

Blacklisting: anatomy of a scandal

The blacklisting scandal that erupted in 2009 is only now coming to a head. In April a decision is expected on whether four separate lawsuits against the UK's largest contractors can be combined into one – lawsuits that together could be worth hundreds of millions pounds. Separately, the contractors' attempt to limit their liability with a compensation scheme foundered in February amid acrimonious talks with representatives of the blacklisted workers. As the battle lines continue to form, **David Rogers** interviewed the whistleblowers to uncover how the scandal came to light. Here he explains what it means, what happens next, and asks what it is about the UK construction industry that gave rise to blacklisting in the first place

For 40 years and more it had been rumoured that employers in the British construction industry maintained and shared a list of people to be kept off their sites. The evidence was plentiful, but it was anecdotal and circumstantial. In any case, some people were known to be troublemakers. Construction is a big industry but a closed world, and word gets around. Just because some people couldn't get a job no matter how many hundreds they applied for, it didn't follow that the contractors had got together and formed a secret society, did it?

But that's exactly what they had done. As secret societies go, the Consulting Association wasn't a grand affair: between 1994 and 2009 it was based in a two-room office that opened onto an alley in Droitwich, Worcestershire. It had one full-time employee and three part-timers, and its principal assets were 3,213 hand-written files, a telephone, a fax machine and a shredder. The fax machine was there to receive lists of names, the cards were for checking the names against and the telephone was for reporting the results. The shredder was used at the end of every working day to destroy the faxes.

Over the course of an average year, about 40,000 names went through the system. As might be expected from an industry that survives by cutting costs to the bone, this was done with great efficiency. Sir Robert McAlpine provided the start-up capital: a £10,000 loan, repaid in full.

The existence of the blacklist was discovered one day in February 2009 when four investigators from the Information Commissioner's Office (ICO) turned up in Droitwich and knocked on the door. There was no reply, so they tried the adjoining property; the owner let them in, and opened a communal door that led to their Consulting Association's office.

Inside was a thin, elderly man called Ian Kerr. The investigators showed him a search warrant and proceeded to remove the card index, the Consulting Association's list of subscribers and its accounts. There was also a file containing a short list of names: these were the company contacts who were the only people who could be phoned with the results of a vetting.

In most cases, it was the board director in charge of HR. Nobody else in the subscriber company could be called. As Kerr later told a parliamentary select committee: "Everybody recognised that this was secret, sensitive information."

What follows is the story of how the blacklist came to light, the way it operated, and what happened after its existence was exposed. If the fact that the industry had a blacklist was a scandal, the events that followed its exposure became a greater one. As well as 44 of the country's leading contractors, it emerged that

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Whistleblower Alan Wainwright

the police, the security services and even the construction unions had had a role gathering names and the mud to daub them with. It also reveals the indifference of successive governments to the injustices suffered by workers who, for the most part, were exercising the political rights that liberal democracies pride themselves on safeguarding. Finally, it involves a pitched battle for compensation through the courts, a battle whose lines are still forming.

The whistleblower

In 2004, a 40-year-old construction manager called Alan Wainwright got a job with Haden Young, the M&E subsidiary of Balfour Beatty. He had trained as an electrician, and had run his own recruitment company, so he seemed a good choice. Within a year Wainwright suspected that an employee was committing fraud on a schools project in Exeter, and raised his concerns with his managers. In written evidence to Parliament's Scottish Affairs select committee, which took up the issue and began grilling



Members of the Blacklist Support Group demonstrating outside the Royal Courts of Justice

witnesses in May 2012, Wainwright said he was then subject to abuse: "false accusations, constant criticism of my work, removal from training opportunities and removal of my lodging allowance".

In June 2005 he was diagnosed as suffering from work-related stress and went on sick leave, where he remained for the following seven months. In January 2006 he resigned and took Haden Young to an employment tribunal for constructive dismissal. Among the material he presented was the evidence of the blacklist, which had been operated by all three of the companies he'd worked for. At this point, Haden Young offered him £20,000 to settle, but he refused. Wainwright told CRI: "I needed to get the blacklisting information into the public domain without fear of libel litigation. The £20,000 would be little use to me if I was to be prevented from earning a living and I had to take out a second mortgage of £17,000 to pay my legal fees."

The tribunal rejected his claim, and his concern that he himself would be stigmatised. "As to the alleged blacklist, our finding

is that none existed," it said, "and Mr Wainwright's fear that he would be placed upon one had no sound basis other than his own, rather wild assumptions arising out of an increasing mistrust of his employer, which he has been unable to show was in any way justified."

Unfortunately for Wainwright, he then amassed a great deal of evidence that those assumptions were anything but wild: more than 200 job rejections. In this respect, he was like hundreds of highly skilled people who found that their work suddenly and inexplicably dried up. But, unlike them, he was a manager with an HR background. And despite the tribunal's remarks, he knew that a blacklist existed because not only had he seen it in action, but he'd met the man who ran it.

The break

Wainwright had gained his first-hand experience of the blacklist while working as the national labour manager for Crown House, which at time was the M&E subsidiary of Tarmac. In 1997, after

he'd been at Crown House for four years, he was given the job of setting up the Central Labour Department in the firm's Manchester office, with the aim of controlling the recruitment of agency labour across the UK. Before that happened, though, he was told by Tarmac's HR director to meet with a "private investigator" called Ian Kerr who was employed by contractors "to ensure that certain workers did not gain employment on their projects".

