation to recruitment more broadly.

CIPD Investigation into blacklisting in employment

I also stated that I would inform the Committee as and when decisions were taken in relation to the investigations into CIPD members alleged to have blacklisted during construction recruitment (ref Q2997 of the transcript of my evidence).

At that point in time, a CIPD Investigation Panel was sourcing and reviewing all available evidence in order to investigate allegations of blacklisting against a small number of our Members.
As a result of these investigations, some Member referrals were closed by the Panel with no case to answer as they did not find evidence of alleged breaches of our Code of our Professional Conduct (‘Code’).

Others have proceeded to a Disciplinary Hearing on the basis that the Members appear to have demonstrated conduct that was in breach of our Code. A Disciplinary Panel hears the evidence and determines whether the Code has been breached; if so the sanction to be applied and makes a recommendation to the CIPD on publication of the findings.

These are in progress and we expect them to have concluded in May of this year (subject to the right of appeal where relevant). However, please note the decision by the CIPD on whether it is in the public interest or the interest of the profession to publish specific details of each case, the Member and the penalty applied will be delayed.

This is because some referrals were placed on hold by the Investigation Panel as a result of a Group litigation order in the High Court (i.e. parallel proceedings) limiting the Panel’s ability to collect evidence. We are continuing to review and taking advice as to when it will be possible for those investigations to continue.

When our Annual Review is published in November 2015, we will report in aggregate a summary of the cases upheld at http://www.cipd.co.uk/codeofconduct

I hope this answers your questions but please let me know if I can be of further assistance. I would also like to again reiterate to the Committee our interest and commitment in eradicating discriminatory recruitment practices and improving standards and behaviours for the future.

Yours sincerely

Peter Cheese

Chief Executive
Draft Report (Blacklisting in Employment: Final Report), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 61 read and agreed to.

Papers were appended to the Report.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 24 March 2015 at 2.00p.m.]
Witnesses

The following witnesses gave oral evidence. The evidence is available on the Committee's website at www.parliament.uk/scotaffcom

Monday 14 July 2014

Gail Cartmail, Assistant General Secretary, Unite, Justin Bowden, National Officer, GMB, and Mr Steve Murphy, General Secretary, UCATT  

Wednesday 16 July 2014

Callum Tuckett, Group Finance and Commercial Director, Laing O'Rourke, Andrew Ridley-Barker, Managing Director, VINCI Construction UK, Nick Pollard, Chief Executive Officer, Balfour Beatty, Richard Slaven, Partner, Pinsent Masons, and Richard Jukes, Managing Director, Grayling Public Affairs

Q3587 – 3709

Q3710 – 4161
Published written evidence

The following written evidence was received and can be viewed on the Committee’s inquiry web page at www.parliament.uk/blacklisting-in-employment. BIE numbers are generated by the evidence processing system and so may not be complete.

1. Balfour Beatty (BIE0010)
2. Blacklisting Scheme Correspondence (BIE0022)
3. Cipd (BIE0021)
4. Edward Allan (BIE0002)
5. GMB - Atlanco Rimec (BIE0003)
6. GMB - Case Study (BIE0006)
7. GMB - Potential awards (BIE0007)
8. GMB - The Construction Workers Compensation Scheme (BIE0004)
9. Laing O'rourke (BIE0011)
10. Letter to Chair from TCWCS (BIE0008)
11. Nicola Sturgeon MSP (BIE0001)
12. Pinsent Masons (BIE0014)
13. Pinsent Masons LLP (BIE0009)
14. Unite (BIE0013)
15. Vinci Plc (BIE0012)
## List of Reports from the Committee during the current Parliament

The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

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