



House of Commons  
Scottish Affairs Committee

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# Blacklisting in Employment: Interim Report

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Ninth Report of Session 2012–13

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## Ninth Report of Session 2012–13

*Report, together with formal minutes*

*Oral and written evidence related to this  
Report are published in a separate volume, HC  
156-I*

*Ordered by the House of Commons  
to be printed 26 March 2013*

**HC 1071**

Published on 16 April 2013  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## 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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### Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via [www.parliament.uk](http://www.parliament.uk).

### 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](http://www.parliament.uk/scotaffcom). A list of Reports of the Committee in the present parliament is at the back of this volume.

The Reports of the Committee, the formal minutes relating to that report, oral evidence taken and some or all written evidence are available in a printed volume. Additional written evidence may be published on the internet only.

### Committee staff

The current staff of the Committee are Eliot Wilson (Clerk), Duma Langton (Inquiry Manager), Gabrielle Hill (Senior Committee Assistant) and Ravi Abhayaratne (Committee Support Assistant).

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## Summary

We live in an age in which conspiracy theories abound—but the blacklisting of building workers by big construction companies via the Consulting Association was no theory—it actually was a real live conspiracy.

The companies set up a structure which allowed them to submit names and details of workers they deemed to be unsuitable to a central list and to check prospective employees, or the employees of subcontractors on their sites, against this list.

The emphasis throughout was on secrecy, with telephone access to sensitive information restricted to only a few, with lists of names submitted destroyed at the end of each working day and no acknowledgement that such a system existed.

As a result of this process, workers were denied employment without explanation, financial hardship was caused, lives were disrupted and sometimes ruined. There was no right of appeal or challenge to the information held or the decisions made, and those affected, though they may have had their suspicions, had no evidence that they were being discriminated against in such a systematic and methodical way.

All this was done by companies who benefitted as a result, since industrial relations or health and safety disputes on site could result in delays to contracts, penalty clauses being invoked and financial loss.

We believe that most of the companies involved are genuine in their regret at having been caught—however, we are not convinced that the process would have been halted had it not been detected. We also completely reject the verbal gymnastics of some companies which asserted that, because not everyone on the blacklist was automatically refused employment, the files did not constitute a blacklist. None of these records was compiled in order to assist any of the individuals involved in finding work.

We note that many of the entries on blacklisting files are little more than gossip, and that whole groups of employees were blacklisted *en masse*.

This is an interim Report, drawing attention to what we have found so far, and the Committee intends to continue examining what happened in the past.

However, we believe that is not sufficient, and we therefore wish to launch consultations on four further topics:

- Whether blacklisting continues;
- What compensation, how determined and from whom, should be provided to those individuals affected;
- Punishment—blacklisting was done for financial gain and latterly was illegal. Throughout the entire process it was morally indefensible, as most of those now caught have accepted. The defence for those individuals operating the system has been that they were simply following orders—should this be acceptable and, if so,

what of those who gave the orders and those who gained financially as a result;

- Whether changes in the law are required in relation to any of the above.

For the avoidance of doubt, we wish to make it absolutely clear that we believe, on the evidence that we have seen so far, that the process of blacklisting by a secret and unaccountable process was and is morally indefensible and that those firms and individuals involved in operating the system should have known this.

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# 1 Introduction

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1. Blacklisting is the practice of systematically denying individuals employment on the basis of information, accurate or not, held in some kind of database. It was an activity of which the Economic League, an organisation founded in 1919 to combat what its members saw as subversion and opposition to free enterprise, was accused in the 1980s. This led to media attention and an inquiry by the then-Employment Committee of the House of Commons. The accuracy of the information held by the Economic League and the use to which it was put came under intense scrutiny, and the League was disbanded in 1993.

2. Thereafter, an organisation called the Consulting Association (TCA) maintained information on individuals and supplied it to companies in the construction industry. TCA grew out of the Services Group, a membership organisation of construction firms, which had had links with the Economic League towards the end of its life. The Chief Officer of TCA was Ian Kerr, who had worked for the Economic League for many years. The Consulting Association was raided by the Information Commissioner's Office and closed down in early 2009. We return to TCA in more detail in the next chapter.

3. Following the raid on TCA by the Information Commissioner's Office, regulations were introduced by the previous government to strengthen the law against blacklisting. Denial of a job for discriminatory reasons such as trade union membership was made illegal and blacklisting was statutorily prohibited under the Employment Relations Act 1999 (Blacklists) Regulations 2010. We consider whether these regulations are sufficient and whether there should be further legislative action later in this Report.

4. This Report was inspired by our previous inquiry into health and safety in Scotland. We heard accusations that workers who raised health and safety concerns, especially in the construction industry, were labelled as 'troublemakers', and likely to be denied further employment. This, added to the fact that the rate of fatal accidents in the workplace is higher in Scotland than in the rest of the UK, gave us significant cause for concern. We therefore decided to conduct an inquiry into the issue of blacklisting, both on grounds of health and safety, and for other activities.

5. This is an interim Report. Although we have held a large number of oral evidence sessions and have received a considerable amount of written evidence, we have by no means concluded our inquiry. The purpose of this Report is to draw the attention of the public to the evidence we have taken so far, to comment on the situation as we see it now, and to seek further information to establish the truth of the matter. Although this Report concentrates on historic incidents of blacklisting and the activities of the Consulting Association, we remain unconvinced that the practice is purely an historic one, and we will continue to seek evidence as to whether individuals are still being blacklisted, as well as consider what further work can be done to eradicate the practice.

6. We are grateful to all the witnesses who have appeared in front of the Committee in the course of this inquiry so far, and to those who have submitted written evidence. As will be discussed later, we have heard testimony which could charitably be described as conflicting. We are far from certain that all of our witnesses have told us 'the truth, the whole truth and nothing but the truth', despite many of them being under oath. We reserve

the right to call some of our witnesses back to give further evidence and clarify issues which we regard as being confused or uncertain. We have also encountered varying levels of cooperation from some of the construction firms with whom we have dealt, and we are grateful to those who have approached this inquiry in a spirit of helpfulness and full disclosure. We regret, however, that this has not universally been the case.

7. We note that Mr Kerr passed away shortly after he gave evidence to us. We offer our condolences to his family, and are grateful to him for his candour and to Mrs Kerr for her continuing assistance.

8. We are also aware that some of the witnesses from whom we have heard evidence are subject to imminent or ongoing litigation. We have been careful to respect the House's *sub judice* resolution and avoid commenting directly on matters before the courts, and we have no wish to prejudice any cases. Again, some witnesses have been more open than others. However, we firmly believe that the issue of blacklisting is an important one and requires wider scrutiny than can be pursued by specific legal actions.

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## 2 The Consulting Association

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9. Ian Kerr worked for the Economic League from 1969 until its demise in 1993. In the latter stages of the League's life, he was responsible for the Services Group, an association of construction companies who collated data on potentially disruptive individuals and which was physically housed on the premises of the Economic League. Jack Winder, formerly Director of Research at the League, explained:

The Services Group companies therefore provided the information and added to it. It was put into the Services Group file, which was separate from the League file, and then regurgitated only to those companies.<sup>1</sup>

10. Mr Kerr expanded on the purpose of the Services Group:

Within the Economic League there was a group known as the Services Group, which was composed of the construction company members who were already, for the most part, members of the Economic League. Because of the problems that the industry perceived it had—I am going back to the early '70s, before my involvement in these matters—the industry decided it wanted to take steps to cover itself because of the national strike it had had in the early '70s, so that it would not be caught in that way again. Subsequently, for a further subscription, those companies wished to form what was called the Services Group. That was operated within the Economic League on behalf of the construction companies. Economic League staff were given an additional role—or a role—which was to look after the construction companies' needs, which were very wide- ranging.<sup>2</sup>

11. When the Economic League was wound down in 1993, many of the companies which had been involved in the Services Group decided that the purpose of the group was still valid and sought to carry it on in another form. Mr Kerr told us that he was approached to become 'Chief Officer' of a new organisation, which became the Consulting Association, and that a number of construction companies were involved in its inception. He named them as Amey, Balfour Beatty Civil Engineering, Balfour Beatty Construction, Ballast Wiltshier, Edmund Nuttall, Higgs and Hill, John Laing, John Mowlem, Kier Group, Morrison Construction, Norwest Holst, Sir Robert McAlpine Ltd, Tarmac, Taylor Woodrow, Trafalgar House, Walter Llewellyn and Willmott Dixon.<sup>3</sup> In the early days of TCA, Mr Kerr told us that Bovis and G. Percy Trentham were also involved, but quickly dropped out.<sup>4</sup>

12. The Consulting Association was set up with a Chairman and a Vice-Chairman, drawn from the subscriber companies. The first Chairman was Cullum McAlpine, a director of Sir Robert McAlpine Ltd, and the Vice-Chairman was Tony Jennings, of John Laing.<sup>5</sup> The

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1 Q 1724

2 Q 1045

3 Qq 1054-55

4 Q 1065

5 Q 1048

main purpose of TCA was to provide 'reference checks' on individuals. Cullum McAlpine confirmed to us that the motive behind TCA was that "It was going to provide a reference service to and from the members."<sup>6</sup> For this, subscriber companies paid an annual fee, initially £3,500, and paid an additional charge for each name they submitted for checking.<sup>7</sup> The transaction in information was two-way: as well as submitting names for checking to TCA's database, the subscriber companies would also supply information on individuals to be added to the database.