When Wainwright met Kerr in Manchester, he was given print-outs from Excel spreadsheets with about a hundred names on them and informed that they were a sample from the blacklist. According to Kerr, it was already in use by main

contractors, and was being rolled out to the M&E sector.

Wainwright comments on his blog: "Within weeks of meeting Kerr and setting up the name checks, I was instructed to cease contact with him and fax all name checks to Frank Duggan's PA. He was the group personnel director for Tarmac/Carillion at the time." The process was "very discreet, a closely guarded secret. It was made clear to me that I was not to discuss it with anybody, and I didn't". He later found the same furtive system in operation at Haden Young.

Now that he was confronted by the probability that his own name was on Kerr's index (it was), Wainwright took action. His first move, in March 2006, was to start a blog and use it to contact

Who used the Consulting Association?

This is the record of who used the Consulting Association. Some firms, such as Willmott Dixon and Morrison, were subscribers but made no use of the blacklisting service, merely paying their annual subscription. Others were heavy users.

	1996/7	1997/8	1998/99	1999/00	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07	2007/08	2008/09	TOTAL
Sir Robert McAlpine	8,598	3,406	12,541	13,540	7,367	7,876	17,814	26,403	22,259	31,680	18,566	24,833	24,623	219,506
Trafalgar House/Kvaerner/Skanska	2,850	3,201	4,459	6,849	7,894	11,085	11,988	24,261	24,932	30,386	30,464	34,308	23,163	215,840
John Laing/Laing O'Rourke	17,293	22,777	28,445	42,209	2,948	3,682	3,911	6,591	2,871	2,898	2,850	5,274	6,005	147,753
Balfour Beatty	7,444	4,822	8,025	4,802	10,189	7,990	6,465	9,289	7,085	10,705	12,969	12,753	9,267	111,804
Tarmac/Carillion	8,912	4,399	9,555	11,145	7,272	6,304	11,169	9,351	2,500					70,607
Amec	9,533	5,901	8,853	13,678	4,712	3,907	2,802	3,683	3,317	4,881	3,355	3,153	1,500	69,275
Norwest Holst/Vinci	3,470	2,098	2,442	3,139	3,325	2,533	2,768	3,061	3,092	3,214	3,186	4,034	3,818	40,180
Edmund Nuttall/BAM Nuttall	2,432	1,894	1,902	2,472	2,260	2,770	2,981	3,389	3,255	3,862	3,936	3,763	3,453	38,369
Costain				1,965	3,607	2,097	5,207	5,027	3,027	2,853	2,902	3,100	3,075	32,860
Cleveland Bridge					412	2,534	3,824	4,349	2,709	2,963	2,903	3,667	8,495	31,856
Kier Engineering	2,443	1,653	1,977	1,772	1,636	1,604	2,146	2,600	2,611	3,074	2,894	3,137	3,075	30,620
Higgs & Hill/HBG Construction	2,100	1,600	1,600	1,600	1,600	1,600	2,100	260	2,600	2,850	2,850	3,100	3,075	26,935
Emcor Drake & Scull/Emcor						1,053	2,100	2,600	2,611	2,882	5,080	5,340	4,004	25,670
Crown House									4,230	4,058	3,468	6,715	4,379	22,850
Amey Construction	2,100	1,600	1,600	1,600	2,819	6,928	2,100	2,500						21,247
John Mowlem	2,124	1,600	1,638	1,600	1,600	1,600	2,122	2,768	2,708	2,869				20,629
NG Bailey									1,950	2,850	2,955	6,861	5,173	19,789
CB&I										5,394	6,748	5,545		17,687
Taylor Woodrow	4,517	3,574	4,036	2,497	1,758									16,382
Ballast Wiltshier/Ballast	2,194	1,600	1,600	1,600	1,600	1,600	2,100	2,550						14,844
Shepherd Engineering Services									2,189	3,116	3,054	3,100	3,075	14,534
Whesoe										3,045	3,363	3,149	3,000	12,557
Walter Llewellyn	2,100	1,600	1,600	1,600	1,600	1,600	2,050							12,150
Morrison Construction	2,100	1,600	1,600	1,600	1,600	1,600								10,100
Willmott Dixon	2,100	1,600	1,600	1,600	1,600	1,600								10,100
Diamond M&E										2,825	3,100	3,075		9,000
Morgan Est												809	3,279	4,088
Morgan Ashurst												775	3,075	3,850
SIAS Building Services													3,113	3,113
Yearly total	82,309	64,925	93,473	115,268	65,799	69,963	83,646	108,682	93,947	118,186	113,014	137,719	127,267	1,274,19

Scottish Affairs Select Committee

other workers who suspected that they had been blacklisted.

This strategy bore fruit the following January, when he was asked to submit evidence to an employment tribunal brought by a "troublemaker" called Steve Acheson and two fellow electricians who had been dismissed from the Manchester Royal Infirmary project four years previously. At Acheson's tribunal the chairman asked Wainwright why he, a management type, would give evidence in support of an activist like Acheson. "I think I'm on a blacklist myself," he said. "But to prove that, I first need to prove that one exists." This was the same "wild assumption" he'd made at his own hearing, but this time it was accepted. The tribunal's findings stated that the workers should be reinstated and compensated—and that a blacklist did exist in the construction industry.

