



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

1. Introduction

- 1.1 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.
- 1.2 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.
- 1.3 Unite believes that many of its members, especially those employed in the UK construction industry, have had their employment opportunities and earnings potential blighted as a direct result of blacklisting.

2. Context

- 2.1 Unite are encouraged by the fact that the Scottish Affairs Committee (hereafter referred to as the Committee) are continuing their rigorous inquiry into the abhorrent practice of blacklisting.
- 2.2 Unite are confident that the Committee now 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 extensive additional skills and experience.
- 2.3 This submission is presented in direct response to the issues raised by the Committee following the publication of the interim report "Blacklisting in Employment" in April 2013.
- 2.4 We would ask that the following be considered in addition to the previous written submission by Unite the Union in August 2012 and the two evidence sessions attended by Assistant General Secretary, Gail Cartmail, on the 2nd September 2012 and the 3rd July 2013.

- 2.5 For the purpose of this written submission we intend to articulate our position on each of the issues subsequently identified by the Committee in its appeal for further evidence.

3. Blacklisting is a Contemporary Issue

The Committee have asked *“Is blacklisting still taking place, both within the construction industry and more widely, and especially in Scotland?”*

- 3.1 As the Committee is fully aware, blacklisting by its very nature is underground, covert and secretive and is notoriously difficult for individual workers or their Trade Unions to prove.
- 3.2 Despite this burden of proof, as a direct result of the recent experience of our members in the UK construction industry, and specifically those engaged on the Crossrail project by the contractor consortia Bam, Ferrovial & Kier (BFK), Unite are convinced that blacklisting is very much a contemporary issue.
- 3.3 Whilst Unite acknowledge the fact that the Crossrail project is essentially a concern for London and the surrounding area, and doesn't strictly fall within the remit of the Scottish Affairs Committee, the fact remains that a number of the major contractors on the project are currently working on or are shortlisted for publicly funded construction projects in Scotland.
- 3.4 Unite believes that the activities of the consortia BFK, responsible for construction work on the Crossrail project, provides sufficient evidence to confidently arrive at the conclusion that blacklisting continues unabated in the UK construction industry.
- 3.5 Unite believes that vetting by contractor companies, including of workers supplied by agencies and/or labour suppliers is currently undertaken to weed out Trade Union activists with the effect of denying them employment.

For evidence, we would ask that the Committee considers the previously submitted Unite dossier titled *“Blacklisting in BFK”*.

4. The Issue of Compensation

The Committee have asked *“Should compensation be paid, and to whom? Anyone whose name appeared on a blacklist? Those who can prove they were adversely affected by blacklisting? Who should provide the compensation?”*

- 4.1 Unite are very much of the opinion that compensation should be paid to all workers whose career progression and earnings potential have been

deliberately hampered as a direct result of blacklisting. Similarly for those workers who have faced years of unemployment in their chosen profession, even when the rest of the industry has enjoyed periods of sustained growth.

- 4.2 On the issue of compensation, Unite fully support the proposal put forward by the Shadow Business Secretary, Chuka Umunna MP that in the first instance those companies identified by the Information Commissioners' Office as having participated in blacklisting through The Consulting Association (TCA) should be compelled to pay into a compensation fund for all workers who appeared on the TCA blacklist that was exposed in 2009.
- 4.3 Furthermore, Unite hold the view that consideration should be given to the immediate family of deceased victims of blacklisting who in some instances have contacted Unite seeking to 'clear their family name'. No such mechanism exists, however posthumous compensation would at least imply 'no fault'.
- 4.4 For clarification on this point, Unite believe that compensation should be made available to all of the 3,213 workers blacklisted by TCA, without any devaluation in those cases where the workers are unable to prove an objective detriment.
- 4.5 Taking this concept forward Unite believe there is significant merit in examining the potential for an industry wide levy to finance a compensation fund for blacklisted workers. Within this framework of contrition Unite believes that contractors should proactively recruit blacklisted workers who wish to be brought back into the construction industry in a role commensurate with their qualifications, providing upskilling and training opportunities where appropriate.
- 4.6 Such a process would readily allow employers in the industry to show some contrition and to objectively demonstrate that they are no longer engaged in the abhorrent activity of blacklisting.
- 4.7 Finally on the issue of compensation, Unite are mindful of the fact that only 407 redacted files have been issued to blacklisted workers and would suggest to the Committee that the Information Commissioners' Office must be more proactive in identifying more of the 3,213 workers blacklisted by TCA and be provided with sufficient resources to do the job.

5. The Penalties for Blacklisting

The Committee have asked "*What penalties are appropriate for those firms and individuals who engaged in blacklisting and who benefited financially from the*

process, and is it appropriate to introduce a degree of retrospection? In addition, should firms which have been involved in blacklisting be prevented from tendering for public sector contracts in future? Or should they only be allowed to tender if they pay compensation to those who have been blacklisted?"

- 5.1 Unite hold the view that blacklisting should be categorised as a criminal offence with appropriate penalties, up to and including imprisonment.
- 5.2 Unite would agree that there must be retrospection in such penalties.
- 5.3 Unite also believe that companies who are found to have participated in blacklisting should be excluded from tendering for publicly funded construction projects, until such times as they have acknowledged their participation, paid compensation to blacklisted workers and publicly endorsed and adopted anti blacklisting measures in their own organisations, including transparent recruitment practices and the cessation of the vetting of workers employed by sub-contractors who have already verified their competency.

