



Unite the Union's Submission to the Scottish Affairs Committee Inquiry into Blacklisting in Employment

Introduction

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

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

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

Historical Context

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

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

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

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

The actions of the Economic League were entirely consistent with their core objective to "combat the fallacious economic doctrines of collectivism, socialism

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

and communism”.² Although the political language is dated by modern standards, it does demonstrate an unfounded and irrational fear of union activity in the workplace. By their own admission, the Economic League believed that “a shop steward can acquire influence out of all proportion to the real nature of his position”.³

Despite the assertion that the Economic League was disbanded in 1993 following allegations that much of the information they held was inaccurate⁴, Unite continued to maintain that the blacklisting of workers in the UK construction industry was still taking place.

Recent Activity

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

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

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

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

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

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

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

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

⁴ Building Magazine – 20th March 2009

had previous 'employment issues' and who may make an application for employment in their organisation.

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

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

Impact on Blacklisted Workers

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

On occasions where Tony has gained employment with smaller subcontractors, including the Piccadilly Gardens project (2003) and Manchester Royal Infirmary

project (2005) he has found these opportunities short lived and subsequently was made redundant. The subcontractors in question have admitted to being put under pressure by certain major contractors not to employ Tony and others.

Recourse for Blacklisted Workers

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

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

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

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

Of particular concern for Unite was the lack of any automatic or retrospective compensation for blacklisted workers, and only in effect the recovery of lost earnings when these could be unequivocally proved to have occurred as a direct result of blacklisting.

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

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

Conclusion

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

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

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

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

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

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

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

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

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

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