The investigator

The Guardian newspaper picked up on the findings and on 28 June 2008 it published an article called "Enemy at the Gates", which told Acheson's story and posed the question: did a blacklist exist in construction or not? A spokesperson for the Construction Confederation said blandly: "We're not aware of it existing. If unions have evidence of malpractice by an employer they need to share it. Blacklisting is not the practice of a good employer." A lawyer who acted in employment disputes said: "I'm absolutely convinced there are blacklists but the problem is proving it."

That edition of the Guardian landed on the desk of a former policeman called David Clancy, who was one of four investigators employed by the ICO. If a blacklist existed, it contravened the 1998 Data Protection Act, which laid down a number of

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Investigator David Clancy

rules by which anyone holding a database containing personal information must abide—such as telling those who were on it that they were on it. This act was policed not by the police, but by the ICO. If it was anybody's job to prove a list existed, it was Clancy's.

His first move was to contact Acheson and arrange to visit him in his home in the Denton suburb of Manchester. Acheson told CRI that he gave him his store of circumstantial evidence, and Clancy said: "I'll prove there's a blacklist." Acheson replied: "I like your confidence, but how do you prove something that's run so covertly?" Clancy replied: "I'm just like you, Steve. Once I get my teeth into something I don't let go," and went off to talk to Wainwright.

Having seen the evidence Wainwright had amassed, Clancy judged that there was enough to launch an investigation. He decided to confront Haden Young, Wainwright's former employer. Under schedule nine of the Data Protection Act, the ICO could either give the company seven days' notice, or ask a judge for a search warrant and turn up without warning. Clancy took the second option, and in September 2008 the ICO raided Haden Young's Watford offices. The information picked up in that swoop gave Clancy his first glimpse of the Consulting Association. But what was it, exactly?

Clancy tried to get more information from Haden Young, which fought an effective rearguard action to keep it secret. Part of the ICO's problem was that it was a new organisation and many of

its powers were untested. But after five months of legal argument Haden Young suddenly capitulated and gave the ICO Ian Kerr's name and address. Clancy went to Manchester Crown Court for another search warrant and the raid on Droitwich was on.

When Clancy knocked on Kerr's door he found the card index and evidence that more than 40 of the biggest firms in construction had paid to consult it. He later told the Guardian that it was "like Christmas ... This had been going on for years. Steve Acheson and others had never been able to get to bottom of it but suddenly we had an answer. It was a nice feeling".

The blacklister

Ian Kerr, the "private detective", died of heart problems in December 2012, aged 70. He was, of necessity, a shadowy individual. He once took a brief call from a reporter, was misquoted, and never spoke to the press again. Fortunately for those trying to understand how the blacklist operated, he did give extensive oral evidence to the Scottish Affairs select committee shortly before he died.

In his twenties Kerr had worked as a teacher for three years before taking a better paid job so he could afford to get married. He joined an organisation called the Economic League as a training officer in 1969. This group, which had been founded in 1919 (originally called National Propaganda) as a kind of anti-socialist PR bureau, had operated a blacklist throughout the 20th century. Originally the focus has been on shipbuilding, mining, steelmaking, brewing and banking, and the aim had been to keep left-wing agitators out of those industries (see box, Blacklisting for Britain).

Kerr stayed with the Economic League until its demise. Michael Noar, its director-general between 1986 and 1989, described him as "a key guy". He said Kerr infiltrated "a lot" of trade union and political meetings, where he recorded who said what and took away the attendance lists. "He was one of our most effective research people," said Noar.

After the widespread and bitter industrial unrest of the seventies, the construction industry became concerned about the need to vet their workforce, and as a result formed its own organisation within the Economic League, called the Services Group. It was this body's index that formed the basis of the Consulting Association's list.

Kerr, as a "key guy", was a natural candidate to run the successor organisation after the Economic League lost its credibility. He was initially paid £20,000 a year, but by 2009 his salary had risen £50,000, and came with private health insurance and a company Mercedes.

After the ICO's Droitwich raid, press reports described him as a private detective who had sold a vetting service to employers, but this was misleading. In fact he acted more as a kind of curator for the information that the companies gave him. His job was simply to be there when he was wanted, to check the faxes and phone the relevant HR director when a name matched an entry on a card. Once a year he chaired a meeting of the association's board, which was held at Sir Robert McAlpine's Bernard Street offices in London. Occasionally, as a kind of hobby, he went to left-wing bookshops—his favourite was Compendium, in Camden—and bought socialist and anarchist papers. If he found a name from his index mentioned in an article, he attached a cutting to the individual's card.

In his evidence to the committee, Kerr was co-operative, but he also wriggled. He suggested that he had acted merely as a kind of machine, simply checking faxes against his list of names.

A contractor placed an advert, it received 50 replies, the names of the applicants were faxed to Kerr, and Kerr checked them. It wasn't up to him what firms did with the information on each name, which he read to them without adding any comments of his own. Sometimes, he said, they would employ an individual even though their name was on a card, so you couldn't really call it a true blacklist. Ian Davidson, the chair of the select committee, commented that the only case he saw in the files of a worker who had been employed despite being listed was a man who had been sacked for smoking a cigarette underground 10 years previously.