13. Mr Kerr also drew our attention to two other functions which TCA performed. The first was organising meetings for subscriber companies to discuss areas of mutual interest. The second was the monitoring of journals and newspapers to keep members of TCA aware of developments among the 'radical' or 'disruptive' elements that concerned them. Mr Kerr explained:

I read—I obtained—I made it my business either by subscription or trawling around a lot of the very interesting, I have to say, radical bookshops that existed in London. There used to be a very good one in Camden, which closed, the Compendium. There was another one in Charing Cross and in Caledonian Road called Housmans. They used to be helpful. There was one in Leamington [...] I had a subscription to the Socialist Worker, The Socialist, Labour Research, which was a very good radical and statistical magazine, and to a lot of anarchist magazines, which kept coming and going by the nature of anarchy and anarchists. There was a whole range of fringe publications around then.<sup>8</sup>

14. The origin of the database from which TCA drew its information is still unclear to us. Mr Kerr told us that TCA inherited a core collection of files and reference cards from the Services Group and the Economic League.

At the time that the Consulting Association was being thought about, set up and considered, I was charged with finding officers, putting phone lines in and all that at this point. At that point, the construction names and cards were moved into the Birmingham offices of the Economic League, which is where I was based when I was with the company. The rest of the stuff, to the best of my memory, was still kept in London, or whatever else the League dealt with, be it cards or references. It was my job to go and take those to bring them across once the new offices had been set up, which was the old construction stuff that the companies which were then called the Services Group were party to and helped to generate, I suppose, in principle.<sup>9</sup>

15. Mr Cullum McAlpine, of Sir Robert McAlpine Ltd, confirmed that the information held by the Services Group, under the auspices of the Economic League, was purchased on behalf of TCA for £10,000. This was a controversial decision, according to Mr McAlpine; several of the subscriber companies had become sceptical of the purpose of the by then-

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6 Q 1440

7 Q 1068

8 Qq 1089-91

9 Q 1299

defunct Economic League and regarded association with it as potentially damaging in reputational terms. Mr McAlpine told us:

Just as I became chairman, Ian Kerr told us that the construction databank from the Services Group had to be paid for and was going to cost £10,000. A number of the members were not happy about that, because they believed that some of the information in that databank was not the kind of information that they would have put on to their own references to various people. They were very mindful—concerned—that there were political and other references that were not part of what the Consulting Association wished to be involved with, so there was quite a discussion about whether this list should be purchased from the rump of the Economic League. At the end of the day, Mr Kerr persuaded us that it was the only potential database that was available at that time and that it would be under his guidance; he would edit it so that it would become reflective of what the members of the Consulting Association would expect to have contributed into the association themselves.<sup>10</sup>

16. It is logical that a database of information compiled on individuals regarded as ‘troublesome’ to the construction industry would be transferred by the Services Group to the Consulting Association. We note that Mr McAlpine confirmed that his company paid £10,000 for the information which had been held by the Services Group, to form the nucleus of the database from which TCA would operate.<sup>11</sup> Sir Robert McAlpine Ltd. also provided an additional £10,000 to cover the start-up costs of TCA, the money for the information from the Services Group having been a loan, which was paid back.<sup>12</sup>

17. However, at this point, the involvement of Sir Robert McAlpine Ltd. becomes somewhat more complex. If the information held by the Services Group was transferred to TCA, we heard that information on individuals held by the Economic League itself was destroyed when the League was disbanded in 1993. Mr Winder told us that the League’s records were destroyed by Securicor.

It was decreed by the chairman of the League that all these records should be destroyed. Securicor came to the Birmingham office and took away all the stuff for secure destruction. Stan [Hardy] and I had to sign a statement to that effect for the central council.<sup>13</sup>

There is a distinction to be drawn between information held by the Economic League and the files held by the Services Group. Mr Winder told us that, while the information he had collated for the League was destroyed, the database maintained by the Services Group was taken away by Mr Kerr, to form the core records of the Consulting Association.<sup>14</sup>

18. Mr Stan Hardy, the last Director-General of the Economic League, professed bafflement as to why there would have had to have been payment for the records of the

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10 Q 1444

11 Qq 1050 and 1490

12 Qq 1490-91

13 Q 1717

14 Q 1723

Services Group. When we put to him that McAlpine had paid £10,000 for the intellectual property rights to the Services Group's database, he responded, "Hang on—to purchase from the Services Group? They were theirs. It was theirs to throw out."<sup>15</sup> The argument was that the Services Group member companies had submitted the information contained on the database, and therefore owned it already. It is not at all clear to us, under those circumstances, why they would have had to pay any sum, let alone £10,000, for ownership of the data.

19. Mr Winder, who had been Director of Information and Research at the Economic League, and Mr Hardy then formed a company called CAPRiM (Corporate Asset Protection and Risk Management) in May 1993. Mr Winder told us that this company was created essentially to provide employment for himself and Mr Hardy.<sup>16</sup> Both Mr Winder and Mr Hardy invested their own money in CAPRiM, but they also received £10,000 from Sir Robert McAlpine Ltd. Mr Winder characterised this payment as being "partly as a good-will gesture and partly to say, 'Keep clear of Ian Kerr and all his works'".<sup>17</sup> He went on to explain that the subscribers to TCA did not want the organisation to be tainted by association with former employees of the Economic League. Mr Hardy confirmed that, while the £10,000 was ostensibly a retainer from McAlpine, it was in essence an inducement to stay away from Ian Kerr and TCA.<sup>18</sup>

**20. We are not satisfied with the explanations we have received about the creation of TCA and the parallel development of CAPRiM. It is not at all clear to us why any money would have had to have been paid for the files of the Services Group, since it was a membership organisation and therefore its property was, presumably, that of its members, who went on to be the founding members of TCA.**

21. Mr Kerr explained to us how TCA operated. Apart from the subscription, members of TCA paid a fee for every name they submitted for checking against the database. He said, "It was a cost per name that was put through to the office from a member to access their own information."<sup>19</sup> The amount of the individual charge varied between £1.00 and £2.20 over TCA's life.<sup>20</sup> Mr Kerr noted that there was a clearly fixed routine by which subscriber companies accessed the database.

Each company had a main contact. Their details were kept in what was called a red binder—a red book—per company. It was by company reference number and by name. There was sometimes a second contact should that first contact not have been there for any reason. In addition to that, there was a blue book, which consisted of the personnel departments' users, who were the day-to-day clerical users, who would be in charge of amassing those names for whichever trades the company was putting together for a particular project. Say they wanted 100 names or, say, 20 people; they would probably put an advert in and accept an application from 50, out of which

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15 Q 1914

16 Q 1692

17 Q 1707

18 Qq 1924-26

19 Q 1072

20 Qq 1074 & 1076



they would probably eventually take 20. Part of the process of deciding who to take was to put those names through the Consulting Association.<sup>21</sup>

He went on to explain that each company's main contact, which would be a senior person at HR director level, controlled a very small number of other contacts at the company, typically two or three at most. Each company would also have a reference number to be used in dealing with TCA. They would then fax to TCA a list of people whom they were considering employing, and Mr Kerr would check these names against the database which TCA held. After this, Mr Kerr told us:

Most of the time we would go back, by telephone, identify the list and say to the HR department girl or man, "All clear." If there was a name that we had information on, we would say to them, "All clear, except a certain name", and that would be the end of the conversation. I would then speak to the main contact.<sup>22</sup>

22. It was clear from the evidence Mr Kerr gave to us that there was a degree of secrecy in the relationship between TCA and construction companies. He told us that the information on names submitted, if any, did not go back to the HR department of the company, and was in fact "deliberately withheld"; instead it would only go to the appointed main contact.<sup>23</sup> The explanation for this was that the main contact would be experienced and would know the specific circumstances of the site on which the proposed employees were to work, and would therefore be best placed to judge what to do with the information. Mr Kerr stressed that TCA did not in any sense editorialise the information they provided, and that the judgement was left entirely to the companies. "I gave him [the main contact] the information as it was on a card, pure and simple, with no suggestion as to what he should do with it, no comment and no interpretation."<sup>24</sup>

