



Briefing for the Public Petitions Committee

Petition Number: [PE1481](#)

Main Petitioner: Mr Pat Rafferty, Mr Harry Donaldson, Mr Harry Frew on behalf of Unite, GMB, UCATT

Subject: End to blacklisting in Scotland

Calls on the Parliament to urge the Scottish Government to conduct a full, independent public inquiry into the effects and extent of blacklisting in Scotland and for the inquiry to examine and determine which companies have been awarded public contracts, to investigate how to introduce ethical procurement policies and how to ensure that companies who continue to practice blacklisting are banned from tendering for future public contracts.

Background

In 2009, the UK Information Commissioner's Office (ICO) found that Ian Kerr, on behalf of The Consulting Association¹ held details on 3,213 construction workers and traded their personal details for profit. The Consulting Association's database was used by over 40 construction companies and included information about construction workers' personal relationships, trade union activity and employment history.

Ian Kerr was fined £5,000 in July 2009 for breaching the Data Protection Act, following a successful investigation by the ICO. [The ICO website](#) lists the companies which used the Consulting Association, and states that it has [issued enforcement notices to 14 companies](#) based on the evidence it recovered from the Consulting Association.

Trade Unions have called for a full disclosure of the information obtained from the Consulting Association, and an investigation into the links between construction employers, the police, security services and the Consulting Association.

The petition states that—

¹ The Petition refers to both the Consultancy Association and the Consulting Association, but the ICO refers to the Consulting Association. Unless quoting direct from the Petition, this Briefing refers to the Consulting Association.

“It is known that construction employers who paid fees to the CA operate in and have successfully tendered for public contracts in Scotland. The Scottish Affairs Select Committee, which is carrying out a report into blacklisting in Scotland, took evidence from Sir Robert McAlpine Director, Cullum McAlpine, where it was revealed that the company had referred to the Consulting Association’s blacklist for several major projects in Scotland including the Quartermile development in Edinburgh, the M74 extension and the Marie Curie Cancer Hospice in Glasgow. It is only through a Public Inquiry with the power to compel witnesses to appear and testify under oath that the full impact that blacklisting has had on workers and industries in Scotland can be uncovered.”

Scottish Government Action

During [a Members Debate on the subject on 2 May 2013](#) (see in addition Scottish Parliament Action section below), Angela Constance MSP, Minister for Youth Employment, stated that—

“For the record, I restate the Scottish Government’s position, which is that blacklisting is wholly unacceptable. The Scottish Government endorses the Health and Safety Executive’s comments; condemns any form of blacklisting of employees by employers for raising concerns about safety standards at work; and is totally opposed to blacklisting or the compilation of a blacklist on such a basis.

First of all, I want to address the most prominent issue that has been raised by Neil Findlay and other members. Although we as a Government acknowledge the call for a Scottish Government inquiry, we believe that it is appropriate for the Scottish Affairs Committee to conduct and conclude its inquiry into this issue. As we know, matters of employment law are reserved to the UK Government and the Scottish Government is not at this time convinced of the merits of holding another inquiry while the Scottish Affairs Committee’s investigation is on-going and its recommendations are pending.”

In addition, the Minister set out the previous and current legislative framework—

“the legislative framework at the time meant that blacklisting was not illegal but, as Elaine Smith told us, the Employment Relations Act 1999 (Blacklists) Regulations 2010, which were introduced by the UK Government in 2010, prohibit blacklisting. Therefore, I believe that we are starting from a better position. There are also the Public Contracts (Scotland) Regulations 2012, which provide that contracts should not be awarded to companies that have been involved in grave misdemeanours.”

The Government also intends to introduce a [Procurement Reform Bill](#) following summer recess. The Minister noted that the Government is currently

considering what action could be taken in that Bill, and in additional guidance to public bodies—

“We have invited the unions—the STUC, Unite, Unison and the GMB—to work with us on the development and strengthening of guidance for public bodies on addressing the issue of blacklisting in terms of their procurement processes and with regard to public contracts. We intend to circulate an initial draft of the guidance to the unions shortly and to convene a meeting to get their valuable input.

We want to explore with the trade union movement the potential for asking additional questions of suppliers at the selection stage of a procurement exercise and for holding suppliers to account through revised terms and conditions of contract, including issues such as termination clauses for those who breach relevant legislation.

As members have suggested, we are, in addition, considering what measures we can include in the forthcoming procurement reform bill to deal with inappropriate conduct, including blacklisting, by companies that are bidding for public contracts in Scotland.”

Scottish Parliament Action

In addition to the Members debate referred to above, which was led by Neil Findlay MSP, [a number of Parliamentary Questions](#) have also been asked on the topic.

The [Infrastructure and Capital Investment Committee](#) also asked questions about whether the Forth Replacement Crossing contracts had any relation to blacklisting. Paragraphs 42-46 of its [2013 Report on the Forth Road Bridge Bill](#) also discussed the issue.

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