

# Construction sector

---

## *BLACKLISTING: UNITE LEGAL GUIDE FOR CONSTRUCTION WORKERS*

Unite is assisting its members who have appeared on the recently exposed blacklist and would urge any member who believe that they may be on the list to contact the information commissioner, details below.

Members will all be aware of recent press reports concerning the activities of the Consultancy Association. This organisation has been raided by the Information Commissioner's Office and found to be holding a blacklist of some 3,200 workers in the construction industry.

It appears that construction industry employers would consult this organisation when deciding to offer work to a particular worker and the obvious conclusion is that if workers were on the blacklist then employers may then have decided not to make an offer of employment.

The blacklisting of workers gives rise to potential claims under s.137 of the Trade Union and Labour Relations (Consolidation) Act 1992 which makes it unlawful to refuse employment to a person on trade union grounds, i.e. that he (or she) is or is not a member of a union.

- **THERE IS A TIME LIMIT OF THREE MONTHS LESS ONE DAY FROM THE DATE OF THE REFUSAL.**

### ***Tribunal claims***

---

Members who are concerned that they may be on this black list may therefore have tribunal claims. Such members should be advised as follows:

1. That if they fear they have been put on a blacklist they may have a claim under s.137.
2. To establish whether they have such a claim they should first ring a special number provided by the Information Commissioner from 9.00 am onwards on 16 March. The numbers to call are **08456 306 060** and **01625 545 745**. Members will be asked to give their name, date of birth and national insurance number. The Commissioner's Office will then search the Consultancy Association's database.

**If details relating to the member are not revealed they will be informed straightaway.**

**However, if the details provided by the member are likely to match the details on the database, the Commissioner's Office will ask the member to provide further identification in writing.**

Once verification and matching with the database has been completed, the Commissioner's Office

will contact the member to confirm if information is held on the database about them. A copy of the information held on the database will then be provided to the member.

**3. If members discover that they are on the list they should immediately contact their local union office and ask to speak to a Construction officer.**

4. Members should be warned about potential limitation problems. You only get three months less one day to bring a claim. It may be the case that members were refused more than three months, less one day ago. In these circumstances it might be possible to persuade the tribunal to hear the claim anyway, but it is vitally important that members take the above steps as soon as possible. The law says that if it is not reasonably practicable to put the complaint in within the three months less one day limit it must be put in within such further period as the tribunal considers reasonable. It is therefore vital there are no delays at all in taking any of the steps set out in this circular.

5. If a member finds that they are on the blacklist and believes that they may have been refused employment because of this [N.B. members must **both** be on the blacklist **and** have been refused a job to potentially have a claim], officers should immediately submit an ET1 to the tribunal in respect of each occasion on which the member was refused work.

Draft grounds for an ET1 are included below. Form ET1s should be obtained from the Tribunals Service (see <http://www.legatio.com/downloads/ETS/ET1.pdf>). These should be completed and submitted to avoid delay, and then a copy sent through to Unite Legal Services at Hayes Court for referral to a solicitor (for its future conduct) under the ETR scheme. The Statutory Grievance Procedures do not apply to such a claim.

6. Further guidance regarding these claims and other potential claims under the Data Protection Act will be issued.

### ***Draft grounds for an ET1***

---

1. The claimant applied for employment with the respondent [insert method of application, i.e. phone/letter/email] on [insert date]. The employment consisted of [describe job and place of work].
2. On [insert date of rejection] the claimant's application for employment was rejected [insert method of rejection – i.e. phone/letter/email]. [If member never heard back insert the following – The claimant did not receive a reply to his application for employment].
3. The claimant has learned that his name was kept on a blacklist kept by an organisation called The Consultancy Association. The purpose of this blacklist was to enable potential employers to check whether job applicants had a history of trade union membership and/or activities and then to reach a decision as to whether to offer employment accordingly.
4. The claimant believes the respondent obtained details of his trade union membership and/or activities from The Consultancy Association and having regard to those details decided not to offer the above employment to him.
5. the claimant believes that the above constitutes unlawful refusal of employment on grounds related to union membership contrary to s.137 of the Trade Union and Labour Relations (Consolidation) Act 1992.  
[insert this paragraph if the application was rejected more than three months before the date you are putting the ET1 in:
6. The above rejection occurred more than three months before the date of submission of this claim. The claimant believes, however, that it was not reasonably practicable for him to submit this claim at an earlier stage as the activities of the Consultancy Association have only recently come to light in the press following which the Information Commissioner set up a special hotline to deal with enquiries concerning the blacklist].