23. Mr Kerr was reluctant to concede that this process made TCA a blacklisting organisation, because he argued that a person's presence on the files did not automatically exclude them from employment; a decision was made by someone else (and it is only fair to note that the service TCA was providing was not illegal when it was established nor for a significant portion of its lifetime). He argued that the service was "to bring these names to their attention. It wasn't to facilitate them not employing."<sup>25</sup> However, when it was put to him that he was involved in a process which was used by subscriber companies to weed out individuals who would then most likely not be employed, he agreed, "Certain people, yes".<sup>26</sup>

**24. It is very clear to us that the service which the Consulting Association offered was a blacklisting one: that is, subscriber companies put information into and took information out of a database, and they used the information on that database to make decisions about whether or not to employ certain individuals. We concede that the**

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21 Q 1077

22 Q 1079

23 Q 1080

24 *ibid.*

25 Q 1094

26 Q 1100

legislative framework meant this was not initially illegal, and it was a service which the Economic League had performed for many years—but by the end of TCA’s life it certainly was illegal and all those involved should have known that. We consider it unethical, and to be condemned. We do not accept the argument made in self-justification that blacklisting did not occur because people were not automatically excluded from employment. This is evasive wordplay.

25. The Information Commissioner’s Office (ICO) became aware of the activities of TCA in 2008, after an article was published in *The Guardian*.<sup>27</sup> The Deputy Information Commissioner, David Smith, told us that, subsequent to that article, the ICO traced TCA to Droitwich and sought and obtained a search warrant for the premises.<sup>28</sup> He went on to explain that scanning the media was one of the ways that his organisation looked for possible breaches of data protection law.<sup>29</sup> The ICO obtained the search warrant from Manchester Crown Court, then searched TCA’s premises in February 2009. The investigation was led by David Clancy. He said:

We identified the Consulting Association database—the card index system that operated the blacklist. With this was an index system that clearly indicated A-Z who the workers were within the database. We quickly identified the construction companies that were using the database.<sup>30</sup>

Mr Clancy added that the warrant issued by the court had not given the ICO *carte blanche*; it allowed the ICO team to search for a blacklist of workers in the construction industry. What other information was held by TCA is an issue which we discuss below.

26. The database held by TCA comprised 3,200 names.<sup>31</sup> It was used by more than 40 construction firms, and contained a wide variety of information, including trade union activities, employment history and personal and relationship details. The database was confiscated by the ICO, who still hold it, and have allowed the Chair of this Committee access to it under the condition of confidentiality. We are grateful to the ICO for allowing this access, but we believe that, in the public interest, the contents of the database, suitably redacted, should be made public. We continue to discuss this matter with the ICO.

27. Mr Kerr was fined £5,000 for breach of the Data Protection Act. The money was in fact paid by Sir Robert McAlpine Ltd, on the grounds that, in Mr Kerr’s words, he had “put [himself] at the front and took the flak”.<sup>32</sup> In addition, 14 of the subscriber companies to TCA were issued with enforcement notices. Mr Smith told us: “They [the enforcement notices] basically said, “You must stop supplying information and you must stop using this database.”” To have continued to use the services of TCA after being served with an enforcement notice would have been a criminal offence.<sup>33</sup> The ICO contacted all of the

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27 “Enemy at the gates”, *The Guardian*, 28 June 2008

28 Q 673

29 Q 674

30 Q 720

31 Q 754

32 Q 1413

33 Q 685



subscribers and received a variety of responses; some denied using the reference service of TCA; some claimed to have been previous users but to have ceased using it; some had changed ownership and identity since TCA was founded; some claimed to have been mistaken for other entities.<sup>34</sup> Mr Smith said that the ICO did not use its powers to pursue the matter further with any of the construction companies because it was satisfied that the confiscation of the blacklist had closed down the practice and the activities of TCA.<sup>35</sup>

28. Having confiscated the material from TCA, the ICO then publicised this fact and invited those who suspected they might have been included on the blacklist to contact it. 2,400 individuals contacted the ICO by telephone, of whom 620 then wrote in because they were possible matches with individuals on the blacklist. Of those, 198 were positively identified as being on TCA's files.<sup>36</sup> This is a small proportion of the number of people on the blacklist. Mr Smith said that the ICO had not been more proactive because in many cases the information on individuals was incomplete or out of date, and he did not feel that writing to addresses which might no longer be applicable was a good use of resources. He noted that the GMB and Liberty had criticised the ICO for not doing more to alert individuals to the fact that they were on a blacklist. He conceded that perhaps more could have been done, but argued that the ICO had taken the action which was deemed proportionate at the time.<sup>37</sup>

29. Mr Smith did tell us that the ICO was now working with the GMB and UCATT to try to coordinate an attempt to match union members with names on the TCA blacklist. He also revealed that his organisation was looking at a pilot of using the services of a commercial organisation to contact the people whose details were held by TCA.

We are likely to do a trial run of, say, 100 or 200 and write out to them to see what response we get. That will provide evidence, Chair, for the points you are making as to whether there really is a pent-up demand or people are not interested.<sup>38</sup>

**30. We are not satisfied that sufficient action has been taken to alert individuals to the fact that information was improperly held about them by the Consulting Association, and that checks were made against this database by construction companies. The ICO has relied too much on individuals to take the initiative and contact it, rather than trying to identify the people who were on TCA's blacklist. Many may be unaware that they were being systematically discriminated against in employment. They deserve to know. We acknowledge that the ICO is now doing more to contact those whose names and details were held by TCA, and we welcome this direction of travel, but encourage the ICO to go further and to work closely with trade unions who have been active in this field. We recommend that the ICO write to us to update us on their progress.**

31. We heard from several former construction workers who believed they had been blacklisted. One, Dave Smith, pursued a claim against Carillion through an employment

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34 Q 713

35 Q 715

36 Q 759

37 Q 758

38 Q 766

tribunal. Although Carillion accepted that Mr Smith had been blacklisted, his claim was unsuccessful on the grounds that he had not been directly employed by Carillion but had been employed through a sub-contractor, and therefore Carillion was not legally responsible for him. We also heard from Alan Wainwright, who had formerly been employed by Tarmac, then Carillion, then Haden Young, a subsidiary of Balfour Beatty. He had raised concerns with the last named about their use of the services of TCA. He told us that he had then found himself on a blacklist for that reason and had been unable to find work.<sup>39</sup> We also took evidence from Francis Graham and Stuart Merchant, two electricians from Dundee, who believed they had been blacklisted and are among a group pursuing a claim in the High Court. We are grateful to all of those who shared their personal experiences, and encourage readers to look at the transcripts of their evidence.

32. When TCA was wound up in 2009, it had various outstanding costs. These were met by Sir Robert McAlpine Ltd. Mr Kerr said:

We had a surplus of £58,000 from which we were not able to cover all the winding-up costs, including statutory redundancies to the staff and to me. They covered the shortfall on that and the contract we got out of with rent and rates on copiers and all that sort of thing—that we had to get out of and cancel. We covered as much of that as we could out of the £58,000 and there was still a shortfall. There was also a payment made to a solicitor for the costs of representing me at one of the IT cases as a further payment.<sup>40</sup>

He indicated that the shortfall was of the order of £20,000.<sup>41</sup> Cullum McAlpine, a Director of Sir Robert McAlpine Ltd who was the first Chairman of TCA, claimed that his company had not been obliged to cover the winding-up costs of TCA, but had felt it was the right thing to do. “We did not have to do it, but it was sensible to do it. Mr Kerr was an officer of the organisation and had incurred costs because of his role in the organisation.”<sup>42</sup> He added that it was “humanitarian, fair and reasonable” to pay Mr Kerr’s fine.<sup>43</sup>

33. Mr McAlpine also explained that his company suggested to other members of TCA that they might help cover the costs. “We did approach a couple of the members, one of which was sympathetic. Then I think everybody ran for the hills.”<sup>44</sup> BAM and Vinci had initially been supportive, but in the end the total costs were covered by McAlpine.<sup>45</sup>

34. One issue on which we still do not have clarity is the full extent of the information held by TCA, and how much of it remains. David Clancy, of the ICO, told us that his team took away only a small proportion of the documentation which was held in TCA’s office in Droitwich. “We are talking of between 5% and 10% of what was in the office. What the other 90% or 95% was I can’t comment on because we didn’t go through lots of it. We just

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39 More information about Mr Wainwright’s case can be found at [alanwainwright.blogspot.com](http://alanwainwright.blogspot.com).