6. The Failure of Existing Legislation

The Committee have asked *"Is the existing legislation against blacklisting sufficient, if properly enforced, or do we need changes to the law to eradicate the practice?"*

- 6.1 As far as Unite is concerned, current and previous legislation on blacklisting has proven grossly ineffective. This has been borne out by the fact that since the exposure of TCA in 2009 the late Ian Kerr has been the only individual to face a legal sanction for blacklisting, which in itself was derisory.
- 6.2 Alongside the inadequate nature of the financial penalties, Unite hold the view that there are issues with the burden of proof.
- 6.3 The burden of proof on the blacklisted worker and their Trade Union to objectively provide evidence of a clandestine activity makes it virtually impossible to prove. In reality such activity only comes to light as a result of an error in the process or by the actions of a whistleblower.
- 6.4 For this reason Unite would suggest that, in situations where relevant circumstantial evidence exists of blacklisting then the onus should be on the contractor company to prove that blacklisting is not taking place, rather than the other way round.

- 6.5 This could be readily done by the contractor company demonstrating a transparent recruitment and selection procedure with objective measures of worker competencies and experience.
- 6.6 Unite would also suggest that existing legislation fails to account for the potential anomalies between the company engaged in blacklisting and the blacklisted workers.
- 6.7 In short, due to the fragmented nature of the industry and the proliferation of sub-contracting and agency working, Unite understand that in a number of cases workers can and have been blacklisted by companies that don't even employ them. Consequently Unite believe that workers should have legal recourse in such situations and that the relevant penalties and compensations alluded to earlier in this submission should apply.
- 6.8 The following principles should be clearly established in law:
1. Everyone should have the right not to be blacklisted (i) because of his or her trade union activities, or (ii) because of his or her activities as a workers' representative;
 2. Anyone whose right not to be blacklisted has been violated should be entitled to compensation: (i) a basic award for being blacklisted; (ii) a compensatory award for losses incurred as a result, and (iii) an aggravated award relating to the nature of the information supplied, stored or used;
 3. Any award of compensation should be recoverable from (i) the blacklister; (ii) any employer who uses or supplies information to the blacklister, and (iii) any director or employee of a company responsible for compiling, keeping, supplying or using the blacklist, or supplying information to a blacklister.
 4. In order to improve the protection of workers' representatives against blacklisting, it should be unlawful to dismiss for any reason anyone who is or has ever been a workplace representative, without the prior approval of the employment tribunal. Any such dismissal should be void.
 5. Anyone who compiles, keeps, supplies or uses a blacklist or supplies information for use in a blacklist should be regarded as having committed an offence. Criminal liability should attach to both the company and responsible individuals, punishable in the latter case by a fine and/or imprisonment.

6. It should be unlawful for any public authority or public authority contractor to enter into a contract with another contractor who has been found in legal proceedings (whether civil or criminal) to have compiled, kept, supplied or used a blacklist, or to have supplied information to a blacklister.
7. It should be unlawful for any public authority or public authority contractor to enter into a contract with another contractor who employs anyone who has been found in any legal proceedings to have compiled, kept, supplied or used a blacklist, or to have supplied information to a blacklister.
8. It should be unlawful for a contractor (A) to terminate a contract with another contractor (B) on the ground that the latter has engaged the services of a person who was blacklisted (C). Any such termination should be void, and a financial penalty should be recoverable by both B and C from A.
9. It should be a criminal offence for any public authority or the employees or agents of any public authority to share information with an employee or any other private person (natural or legal) about an individual's trade union activity, activity as a workplace representative, or political activity.
10. In any legal proceedings relating to allegations of blacklisting, the onus should always be on the respondent to prove that (i) any adverse action was unrelated to blacklisting, and (ii) in the event of a complaint of blacklisting being upheld the complainant did not suffer any losses alleged.

7. Conclusion

- 7.1 Unite would point to the objective fact that none of the companies exposed as having participated in blacklisting through their involvement with and funding of TCA by the Information Commissioner's Office in 2009 have offered to come forward with compensation.
- 7.2 In fact many of them continue to defending complaints to employment tribunals on technical grounds, even where it is proven that workers names existed on the Consulting Association blacklist.

Evidence of such cases has been provided separately by Unite to the Committee

- 7.3 Despite this and for the benefit of the industry as a whole, Unite is still prepared to work with all industry stakeholders to build in future

safeguards against the blacklisting of individual workers and sub-contractors.

- 7.4 To this end Unite is seeking a broad agreement on a defined code of conduct to establish transparent recruitment practices and tackle the vetting by contractors of workers, including those engaged in their own supply chain by a third party who has already undertaken an objective recruitment exercise that has established their suitability for the role.
- 7.5 Finally Unite are seeking to establish anti blacklisting measures in all existing collective agreements in the industry, and the creation of an anti-blacklisting 'charter', to secure robust measures for Trade Union facility time so that bona fide and democratically elected shop stewards and health & safety representatives can work to drive blacklisting and discrimination out of the industry.

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