Kerr could see how much financial hardship an individual was suffering because each time they were rejected for a job he noted it on their card. Sometimes he even felt sorry for the people whose lives he was blighting, whose marriages were on the rocks and whose children were in receipt of milk tokens (see victims box). When one of the MPs on the committee asked him if his conscience ever troubled him, he replied that "where it had ruined lives and it could be genuinely shown to have done that, then that would be a concern and a matter of regret for me". Sometimes, he said, he wouldn't tell a company that a name was on the blacklist, if the information was old or weak, and if he knew the company would automatically reject the application—he named Balfour Beatty and Skanska as being particularly "hard nosed" in this respect. However, he also believed that companies had the right of self-defence, and although they refused employment to some workers, those workers could always get a job with another company that didn't use his blacklist.

The law

When Kerr was prosecuted, it was for contravening the Data Protection Act by keeping information on individuals without their consent or knowledge. This led to a trial in Knutsford Crown Court on 16 July 2009. Kerr pleaded guilty and was given a £5,000 fine (paid by Sir Robert McAlpine).

Given the financial and emotional damage that thousands of people had suffered as a result of Kerr's activities, that penalty

struck many commentators as derisory. But it was the maximum allowed for failing to register the Consulting Association as a data controller. David Smith, the ICO's director of data protection, lamented in his blog in August 2012: "It was disappointing to us that we could not issue more substantial penalties, but these were the maximum legal powers available to us at the time. We have since been given the power to issue civil monetary penalties up to £500,000, but these can only be used where a breach of the Data Protection Act has taken place after April 2010."

In fact, what Kerr was doing was almost lawful. The Data Protection Act requires that data be accurate, held for as short a time as possible, used for a limited and specifically stated purpose, kept safe and secure and used in a way that was lawful. It was arguable that the Consulting Association complied with all of these provisions—assuming it was true that Mr A from Edinburgh really was a "young nutter" and Mr B did have "a girlfriend who has been involved in several marriages of convenience". One man was on the blacklist because "he was on the blacklist". Where Kerr fell foul of the rules was in not telling the people on the list that they were on it. But, then again, neither did the ICO – as of 19 September last year, only 442 members of the list had been contacted, although plans are in hand to inform another 1,200.

So there was nothing illegal in running a blacklist—if you informed those who were on it. The Labour government had included a provision banning "prohibited lists" in the 1999 Employment Relations Act but had not activated it on the grounds that such lists did not exist (despite the fact that, as it later transpired, public employees were helping to maintain one). After the revelations about what the largest firms in the UK's largest industry had been up to, the government drafted a regulation prohibiting the compiling of lists "with a view to their being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers".

This was brought forward as a statutory instrument and came into force on 2 March 2010. Blacklisting was finally illegal. The new regulations allowed much higher financial penalties than the Data Protection Act—but stopped short of making blacklisting a criminal offence. Nor is it clear whether they can be used to prosecute a firm that blacklists a worker who is employed by somebody else—which, from the point of view of main contractors, is just about everyone on a building site.

An alternative approach has been put forward by Keith Ewing, professor of law at King's College London. He argues that everyone should have a right not to be blacklisted, and a collateral right to be compensated for breach of that right. But there is no sign that the Coalition is willing to take further action. Vince Cable, the business secretary, has said that blacklisting is "thoroughly objectionable and indefensible", but says he has no evidence that it is continuing—which is the position taken by the previous government.

The claimants

After it became clear that none of the companies that had subscribed to the Consulting Association would face legal action from the state, beyond an order from the ICO to comply with the Data Protection Act in future, the focus shifted to whether the workers who had suffered could seek redress through civil law.

The first legal moves were to call employment tribunals but most of these claims were time-barred, as tribunals have to be brought within three months of the incident to which they relate. In other cases it was found that a blacklisted worker could not be compensated if the list was maintained by a main contractor rather than their direct employer. And the few that did succeed were marginal victories. An electrician called Steve Kelly received £2,400 after spending 10 years on the blacklist. He said: "I tried to get on the Olympic project and was told 'no way, he's the biggest troublemaker in London.'" As the defeats and pyrrhic victories mounted, it became clear that the aggrieved workers would have to find another way to seek compensation.

That other way was a direct attack. On 20 July 2012, a group of 79 blacklisted workers served a writ on Sir Robert McAlpine, the firm that had worked most closely with the Consulting Association and had spent the most on its services (see table: Who spent what). The claim was for loss of earnings and damages resulting from an alleged unlawful conspiracy. The value of the damages was initially put at £17m, but some press reports speculated that the final claim could be as high as £600m. Papers were served in the High Court in January 2013, and Sir Hugh Tomlinson, the Matrix Chambers QC who had represented victims of phone hacking, was retained by the claimants. If the case is decided against McAlpine, the firm has indicated that it will seek contributory damages from 10 other subscribers to the Consulting Association: Balfour Beatty, BAM, Carillion, Costain, Laing, Kier, Skanska, Vinci, Taylor Woodrow and Amec.

Three other legal actions were launched by construction unions against companies that subscribed to the Consulting Association.