40 Q 1415

41 Q 1416

42 Q 1577

43 Q 1581

44 Q 1587

45 Q 1588

took the information that was relevant to our inquiry.”<sup>46</sup> He insisted that it had not been necessary to look at anything else, because he had been certain that he had found the blacklist, which was all that was within the scope of the warrant. “We didn’t go through all the other information. We looked and said, “We are satisfied that that is the information. That is the blacklist that operates within the construction industry.””<sup>47</sup> However, Ian Kerr confirmed to us that other information was held, including some files on environmental activists.<sup>48</sup> These were not taken away by the ICO and were subsequently destroyed. The only evidence that remains is the names of individuals.

35. Mr Kerr also explained that the ICO had returned to him photocopies of the documents they had confiscated. The vast majority of these were burned<sup>49</sup>, and after his death Mrs Kerr passed to us some documentation which he had left in his possession. However, it is not clear to us what happened to the alleged 95% of the papers that the ICO claim to have left behind. It may be that these were among the items Mr Kerr told us he destroyed.

**36. We find the ICO’s justification for leaving behind the vast majority of documents at TCA’s office unconvincing. We accept that the ICO was concerned that the warrant which it had obtained was limited in scope, but we regret that more documents were not seized. Even if the Consulting Association is now defunct, there remains the possibility that its activities could have been more widespread than has so far come to light. A greater degree of curiosity on the ICO’s part might have demonstrated this one way or the other.**

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46 Q 726

47 Q 729

48 Q 1132

49 Q 1058

### 3 Members of the Consulting Association

37. As we noted above, Ian Kerr told us that there were 17 initial members of the Consulting Association: Amey, Balfour Beatty Civil Engineering, Balfour Beatty Construction, Ballast Wiltshier, Edmund Nuttall, Higgs and Hill, John Laing, John Mowlem, Kier Group, Morrison Construction, Norwest Holst, Sir Robert McAlpine Ltd, Tarmac, Taylor Woodrow, Trafalgar House, Walter Llewellyn and Willmott Dixon. Bovis and G. Percy Trentham were also involved at an early stage, but dropped out. Other companies joined, and 43 companies or divisions of companies were at some point subscribers to TCA (see Table 1 below). So far, we have taken evidence from representatives of Sir Robert McAlpine, Skanska and Balfour Beatty, and we have received written evidence from Carillion. It is our intention to take oral evidence from other companies in due course.

Amec Building Ltd	Kier Ltd
Amec Construction Ltd	John Mowlem Ltd—Ex Member
Amec Facilities Ltd	Laing O'Rourke (John Laing Ltd)
Amec Ind Div	Lovell Construction Ltd—Ex Member
Amec Process & Energy Ltd	Miller Construction Limited—Ex Member
Amey Construction—Ex Member	Morgan Ashurst
B Sunley & Sons—Ex Member	Morgan Est
Balfour Beatty	Morrison Construction—Ex Member
Balfour Kilpatrick	N G Bailey
Ballast Wiltshier Plc—Ex Member	Shepherd Engineering Services
Bam Construction (HBC Construction)	Sias Building Services
Bam Nuttall (Edmund Nuttall Ltd)	Sir Robert McAlpine Ltd
C B & I	Skanska (Kvaerner/Trafalgar House)
Cleveland Bridge UK Ltd	SPIE (Matthew Hall)—Ex Member
Costain UK Ltd	Taylor Woodrow—Ex Member
Crown House Technologies	Turriff Construction—Ex Member
(Carillion/Tarmac Construction)	Tyson's Contractors—Ex Member
Diamond M & E Services	Walter Llewellyn & Sons—Ex Member
Dudley Bower & Co Ltd—Ex Member	Whessoe Oil & Gas
Emcor (Drake & Scull) — 'Ex Ref'	Willmott Dixon—Ex Member
Emcor Rail	Vinci plc (Norwest Holst Group)
G Wimpey Ltd—Ex Member	
Haden Young	

38. We also received from Ian Kerr the accounts of TCA that he held, and so we have been able to see the amounts of money which different companies paid for the services which TCA offered. These can be seen on our website. We would like to see TCA's daybook in order to be able to link individual payments to individual sites. We are quite certain that Sir Robert McAlpine Ltd was a major force in the formation and operation of TCA, and it is hardly likely to be coincidence that the company provided the organisation's Chairmen for

eight of its sixteen years (Cullum McAlpine 1993-97, David Cochrane 2006-09). McAlpine was also a major spender on the services of TCA; so too was Skanska and its predecessors and subsidiaries. We will outline the involvement of those companies from whom we have taken evidence below.

## Sir Robert McAlpine Ltd

39. We took evidence from Cullum McAlpine, the first Chairman of the Consulting Association. Mr Kerr told us that he was an important part of creating the organisation from the remnants of the Economic League and the Services Group:

At its inception, the first chairman was the person who was there guiding it towards becoming the Consulting Association [...] that was Cullum McAlpine of Sir Robert McAlpine.<sup>50</sup>

Mr McAlpine denied that he was personally an important part of the creation of TCA. He described how a group of human resources managers from the companies which had been involved in the Services Group were working towards forming an association which would become TCA, and decided that they wanted a main board director from one of the larger civil engineering and construction companies to act, in effect, as a figurehead. He was approached, and referred the issue to the board of McAlpine.<sup>51</sup> He added that the group “really wanted McAlpine, not me.”<sup>52</sup>

40. Mr McAlpine also played down his role as Chairman during the first four years of TCA. He chaired the finance committee, which concentrated “pretty much only on budgets and financial arrangements—income, expenditure and that sort of thing”, and told us that there was no real control of the day-to-day or month-to-month activities of TCA.<sup>53</sup> He summed up his function like this: “My role was to try to make sure that it [TCA] did not lose money and that it survived the first three years. To that extent, it was a commercial role.”<sup>54</sup>

41. Whatever Mr McAlpine’s personal involvement in TCA, which we will consider a little later, it is evident that Sir Robert McAlpine Ltd was a major subscriber and client. Between the financial years 1996/97 and 2008/09 (the years for which Mr Kerr was able to supply us with usage and subscription charges), the company spent in excess of £150,000 on the services of TCA—with each individual check only costing in the region of £2 (though of course this amount will also have included the annual subscription fee).

**42. We were not persuaded by Mr McAlpine’s description of his role with the Consulting Association as being hands-off. We accept that there was little direct supervision of Ian Kerr’s activities as Chief Officer of the organisation, and in that sense Mr McAlpine acted as a non-executive Chairman. However, his position as the founding Chairman, and as a Director of one of the biggest spenders on TCA’s services,**

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50 Q 1047

51 Q 1422

52 Q 1436

53 Q 1458

54 Q 1465

**suggests that his involvement may have been rather more substantial than he suggested. The evidence we heard from Mr Kerr suggested that he was simply a paid employee of TCA and that initiative and direction came from elsewhere. We see no reason to doubt this.**

43. Sir Robert McAlpine Ltd is currently facing a court case over its involvement with TCA, in which Cullum McAlpine is personally named. The claim is that the company:

Was involved in an unlawful conspiracy with other construction companies which subscribed to the database, which involved inter alia the wrongful gathering, storage and use of information concerning trade union activities and in particular the making of decisions as to whether or not the Claimants should be employed.<sup>55</sup>

The company has declined to comment on the claim, as it is preparing a legal defence. However, a spokesman for Sir Robert McAlpine Ltd, noting that a large number of construction companies had contributed information to and accessed information from TCA's database, added:

Sir Robert McAlpine Ltd has never operated a 'blacklist'. We are, and have always been, wholly committed to maintaining good relationships with our workforce and to responsible trade unionism.<sup>56</sup>

44. During our evidence session with Cullum McAlpine, we were careful not to engage in any lines of questioning which might be seen as prejudicial to the case. We hope that Mr McAlpine was as frank and full in his evidence to us as he could reasonably have been. There is the potential for considerable reputational damage for all the construction firms from which we have taken evidence of appearing to be less than open to a committee of the House.

## Skanska

45. Skanska UK was created in 2000 when Kvaerner sold its construction arm to Skanska AB, the Swedish parent company. Kvaerner had previously acquired Trafalgar House in 1996. Trafalgar House was one of the founders of TCA in 1993. We took oral evidence from Harvey Francis, Executive Vice President, Human Resources, Communications and IT for Skanska UK, who had been in post when the activities of TCA came to light in 2009. He and the then head of Skanska UK, Mats Williamson, were responsible for dealing with Skanska's reaction to the revelations about the Consulting Association.

46. Skanska, like McAlpine, spent significant sums of money on the services of TCA, including in its incarnations as Trafalgar House and Kvaerner. During the years for which Mr Kerr provided records, their total spend was over £200,000. Mr Francis admitted that Skanska had been heavy users of TCA. While he did not seek to excuse the practice, he did seek to put it in context, when asked how many individual checks the company had made:

<sup>55</sup> Claim form, High Court of Justice, Queen's Bench Division, 20 March 2012

<sup>56</sup> "McAlpine denies high court claim it has major role in 'blacklist scandal'", *The Guardian*, 12 January 2013



It is difficult to tell for sure, because the records that exist are very patchy. We have not seen the database, so we do not know for sure, but extrapolating from the invoices, the number is around 66,000. That looks like a huge number—I am not sitting here trying to excuse that in any way—but by way of context, if you look at 2008, which was one of our peak years in terms of volume and large buildings, we had something like over 90,000 people working on our sites during that one year alone. You need to think about the cyclical nature of how the trades come on to projects and go off, and then the churn within that. I just wanted to explain by way of context why the number looks big, and is big.<sup>57</sup>

It is clear, therefore, that subscriber companies to TCA used its reference checking service as a matter of course. Mr Francis also noted—and this is especially relevant to some of the employment tribunals which have arisen from TCA’s activities, including that of Mr Smith, discussed above—that Skanska used the reference checking service primarily for subcontractors, rather than for people whom the company would be employing directly.<sup>58</sup>

47. Ian Kerr told us that different companies used the information from TCA’s database in different ways. He said:

It could be shown that some companies took a harder line, to be fair, and didn’t employ because—I think this is what you are saying—the name was there. Some would say, “Well, that was a long time ago”, or “He’s not to come along with any of the others,”—say there were half a dozen involved in a project. “We’ll take a chance. We will note and monitor.” In other cases, if the information was quite old or they thought it was minor, or if they knew the person it had come from and they thought that person was too hard, too harsh, they would say, “We’ll take him on.” This depended, to a degree, on the company’s philosophy. Some were more hard and earnest than others.<sup>59</sup>

When pressed, he identified Skanska as being among this latter group of companies.<sup>60</sup>

48. After the discovery of Skanska’s involvement with TCA, senior executives from the company met with trade union representatives, including Jim Kennedy of UCATT, who has given evidence to the Committee. The senior executives were Mr Williamson and Mr Francis. Skanska revealed that their internal investigation had revealed that the company’s named contact with TCA was Stephen Quant, then human resources director. Mr Quant had also been Chairman of TCA in 2002 and 2003. There was also a second point of contact, unnamed, who was a security manager in London. Mr Quant left Skanska not long after the ICO raid on TCA’s premises.

49. We acknowledge that Skanska have faced up to the responsibilities they had for their use of TCA’s services. Mr Kennedy, of UCATT, told us that, when he met Mr Williamson and Mr Francis in the wake of the ICO raid:

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57 Q 2062

58 Q 2084

59 Q 1082

60 Q 1213

I have to say that at that meeting they were deeply embarrassed by the whole scandal and were asking us, “What can we do to make things right?”, you know, in terms of future processes. What had come out of their internal investigation—and they were adamant about this—was that Stephen Quant had assured him that he had only ever requested information concerning health and safety issues. There was no record of any communication between Skanska, Kerr and the Consulting Association. Apparently, all the communications had been done via fax or telephone.<sup>61</sup>

It was not initially clear what “information concerning health and safety” meant, and it is certainly no excuse for the illicit use of a blacklist. Mr Francis admitted to us that the use of TCA’s services did not come to general attention in Skanska. When he was asked if anyone except Mr Quant would have known what TCA invoices were for, he said that they would not, as an invoice with an authorised signature (that of Mr Quant) would have been paid by the finance department without any further questions.<sup>62</sup>

50. Skanska’s internal review, conducted in 2009, initially concluded that the company had only drawn information out of TCA’s database, rather than added any data to it. However, Skanska subsequently discovered that that was not the case, and wrote to the ICO to inform it of this fact.<sup>63</sup> After some negotiation, Skanska has agreed to make its internal investigation available to us on the basis of confidentiality, and we intend to return to the matter in the future.

51. Mr Kennedy of UCATT thought that Mr Quant was likely to be the lynchpin of Skanska’s use of TCA. However, he pointed to the fact that several operating units in the Skanska family and ‘genealogy’ had made checks against TCA’s database, and concluded, “If you look at that, at one point it was pretty widespread across all operating units in Skanska. There was, obviously, one point of contact, but a lot of people would have been feeding into that one point of contact—i.e. Mr Quant.”<sup>64</sup>

52. It should be noted that Skanska was not among those companies served with an enforcement order by the ICO when TCA’s activities came to light. We asked Mr Francis why he thought that was. He said he did not know, but suggested it might have been a result of the “full co-operation, transparency and candidness with which we shared information”.<sup>65</sup>

53. One final concern which we have in terms of Skanska’s reaction to its use of TCA’s services is that no individual employees have been held responsible for any wrongdoing. Mr Francis told us that he—and, we assume, by extension, Skanska—preferred to take corporate responsibility for what had happened.<sup>66</sup>

**54. Skanska’s claim is that its use of the Consulting Association was essentially dependent on one individual, Stephen Quant, who is no longer with the company. We**

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61 Q 872

62 Q 2107

63 Qq 2188-89

64 Q 874

65 Q 2185

66 Q 2069



have no evidence to contradict this, though it seems implausible that no-one else in the company had the slightest inkling that potential employees or subcontractors were being systematically checked against a database. We acknowledge the extent to which Skanska subsequently faced up to its responsibilities in this regard once caught, and conducted a swift internal review. We look forward to examining this process in more detail. We also heard extensive evidence from Skanska that practices and cultures within the company had changed fundamentally as a result of this review. We accept that Skanska has made significant efforts to cooperate with the ICO.

55. We remain concerned by the failure of Skanska to hold any individual to account for the wrongdoing which it has acknowledged. There is much in the company's determination to accept corporate responsibility to be admired, but the fact remains that thousands of workers may have had their employment prospects blighted and their lives significantly disrupted, whereas those responsible for the illicit use of TCA's blacklist may still be employed by Skanska.

### Balfour Beatty

56. Balfour Beatty was another significant user of TCA's services, through a number of distinct subdivisions: Balfour Beatty Civil Engineering/Major Projects; Balfour Beatty Construction; Balfour Kilpatrick; Haden Young Ltd; Raynesway/Balfour Beatty Infrastructure Services; and Balfour Beatty Scottish and Southern. In July 2009, Balfour Kilpatrick and Haden Young merged to form Balfour Beatty Engineering Services. All of these companies were covered by a single group subscription to TCA, but were invoiced for their usage charges for TCA's services directly. As we mentioned earlier, Balfour Beatty Construction and Balfour Beatty Civil were founder members of the Consulting Association.

57. As we discussed in relation to Skanska, Mr Kerr told us that some members of TCA were especially severe in applying information found on individuals during reference checks against the database. He noted that "The Balfour Beatty companies were particularly hard-nosed, I found".<sup>67</sup>

58. Gail Cartmail, of Unite the Union, told us that Balfour Beatty Engineering Services was engaged in blacklisting.

One firm in particular is Balfour Beatty Engineering Services. One of our members, Stewart Hume, was interviewed by a manager called Gerry Harvey who, if I can put it in the vernacular, has form on blacklisting. The Committee may say that we could pursue the victimisation of trade union activities, but I am absolutely convinced that Stewart Hume will never be engaged by Balfour Beatty Engineering Services following his redundancy.<sup>68</sup>

67 Q 1212

68 Q 604

Asked if she believed that Mr Hume was blacklisted on the basis of his trade union activities, she replied, “I am absolutely convinced of that”.<sup>69</sup>

59. As we mentioned above, we heard evidence from Alan Wainwright, who had been employed by Haden Young, a Balfour Beatty subsidiary, as Regional Production and Resources Manager for the Midlands and Southern Region from 2004 to 2006. In 2005, while working for Haden Young, Mr Wainwright wrote to his head office, alleging that the company operated a system of blacklisting for new recruits and hired temporary agency workers “to check for any previous history of union militancy, troublemaking”.<sup>70</sup> From time to time, Mr Wainwright claimed, lists of names were faxed to Haden Young’s head office; he believed that this was so that the names could be vetted. The following year, he resigned his position at Haden Young and pursued a claim against them at an employment tribunal, but was unsuccessful. Mr Wainwright confirmed to the Committee that Haden Young was a subscriber to the Consulting Association and checked names against its database.<sup>71</sup>

60. Balfour Beatty has admitted using the services of the Consulting Association. According to an article in *The Guardian* in January 2013, Mike Peasland, Chief Executive Officer of Construction Services UK, Balfour Beatty plc, who gave evidence to us, wrote to Dennis Hone, Chief Executive of the Olympic Delivery Authority, admitting that:

Companies within Balfour Beatty’s Construction Services UK division “used the services of the Consulting Association prior to February 2009 when the office of the information commissioner raided the Consulting Association’s offices”. It adds: “We have carried out an internal review of our operating companies. We found that in 2008 we used the Consulting Association in connection with the engagement of 12 operatives”.<sup>72</sup>

After the raid of TCA’s office by the Information Commissioner in 2009, six Balfour Beatty companies were among those served with enforcement notices: Balfour Beatty Civil Engineering Limited; Balfour Beatty Construction Northern Ireland; Balfour Beatty Construction Scottish & Southern Limited; Balfour Beatty Engineering Services (HY) Limited; Balfour Beatty Engineering Services Limited; and Balfour Beatty Infrastructure Services Limited.<sup>73</sup>

61. Mr Peasland confirmed to us that Balfour Beatty, as a group of companies, had been a member of the Economic League, and had been a founder member (in more than one guise) of the Consulting Association. Once he had acknowledged that TCA provided a referencing service for potential employees against a database, we asked him why Balfour Beatty had felt the need for such a service. He said:

We were suffering huge amounts of disruption in our business from unlawful acts on our sites. That would have led to major issues in terms of disruption for our

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69 Q 605

70 “Alan Wainwright: The lonely life of a construction industry whistleblower”, *The Guardian*, 15 May 2009

71 Q 972

72 “Olympic workers cross-checked against unlawful blacklist”, *The Guardian*, 20 January 2013

73 [www.ico.gov.uk](http://www.ico.gov.uk)

customers, for our staff and for our own work force. We felt that this was a way to help prevent unlawful acts on our sites from happening.<sup>74</sup>

He went on to accept that Balfour Beatty had been slow to react to changes in data protection legislation, and had been using the services of TCA in an improper way. He said that “We regret using the Consulting Association”.<sup>75</sup>

62. In the wake of the ICO’s raid, Balfour Beatty, like Skanska, initiated a review of its process in these specific areas. Mr Peasland said that the company’s “reaction was to review exactly where we were with what we were doing and to change and improve our policies both in terms of our code of conduct and data protection”.<sup>76</sup> When asked if he thought matters would have improved without the impetus of the ICO raid, he affirmed that he did, though more slowly. Pressed on the evidence for this assertion, Mr Peasland replied, “There is no evidence of that”.<sup>77</sup>

63. We asked Mr Peasland what the review had revealed. He told us that Balfour Beatty’s data protection policies and code of conduct had been found wanting, and needed to be toughened up “to make it much more visible and explicit in terms of the actions that would be taken for either the use of or support of lists that supported people being excluded from sites without reference”.<sup>78</sup> The existing systems had not been robust enough.<sup>79</sup> We asked Mr Peasland to supply a copy of the review for us to see. He declined our request on grounds of legal privilege. However, we continue to negotiate with Balfour Beatty in the hope that a satisfactory solution can be found.

64. As we had done with Mr Francis from Skanska, we asked Mr Peasland if individuals within Balfour Beatty had been held to account for the failings involving the company’s use and membership of the Consulting Association. He told us that no-one had either been sacked or made redundant as a result.<sup>80</sup> He argued that individuals had simply been following existing company policy: only obeying orders.<sup>81</sup>

**65. We welcome the fact that Balfour Beatty has acknowledged that it was mistaken in using the services of the Consulting Association. We also welcome the fact that the company conducted an internal review in the wake of the ICO’s raid. On the first point, however, while we are sure that Balfour Beatty regrets being caught, we were less convinced that management regretted its involvement with TCA. On the second point, we cannot comment on the robustness or extent of the internal review until we see a copy of the document. We encourage Balfour Beatty to engage with us in a spirit of openness and honesty.**

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74 Q 2249

75 Q 2518

76 Q 2511

77 Q 2513

78 Q 2558

79 Q 2560

80 Q 2568-69

81 Qq 2624-25

66. The final point is, once again, the lack of individual accountability. Balfour Beatty confirmed that no-one had been sacked or made redundant as a result of the company's wrongdoing. We find this difficult to accept. Admission of corporate responsibility is an admirable thing, but it can be no substitute for holding individuals to account when they have committed illicit or illegal acts. It is hard to see how workers who have been systematically and illegally denied employment will understand that the perpetrators are still in their jobs. We do not accept the defence that people were only obeying orders.

## 4 Compensation

67. We have heard enough evidence to satisfy us that people have been wrongly denied employment because of the services provided by the Consulting Association, and that the practice of blacklisting may well extend further than that. However, a number of factors make it very difficult for those who have been discriminated against to seek redress.

68. One factor, as we discussed above, is that many of those on TCA's blacklist may not be aware of their presence on it. The ICO has demonstrated a very poor rate of return on its attempts to alert individuals to their presence on the blacklist and the vast majority of those 3,200 names must still be ignorant of the fact, or have suspicions which they cannot prove. **People must be made aware that they have been blacklisted if they are to be able to seek any form of redress.**

69. Another problem, demonstrated by Dave Smith's employment tribunal against Carillion, is that employers seem to be able to evade responsibility for the employees of subcontractors. This seems, *prima facie*, deeply unfair. **If a company discriminates against a worker on the basis of data improperly (let alone inaccurately) held, that company should be liable for any loss of earnings suffered. We recommend that the Government reviews this as a matter of urgency.**

70. We are also concerned about the issue of proof of loss of earnings. It seems clear to us that if someone is consistently denied work because of the presence of their name on a blacklist, that should entitle them to compensation. However, there are more nuanced cases. If people have had to move significantly out of their home area to seek work, because they have been blacklisted locally, that is surely a detriment to their home and family life. It is not clear what provision could or should be made for that in terms of compensation. **We will return to the issue of compensation in respect of blacklisting as our inquiry progresses and seek to make concrete recommendations to the Government.**

## 5 The way forward

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71. So far, our inquiry has concentrated on historical events and practices which may now have been changed. Certainly, the Consulting Association no longer operates, and the construction companies from whom we have taken evidence have been quite explicit that they are no longer involved in blacklisting. We make no apology for this; until 2009, this was a practice which was not widely known about by the general public, and deserves the greater exposure which we hope we have given it. Nevertheless, we wish to make a constructive contribution to the debate as well as to expose wrongdoing in the past, and we would therefore invite further submissions to our inquiry as it continues. We would like to concentrate on four issues:

- Is blacklisting still taking place, both within the construction industry and more widely, and especially in Scotland?
- Who should qualify for compensation? Anyone whose name appeared on a blacklist? Those who can prove they were adversely affected by blacklisting? Who should provide the compensation?
- 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?
- Is the existing legislation against blacklisting sufficient, if properly enforced, or do we need changes to the law to eradicate the practice?

72. Once we have more evidence on these matters, we intend to make a number of recommendations to the Government. We also intend to continue our investigation into the operation of the Consulting Association, to try to resolve various anomalies in the evidence we have heard, and take further evidence from construction companies. Only once the truth, the whole truth and nothing but the truth is known will it be possible for individuals who were affected to be properly recognised and recompensed for their suffering.

## Conclusions and recommendations

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### The Consulting Association

1. We are not satisfied with the explanations we have received about the creation of TCA and the parallel development of CAPRiM. It is not at all clear to us why any money would have had to have been paid for the files of the Services Group, since it was a membership organisation and therefore its property was, presumably, that of its members, who went on to be the founding members of TCA. (Paragraph 20)
2. It is very clear to us that the service which the Consulting Association offered was a blacklisting one: that is, subscriber companies put information into and took information out of a database, and they used the information on that database to make decisions about whether or not to employ certain individuals. We concede that the legislative framework meant this was not initially illegal, and it was a service which the Economic League had performed for many years—but by the end of TCA's life it certainly was illegal and all those involved should have known that. We consider it unethical, and to be condemned. We do not accept the argument made in self-justification that blacklisting did not occur because people were not automatically excluded from employment. This is evasive wordplay. (Paragraph 24)
3. We are not satisfied that sufficient action has been taken to alert individuals to the fact that information was improperly held about them by the Consulting Association, and that checks were made against this database by construction companies. The ICO has relied too much on individuals to take the initiative and contact it, rather than trying to identify the people who were on TCA's blacklist. Many may be unaware that they were being systematically discriminated against in employment. They deserve to know. We acknowledge that the ICO is now doing more to contact those whose names and details were held by TCA, and we welcome this direction of travel, but encourage the ICO to go further and to work closely with trade unions who have been active in this field. We recommend that the ICO write to us to update us on their progress. (Paragraph 30)
4. We find the ICO's justification for leaving behind the vast majority of documents at TCA's office unconvincing. We accept that the ICO was concerned that the warrant which it had obtained was limited in scope, but we regret that more documents were not seized. Even if the Consulting Association is now defunct, there remains the possibility that its activities could have been more widespread than has so far come to light. A greater degree of curiosity on the ICO's part might have demonstrated this one way or the other. (Paragraph 36)