“ It was like Christmas. This had been going on for years ”

Investigator David Clancy

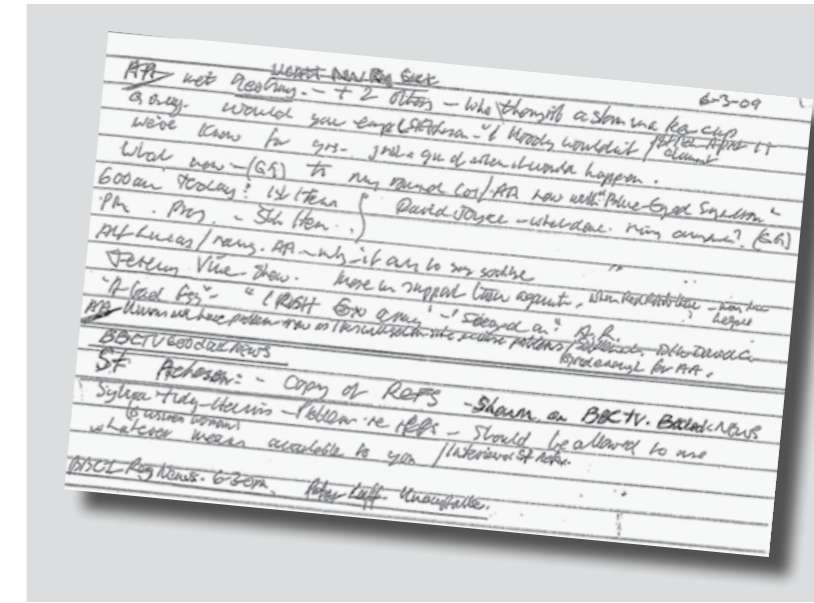
The GMB launched theirs on behalf of 70 of their members in June 2013, and Unite and Ucat began proceedings in November 2013 (see box: who's suing whom).

An application to combine these four cases was lodged in the High Court in February 2014, but has been postponed. Steven Whitaker, the senior master of the Queen's Bench division, ruled that the actions launched by Ucat and Unite in were not sufficiently advanced, and said he would decide on a group litigation order in April 2014.

The police and the unions

One of the more startling facts brought to light by the scandal was that not only had the police and security services shared intelligence with the subscribers and the construction executives who sat on the Consulting Association's governing committee, but union officials had as well—the same unions whose members had been victimised.

The security link emerged in evidence given to an industrial tribunal by David Clancy, the ICO's investigations manager, on 3 March 2012. He told the hearing: "There is information on the



Handwritten notes on Steve Acheson by the Consulting Association's Ian Kerr

Consulting Association files that I believe could only be supplied by the police or the security services. The information was so specific and it contained, in effect, operational information that wouldn't have formed anything other than a police record."

It later emerged that the ICO's 2009 raid on the Consulting Association had uncovered a report of a meeting in November 2008 between the Consulting Association and officers from the police National Extremism Tactical Co-ordination Unit, which runs undercover officers. This information was then supported by an announcement from the Independent Police Complaints Commission in October of last year that a Scotland Yard inquiry had found that it was "likely that all special branches were involved in providing information" to the blacklist.

An examination of the files also revealed the involvement of union officials. Sean Curran is a solicitor with the legal firm Guney, Clark & Ryan (GCR), which specialises in civil rights, and is representing the 79 victims who sued McAlpine in 2012. To prepare its case, GCR was given access to the Consulting Association's database. Curran said: "We have seen evidence that implicates Amicus [the electrician's union that evolved into Unite] and Ucat officials in the supply of negative commentary about the suitability of their members for employment. That commentary frequently made its way onto the Consulting Association database and was no doubt one of the factors that led to denials of employment."

Curran accuses the unions of bald hypocrisy. On GCR's website he wrote: "Until very recently, there has been little or no support from the trades unions, to which many of those individuals who are bringing the claim belong. Indeed it is only because of the hard work and dedication of these claimants and GCR ... that the unions had to sit up, take notice and take action. As a result, with much media fanfare [they] have all now also issued High Court claims of their own, and are running media campaigns highlighting their 'fight' for justice for blacklisted workers despite years of inaction and there is ample evidence that implicates union officials in the supply of information to the blacklist."

Steve Murphy, the general secretary of Ucat, told CRI: "Ucat takes allegations of collusion between any of our officials and blacklisters incredibly seriously. If we are provided with evidence we will investigate the allegations thoroughly." A Unite spokesperson told us: "Unite supports a public inquiry into the

Who's suing who

- The Blacklist Support Group is suing Sir Robert McAlpine and Callum McAlpine
- GMB is suing Sir Robert McAlpine and Carillion
- UCATT is suing: Sir Robert McAlpine, Carillion, Balfour Beatty, Bam, CB&I, Costain, Laing O'Rourke, Lend Lease, Skanska and Vinci
- Unite is suing: Sir Robert McAlpine, Balfour Beatty, Crown House Technologies, Kier, Laing O'Rourke and Skanska

An application to combine these four cases was lodged in the High Court in February 2014, with a decision due in April 2014.

blacklisting scandal that looks at all the evidence leaving no stone unturned. The systematic blacklisting funded and organised by construction contractors lasted many years and it is in the public interest to know the full facts.”

The evidence of black operations on the part of the security services has led to calls for a public enquiry, but so far the Coalition has shown no enthusiasm for that. Labour leader Ed Milliband has indicated that he would hold one if elected, so more information about this shadowy area may come to light one day.

After Kerr’s case was over, and the regulation against prohibited lists came into force, and a series of employment tribunals hit the buffers due to the time bar, the issue would likely have petered out. But then a parliamentary select committee decided to open an inquiry in May 2012, and the evidence it collected painted a detailed picture of the blacklisting operation—and brought it all up again. Lawsuits followed later that year.

John McDonnell, a Labour member who has supported the blacklisted workers, says that this decision was taken at the personal initiative of Ian Davidson, the MP for Glasgow South West and the chair of the Scottish Affairs select committee. McDonnell told a meeting of the Blacklist Support Group last year: “When nobody else would touch it, Ian Davidson said ‘I think I can get an inquiry going’. And he did. He convinced the other members and he dragged the employers in front of it. That will give us the basis for demanding new legislation and a compensation scheme.”

The companies

The response of contractors to the reputational damage they suffered from the publicity, and to the financial damage of the court cases, has varied from company to company.

“ Where it had ruined lives ... that would be a concern and a matter of regret for me ”

Consulting Association’s Ian Kerr

Skanska has shown the most contrition. Jim Kennedy, Ucat’s National Political Affairs Officer, told the Scottish Affairs select committee that he had met Mats Williamson, the company’s then chief executive, and Harvey Francis, its HR vice-president, after the story broke and they were “deeply embarrassed by the whole scandal and were asking us, ‘What can we do to make things right?’” At the same time, Kennedy said they were “adamant” that the use of the blacklist had been carried out by a former HR director called Stephen Quant, and that he had assured them that he only ever requested information concerning health and safety issues.

Carillion fought back. It posted its version of events on its website under the heading “Blacklisting: what actually happened”. This explained its subsidiary Crown House’s use of the blacklist by claiming self-defence against workers who were likely to engage in disruptive, illegal or violent behaviour, and pointed out that in 1999 the company had lost 597 working days to unofficial action on sites across the UK. It said there was no evidence that the main

Carillion board was aware of Crown House being a subscriber to the Consulting Association before the scandal broke in 2009. At the same time, it said Crown House stopped using the Consulting Association’s service in 2004 because an HR manager “believed it was wrong”. Carillion also claimed to be a relatively minor user, although it was the fifth largest.

The Scottish Affairs select committee was unimpressed with Balfour Beatty’s mea culpa, delivered in oral evidence by Mike Peasland, the chief executive. Its interim report, published in March 2013, commented: “While we are sure that Balfour Beatty regrets being caught, we were less convinced that management regretted its involvement with the Consulting Association.” It also expressed dissatisfaction with Balfour’s refusal to disclose the details of the internal review it had conducted in the wake of the scandal. Finally, it deplored the fact that nobody within Balfour had been held responsible for using the blacklist. “It is hard,” the report said, “to see how workers who have been systematically and illegally denied employment [illegal as in contrary to Data Protection Act] will understand that the perpetrators are still in their jobs. We do not accept the defence that people were only obeying orders.”

The strongest line was taken by Sir Robert McAlpine, which essentially pleaded “not guilty”. Although the evidence given by Callum McAlpine to the committee was constrained by the need to steer around the court case, in which he was personally a defendant, he maintained that the “blacklist” was in reality a reference service. He added that he had very little to do with the activities of Ian Kerr. This was also the line taken by his QC when his case came before the High Court in November.

In October of last year, eight of the companies who made most use of the Consulting Association’s services have tried to meet the threat of legal action by setting up a Construction Workers Compensation Scheme (CWCS). The companies involved are Balfour Beatty, Carillion, Costain, Kier, Laing O’Rourke, Skanska, Vinci and Sir Robert McAlpine. They also issued a statement saying they “apologised for their involvement with TCA and the impact that its database may have had on any individual construction worker”.

The CWCS proposes to pay £1,000 to workers deemed to have suffered no loss from appearing on the TCA database, and also that any workers agreeing to a deal must drop any legal claims. The role of the fund is, therefore, to put a limit on the damages that the subscribing companies will have to pay, whatever that turns out to be.

Both of those proposals have been resisted by unions and lawyers representing the blacklisted workers. Negotiations between the claimants and the CWCS’s managers have been held, but both sides seem a long way apart.

The first full round of talks began on 3 February this year between Pinsent Masons, the lawyer for the contractors, members of the Blacklist Support Group (BSG), solicitor GCR, and the three trades unions involved. Meetings were held before Christmas, as well, but the BSG walked out over what Dave Smith, group secretary, described as the “insulting” offer of £1,000. The February meeting seems to have made almost as little progress. Smith commented on the BSG’s Facebook page that “The employers’ team spent the talks reiterating their position and restated their intention of making the ‘generous’ offer of

£1,000 to the majority of blacklisted workers, in what they repeatedly described as a ‘fast track transparent alternative to the High Court.’” Smith responded it was a “fast track alternative to justice”. He added: “Until there are concrete proposals there is nothing more to discuss.”

The victims

A number of industry figures have said they were trying only to target workers who used health and safety concerns as a cloak for politically motivated agitation on site. The truth or otherwise of this rests ultimately on a company’s word against that of a blacklisted individual, but even a sympathetic reading of the evidence suggests this aim suffered from severe ‘scope creep’. One other thing is certain: blacklisting gives victims no opportunity to defend themselves against the charge.

“ We do not accept the defence that people were only obeying orders ”

Scottish Affairs select committee

One victim of the Consulting Association’s blacklist was Professor Charles Woolfson, an academic formerly at Glasgow University. A file appears to have been opened on him after he began writing about the safety of offshore oil rigs after the Piper Alpha disaster, which killed 167 people in 1988. One extract said: “Funding from oil industry to Glasgow university may now be cut if activities continue or there may be a reduction in his activities to prevent this happening.”