### Sir Robert McAlpine Ltd

5. We were not persuaded by Mr McAlpine's description of his role with the Consulting Association as being hands-off. We accept that there was little direct supervision of Ian Kerr's activities as Chief Officer of the organisation, and in that sense Mr McAlpine acted as a non-executive Chairman. However, his position as the founding Chairman, and as a Director of one of the biggest spenders on TCA's



services, suggests that his involvement may have been rather more substantial than he suggested. The evidence we heard from Mr Kerr suggested that he was simply a paid employee of TCA and that initiative and direction came from elsewhere. We see no reason to doubt this. (Paragraph 42)

## Skanska

6. Skanska's claim is that its use of the Consulting Association was essentially dependent on one individual, Stephen Quant, who is no longer with the company. We have no evidence to contradict this, though it seems implausible that no-one else in the company had the slightest inkling that potential employees or subcontractors were being systematically checked against a database. We acknowledge the extent to which Skanska subsequently faced up to its responsibilities in this regard once caught, and conducted a swift internal review. We look forward to examining this process in more detail. We also heard extensive evidence from Skanska that practices and cultures within the company had changed fundamentally as a result of this review. We accept that Skanska has made significant efforts to cooperate with the ICO. (Paragraph 54)
7. We remain concerned by the failure of Skanska to hold any individual to account for the wrongdoing which it has acknowledged. There is much in the company's determination to accept corporate responsibility to be admired, but the fact remains that thousands of workers may have had their employment prospects blighted and their lives significantly disrupted, whereas those responsible for the illicit use of TCA's blacklist may still be employed by Skanska. (Paragraph 55)

## Balfour Beatty

8. We welcome the fact that Balfour Beatty has acknowledged that it was mistaken in using the services of the Consulting Association. We also welcome the fact that the company conducted an internal review in the wake of the ICO's raid. On the first point, however, while we are sure that Balfour Beatty regrets being caught, we were less convinced that management regretted its involvement with TCA. On the second point, we cannot comment on the robustness or extent of the internal review until we see a copy of the document. We encourage Balfour Beatty to engage with us in a spirit of openness and honesty. (Paragraph 65)
9. The final point is, once again, the lack of individual accountability. Balfour Beatty confirmed that no-one had been sacked or made redundant as a result of the company's wrongdoing. We find this difficult to accept. Admission of corporate responsibility is an admirable thing, but it can be no substitute for holding individuals to account when they have committed illicit or illegal acts. It is hard to see how workers who have been systematically and illegally denied employment will understand that the perpetrators are still in their jobs. We do not accept the defence that people were only obeying orders. (Paragraph 66)

## Compensation

10. People must be made aware that they have been blacklisted if they are to be able to seek any form of redress. (Paragraph 68)
11. If a company discriminates against a worker on the basis of data improperly (let alone inaccurately) held, that company should be liable for any loss of earnings suffered. We recommend that the Government reviews this as a matter of urgency. (Paragraph 69)
12. We will return to the issue of compensation in respect of blacklisting as our inquiry progresses and seek to make concrete recommendations to the Government. (Paragraph 70)

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## Annex A—Examples from the blacklist

### Consulting Association – Extracts from Files

When the Information Commissioner's Office seized paperwork from the Consulting Association the most important items seized were the index of names, held on sheets in ring binders, listing the names, National Insurance Number, location and trades of those on whom files were held and some 3200 individual cards. These were filed alphabetically and contained identifying information including dates of birth where available, plus records of contacts from companies seeking and providing information with comments on the individuals involved.

Some of this information is reproduced below. To comply with the terms under which I was permitted to see the cards by the ICO no individuals should be identifiable.

The extracts below have been drawn from approximately 20% of the material I had time to read. Italics are mine, underlining copied from Consulting Association

Ian Davidson MP

### *Examples from the blacklist*

After taking on showed signs of militancy over safety.

Glasgow, Pipe fitter, bad all round

Sold Socialist Worker

Militant ringleader

Started 22<sup>nd</sup> August with xx and xx has been informed that they have now taken him on but will get rid of him.

On list of persons described as unofficial shop stewards, described as very dangerous

Do not touch!!

Mechanic Edinburgh reported by xx as a troublemaker

Regarding his competence for the circumstances he was below average because he became involved in a lot of Trade Union activities at the site. Hence described as an activist. There is no doubt that he is a competent electrician but in view of previous comment is therefore not recommended.

Kilmarnock. Do not touch

Glasgow, is an extreme troublemaker, worse than any Communist.

Electrician Edinburgh Causing trouble at xx reported by local E.E.P.T.U. official as militant

1981, October, attended a C.P. meeting up in Glasgow. *No entry after May 1983.*

One of seven who 'tried to organise' 'xxxx major site xxxx. All were employed by subcontractor xxxx. After being dismissed took the company to a tribunal represented by xx of UCATT.

There was a settlement of £2000/man. Above described as one of the "also rans" along with xx, xx and xx. Ringleaders were xx, xx and xx.

Known troublemaker and extremist

After industrial dispute all the electricians, with the exception of the above, were given the opportunity to reapply for their jobs. Following the dispute, the above along with (22 names) were not taken back. All were suspected of being EPIU members.

These were regarded as followers rather than leaders of the unofficial action *then list of about 20 names.*

Subject, along with others, is an electrician who is a troublemaker and is politically motivated

Changed name from xx to xx to get work. Union agitator

Involved in safety strike at xx station

E.E.P.T.U. says N O ( *this appeared on several cards*)

Info from Scottish Region active trouble maker would never Re-Employ (*nothing else on file*)

Strong Left Wing view tendencies and a very active unionist

Involved in a dispute to try to enforce the main contractor to take responsibility for the non-payment of several weeks wages

After being employed by xx was elected safety rep on site

While at xx , drew H&S issues to the attention of site manager

Organised petition over homelessness

Has been moved with two others (to avoid suspicion)

Troublemaker

He is a convenor steward

The Subject worked for xxxx and was a troublemaker who would not be reemployed.

AEEU (xx) describes above as F. evil as far as internal union dealings are concerned. Active at branch level.

Report from previous employer, xxxx, he was a constant source of trouble. Barrack room lawyer makes shells for others to fire.

Thought possible that xx & xx are twins.

1997 – 1999 worked at Jubilee Line Extension. Allowed himself to be drawn along by the course of events at JLE, 1997-1999, not in front line of action. Source xxxx

Was actively involved in the issues which arose during the terms of the contract.

Above information arose from liaison between Union, contractor and managing agent at J/L

*File then records “co. has not employed” from 2001-2008 – 7 different companies.*

Troublemaker

Subjects, along with others is an electrician who is a troublemaker and is politically motivated. Would not be re-employed

That subject is a very bad troublemaker and would not be re-employed.

Deputy steward with xx made bullets for xx for others to fire.

IT claims against Network Rail described as a troublemaker and therefore a person Network Rail would not want on their books hence xx in a third party position have not employed.

Under no circumstances whatsoever.

We managed to get rid of him and will not re-employ him.

Believed he was involved in unofficial action as a hard core at the Pfizer building 500 dispute. Dismissal of the entire workforce 180 electricians. All are suspected of being members of the EPIU

Prior to this had been a very good and conscientious worker, but turned quite dramatically and took a leading part in formulating strike action. Workers tried to change NINO to avoid the blacklist. Example, xx changed his NINO and also his DoB.

Inner London shop stewards committee link. Not confirmed.

Agitator.

Is a good worker but has proved to be very militant.

Above would not be re-employed by them or recommended to anyone. Caused them a great deal of trouble.

Subject is an electrician who is a troublemaker and is politically motivated.

Apprentice electrician

1997 -1999 worked on JLE allowed himself to be drawn along by the course of events at JLE 1997-1999. Not in front line of action.

Under no circumstances whatsoever.

Described as totally obstinate, hater of management, very well off, out to cause trouble wanting to obstruct xx project as much as possible. Described self as a freemason.

Hardly at work due to union duties. If taken on takes a lot of time off would not re-employ for this reason.

Subject worked for xx who fired or made redundant. They were glad to get rid of him and would not re-employ. He was a T&GW safety rep first class troublemaker. Applied xx with brother not employed

Elected shop steward causing a great deal of trouble.

Large family in xx. Troublesome

Not politically motivated but well versed in troublemaking. More astute than xx. Well versed in manipulating situations.