Dave Smith, an engineer and secretary of the Blacklist Support Group, says his income fell from £35,000 a year to £12,000 after he raised safety concerns with construction firms, including notifying them about the presence of asbestos. “I was a qualified engineer and during one of the longest building booms this country has ever known, my children were on milk tokens.”

In the end he left the industry to teach in a further education

college. Alan Wainwright, the man who did more than anyone to bring the blacklist to light, started his own business selling concert tickets.

Leaving the industry may have been the only viable course of action because, as the case of Mick Abbott shows, once you were on the blacklist you were on it for life. Abbot, a father of four who died in February, said the file held on him by the Consulting Association included information on his trade union activities from the 1960s up to 2006. He said: “This nearly ruined my marriage and it meant that my children were on free meals at school. They have been watching me all these years and passing this information around, blighting my life over four decades. I had to become self-employed and go into work with my sons fitting kitchens.”

Why construction?

There is some evidence of blacklists in other industries but so far only construction has been caught with its hand in the filing cabinet. A number of observers say it’s the widespread casualisation of labour that makes blacklisting both possible and desirable from an employer’s viewpoint.

Rather than training and directly employing skilled workers, as would be the case in a standard manufacturing firm, main contractors rely on armies of strangers to carry out works packages that might be subcontracted several times over. But the success of the project depends on those strangers. In that situation, the blacklist might seem to a worried manager like a prudent alternative to interviewing, taking up references, offering a six-month probationary period, and operating a disciplinary procedure and a skills development programme. It will seem much simpler to just a fax a list of names.

Paul Chan, a Manchester University academic who studies human relations in construction, says: “The practice of blacklisting was probably allowed to continue for such a long time because of the many non-standard ways of employing people in the industry, from the widespread use of self-employment, contract workers and, more recently, employment through payroll companies. So it is possible that these

Blacklisting for Britain

Was the involvement of police and unions in collecting information really so shocking? Blacklists have been part of British industrial relations since there were industries to have relations with. The best known organisation was called National Propaganda, and it was founded in 1919 by a group of ennobled magnates with interests in mining, brewery, shipbuilding, cement, steel making and banking. This later evolved into the Economic League, which operated as a kind of anti-socialist PR bureau and as custodian of an extensive blacklist.

Through most of the Cold War period blacklists were controversial but not necessarily morally indefensible. After all, the government vetted its own workers using secret files held by the security services and local authorities did the same for teachers, so many people saw them as a regrettable but necessary part of the struggle against Communist subversion. And the

state’s political police (that is, Special Branch and MI5) and moderate union leaders have had a long history of collusion. Even the socialist writer George Orwell gave MI5 a list of “crypto-Communists”.

Opinion changed in the eighties when a series of television documentaries exposed just what information was on the Economic League’s blacklist. It wasn’t so much that it was a danger to civil liberties, but rather that it was ridiculous. A former chairman of the Dunfermline Young Conservatives was listed as an anarchist, the chancellor of Aberdeen university was down as a member of the Socialist Workers Party and a soldier who had been blinded while fighting in Italy was blacklisted for applauding a council’s decision to buy a painting of Nelson Mandela. In 1989, Richard Brett, the league’s former North West Regional Director, suggested that 35,000 of its 45,000 files should be purged because they were either hopelessly inadequate or uselessly out of date.

non-standard forms of employment made it difficult to trace any wrongdoing.”

Linda Clarke, professor of European industrial relations at the University of Westminster, agrees with Chan and says the UK’s use of agencies and labour-only subcontractors is unique in

Europe. “Labour-only firms are illegal in Germany, but are just accepted here,” she said.

Clarke’s solution to the blacklisting is a full-blown inquiry, and more oversight of the industry’s HR practices. “What we absolutely need is more regulation,” she said.

The soggy boots troublemaker: Steve Acheson

Construction can be a great industry to work in. Once upon a time you joined in your mid-teens, endured a five-year apprenticeship, and if you made it through and were good at your job you had wide horizons to explore. Steve Acheson found that electrical engineering took him to Iraq, Libya, Bulgaria and Sweden. He worked for two years on the Channel Tunnel, earning a grand a week and living in the biggest cave in the world.

Then, in March 2000, he took a job with Balfour Kilpatrick, an M&E firm he’d worked with four times before. The job was on a Viagra factory that Pfizer’s had commissioned in Sandwich, Kent. The site had been a marsh before work started and on Tuesday, 4 April, two inches of rain fell in 12 hours, and the temperature dropped to 4°C. The 240 electricians on site had to wade through two feet of water to get to their Portakabins, which were fitted with weak convection heaters.

When they arrived at work on the next day, they found that their boots and overalls were still soaking, but they put them on and got on with it. By lunchtime they’d had enough, and a delegation was sent to Balfour’s construction manager to ask for the rest of the day off and for wellington boots to be provided for Thursday. He took them to see the project director, who dismissed their request “rather perfunctorily”, in the words of a judge who later ruled on the case. They men went home. The next day, they arrived at work to find the same situation, and rather than go back on site, they spent all day in the canteen. Nobody from site management came to talk to them.

They did the same on the Friday, but by this time Balfour had resolved to take action: when the men left at lunch time, they found that a line of security guards has assembled; as they passed through them they were told to surrender their swipe cards and were issued with dismissal letters, together with forms applying for re-employment. It was what used to be known in the building trade as a “massacre”. All the electricians were sacked, even those who were on holiday. Some had worked for Balfour for 35 years.