Involved in an industrial tribunal. Jan 2007. Witnesses for the above 3 were xx,xx,xx,xx

See references North West Regional TGWU official their cases succeeded unanimously judgement at the tribunal.

Bad all round.

On the building industry blacklist

Girlfriend has been involved in several marriages of convenience

They were all known to associate with extreme left wing organisations. We managed to get rid of him and will not re-employ him.

Inner London shop stewards committee link. Not confirmed.

Under no circumstances whatsoever

Is believed to be a member of the CP

Strike leader xx believed CP

Got shop stewards committee to contribute to Labour research dept. Described as an activator who operated in the background.

Subject reported by xx as an aggressive militant

Reported troublemaker

3 separate spellings of surname. Uses addresses and gives 2 different ones.

Has been selling TNS in Glasgow

From researchers records it would appear that subject is RCP activist

Has probable connections with ....2 names given....

Reported by local EEPTU official as “militant”.

xx could perhaps be a son of xx.

January 2000 confirmed son of BC – *no other entry on file apart from home address DoB, NINO and trade. No employment comments at all.*

Alleged association with SWP

Involvement with EPIU in dispute thought possible, but not verifiable

Police helped by assuring men were able to get on to site without problems

Advice to xx thought possibly coming from lecturers at xx University

Above described as one of Glasgow’s “murphia” and has several brothers and other relations who act and work together. Rough and hard but handleable. Co has employed.

Glasgow - causes trouble at every opportunity

Irvine – subject was a troublemaker

Subject is a troublemaker. He is a friend of xx he is easily led and does everything xx tells him to

Worked at Jubilee Line Extension. Allowed himself to be drawn along with the course of events at JLE, not in front line of action.

Co has not furthered *given on 15 other occasions up to September 2008.*

Subject is a TGWU steward on the xx site. He is of Scottish decent but has lived at the above address for 8 years. Holds extremely militant trade union views, is anti authority and appears to be an agitator

He holds strong ‘far left’ political views and is a firm supporter of Tony Benn, its warned that this subject could be a future source of trouble.

*Press cutting – RMT activist . Copy of press cutting from Morning Star October 2002.*

Joiner – power stations

Winding up men on issues of jobs at xx power station. xx of Unite also involved. Attempts to make this a national issue.

Bricklayer – London

Described as “mouthing off a lot, but doing little”. Source xxxx

London – electrician

2003 February information received that the above, along with 7 others are taking xx co to an industrial tribunal on the grounds that they were dismissed for trade union activities.

The others are – *listed.*

1977 worked for upper Clyde shipbuilders. Reported as troublemaker, not a member of CP but definitely a supporter.

Union steward – work and this man do not agree!! Problems!

Orkney – labourer

“bad all round”

Ringleaders appeared to be xx and xx who between them conduct the orchestra and wind the others up

Possible serial claimant re holiday pay. Signs declaration of self employment and in approx 2 weeks claimed for holiday pay – agency pays him off

Further note – above is 1 of 3 bricklayers whom xxxx suspects are serial ET claimants. They work as sub contractors men, move on and make claims for holiday payments under WTR's

EETPU says no

Convenor steward – west Chelsea – 1996

Edinburgh – labourer

young nutter

Essex – labourer

*At same Jubilee Line extension entry*

August 2005 co has not furthered. September 2005 above has questioned via the project manager, a friend, why he was not taken on. Project manager told him he has not passed company's security processing. Project manager stated that the above has worked for xx for 6 years via various subcontractors and that he is one of the best workers. Being punctual, hard working and has never been reprimanded. In view of this, and others on site, co will note and monitor.

believed to have worked at JLE during the dispute. Information awaited to indicate whether involved actively in dispute or not.

subject along with others is an electrician who is a troublemaker and is politically motivated.

Subject took part at violent picket at xx. But avoided arrest.

subject along with 4 others whom we know of are travelling around sites in a gang. We have no proof of anything on this man but the leader of the gang is xx

Card 3 for info only: see ref xx for X,Y and Z similarities.

Note: no firm link can be made, however.

He has strong left wing tendencies.

no trace of subject on voters list.

Applied to xxxx via xx at Portcullis House contracts Co has not employed

These details thought possibly to belong to a son of xx (no proof he has a son)

xx. Confirmed some of the above.

A sound workman, but would not be re-employed as judged to be too difficult to handle.

This man is a troublemaker of the first order. He started with X in September on their XY site. He frequently calls meetings (which he calls "discussions") in working hours and sells the Morning Star in the canteen. Does all he can to cause strikes. He openly "breaks all the rules" but has a slick answer every time he is called to account. A real clever devil, and a potential danger to any firm who should engage him. Is a self confessed member of the CP and avid to increase membership. Will be leaving them shortly and will be "coming on the market".

He has gone round the site boasting that he is a Communist and stating that he is on a "blacklist". The company is "on the spot" and they realise that names should be checked before engagement and this they are proposing to implement. All they can do is transfer subject to a site where he can do the least damage. He has already brought xx in on his side.

labourer

Information from xx. He is on their xx site where he has been made shop steward. He is a Communist and has just joined the brotherhood. Is said to be a real troublemaker.

Carpenter

They found him to be very militant and a great aggravation and they are convinced he was behind their Christmas strike. We did a special on him in June 1977 and our opinion was that although he was a strong trade unionist he wasn't Militant. We suggest references are kept up.

Miner – tunnelling

Is employed by xx on a tunnel project at xx his brother xx, and several other Irish men who are normally London based, are working with him. They have recently had a 2 week strike over wages. He is a shop floor steward and holds very militant trade union views. He is usually chief spokesman for the Irish contingent and is a well practiced agitator. His political views are extreme left wing and very much in line with the CP. He is not a member of the Party, but will support any extreme left wing political organisation that will support the workers in the cause against officialdom.

Mr xx of xx Ltd telephoned to see if anything was known about the above named. Both the League and official sources knew nothing to the detriment of this man.

The following list were all believed to have been employed at JLE from 1997 to 1999. *Jubilee Line list cards 1-10*

*At least 500 names attached with NINOs.*

Carpenter

Very bad news – will close sites

Has been moved with 2 others (to avoid suspicion) on to another contract of the subcontractor.

reported to have requested employer xx to pay him off to go away.

It was emphasised that there is still an element of doubt in view of the entry of July 21<sup>st</sup>.

assenter to the CP candidate in the general election.

Subject is a shop steward and member of the TGWU. Is a troublemaker. If she is not a member of the CP her husband certainly is.

Joiner says he has charge hand experience and is a member of UCATT. Is believed to be a member of the CP

May 1974 phone check by xx, xx informed. Name appeared on lists from Scottish xx v74. Xx informed.

Scaffolder 6<sup>th</sup> June xx strike leader believed CP (Communist Party)

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# Formal Minutes

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**Tuesday 26 March 2013**

Members present:

Mr Ian Davidson, in the Chair

Mike Crockart  
Mrs Eleanor Laing  
Jim McGovern  
Graeme Morrice

Pamela Nash  
Sir Jim Paice  
Lindsay Roy

Draft Report (*Blacklisting in Employment: Interim 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 72 read and agreed to.

Annex and Summary agreed to.

*Resolved*, That the Report be the Ninth 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 16 April at 2.00 pm]

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# 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.

## Session 2010–12

First Report	Postal Services in Scotland	HC 669 (HC 884)
Second Report	Video Games Industry in Scotland	HC 500 (Cm 8067)
Third Report	UK Border Agency and Glasgow City Council	HC 733
Fourth Report	The Scotland Bill	HC 775
Fifth Report	Student Immigration System in Scotland	HC 912 (Cm 8192)
Sixth Report	The Referendum on Separation for Scotland: Unanswered Questions	HC 1806
Seventh Report	The Crown Estate in Scotland	HC 1117
Eighth Report	The Referendum on Separation for Scotland: Do you agree this is a biased question?	HC 1942

## Session 2012–13

First Report	A Robust Grid for 21 <sup>st</sup> Century Scotland	HC 499
Second Report	The Referendum on Separation for Scotland: making the process legal	HC 542
Third Report	The Referendum on Separation for Scotland: a multi-option question?	HC 543
Fourth Report	The Referendum on Separation for Scotland: Terminating Trident—Days or Decades?	HC 676 (HC 861)
Fifth Report	The Future of HM Coastguard in Scotland	HC 583
Sixth Report	The Referendum on Separation for Scotland: The proposed section 30 Order—Can a player also be the referee?	HC 863
Seventh Report	The Referendum on Separation for Scotland: Separation shuts shipyards	HC 892
Eighth Report	The Referendum on Separation for Scotland: How would Separation affect jobs in the Scottish Defence Industry?	HC 957