That weekend, Balfour brought in a contractor to install heaters, benches and hooks in the drying rooms at the cost of about £4,000. The firm had actually been employed on the Wednesday, but the electricians had not been told. This was not British site management’s finest hour.



Steve Acheson

Awkward alliance

Steve Acheson wasn’t a union rep, but was known as someone who’d argued the case for electricians in the past, and he was the man who handed in the electricians’ forms when they took their grievances to an employment tribunal, so the case became known as Mr S Acheson & Others v Balfour Kilpatrick. All the electricians at Pfizers had files opened on them by Ian Kerr, but Acheson became the name most closely associated with the dispute. He was, from that day forward, a marked man.

Acheson had no work until he was employed at Bovis Lend Lease’s Manchester Royal Infirmary project during the 2002 Christmas break (when HR departments were closed) then dismissed without reason in the new year (when they opened again). Acheson, who had been promised four years’ work doing all the plant rooms, spent the next two-and-a-half holding a lonely protest outside the gates of the site.

This protest proved to be an important step on the road to proving a blacklist existed, because it made him visible to Alan Wainwright, who had his own reasons for exposing the list. Wainwright called him towards the end of 2006, and explained who he was. Acheson’s response was to put the phone down. Wainwright tried again a few days later; Acheson hung up again, and mentioned the call to his union branch. He was told: “Tell him to piss off, Steve. We don’t want to speak to directors.”

Meanwhile, what the scandal has not done is convince everybody that blacklisting is now part of the bad old days. In fact, the heightened awareness of discrimination has probably led to more cries of foul than was previously the case, most recently over workers denied employment on London’s Crossrail project.

And there are hints that there were more blacklists than the one operated by the Consulting Association: in Kerr’s evidence to the select committee, he comments at one point that Norwest Holst became a subscriber because it was unhappy with the accuracy of the other blacklist that it had been using.

Two weeks later, Wainwright called again, and this time he had his pitch ready. He said: “All I want off you, Mr Acheson, is five minutes of your time. I know you think I’m a wretch, but I have information.” He proceeded to read out names from the list that had been shared between Balfour Kilpatrick and Emcor Drake & Scull, and Acheson recognised many of the people who’d sat in the canteen on a wet Thursday in April 2000. Acheson said: “Okay, but why do you want to help me?” Wainwright replied: “I think I’m being blacklisted myself, and my wife said to me, ‘now you must know how it felt for all the people you were targeting.’”

After a while, a slightly awkward alliance was formed between the two very different men, one with a management perspective, the other from the rank and file. They established a routine of talking each Sunday morning. “I went against the wishes of my branch, and I’m glad I did,” says Acheson. “I know we’re from different positions, but without Alan Wainwright it would never have got off the ground. It was Alan who changed the whole face of it for us.”

Even more sinister

The next significant call Acheson received was from David Clancy, the Information Commission’s Office investigator. He wanted to come round and talk about the blacklist. On the day he arrived, Acheson had just had some good news: he’d finally got another job, at the Fiddlers Ferry power station in Cheshire. He says: “I remember my family were chuffed. I hadn’t taken my daughter on holiday for 10 years.” Then, while Clancy was sitting in Acheson’s front room, he received a call from the company employing him: regrettably, they were going to have to withdraw the offer, because if Acheson worked the night shift they would have

When David Clancy raided Ian Kerr’s office back in February 2009, the two men sat down and held a conversation that was surprisingly amicable, under the circumstances. The only moment of anger on Kerr’s part was when he said to Clancy, “You realise you have destroyed, or you appear to be about to destroy, a very effective network in the industry.” To which Clancy replied, “I can’t understand why this hasn’t gone overseas long ago, outside the ICO’s jurisdiction.”

It seems that the rumours of blacklists will continue to haunt Britain’s sites for some time to come. □

20 men and would be obliged to employ a health and safety representative.

After the raid in February 2009, Clancy sent him the file that Ian Kerr had compiled on him. When Acheson saw it, he was astonished. “It was 22 pages. I thought it was just one company putting in a bad word. But it was updated every couple of months. It was as though they had me under surveillance. I was ‘the trouble-caused from Pfizers’. And it was full of nonsense. They had me in Germany and in a power station in the Isle of Man. I’ve never been to Germany or the Isle of Man in my life.”

Even more sinister were revelations made by solicitors Guney, Clark & Ryan (GCR), who were handling the attempt to sue Sir Robert McAlpine. As part of pre-trial disclosure it had seen another file on Acheson, separate from the one Clancy had sent, and they considered it so sensitive that they asked Acheson to travel from Manchester to London for a face-to-face interview. “This was a file entry that had me down as ex-Irish army, a bad egg – a “bad egg” was the code for information that had come from Special Branch.” The “Irish army” meant the IRA, and this label led to a failed attempt to stop his protests on anti-terrorism grounds – although he has no Irish ancestors on either side of his family.

Acheson is 60 now, and any chance he had of resuming a normal working life is just about gone. What he is particularly angry about is the fact that he won three employment tribunals, and received five-figure payments, but none of those victories cleared his name. Effectively, the protest over wet boots led to a life sentence. If he knew then what he knows now, would he still have joined the protest over the boots? Acheson says: “Yes, I would. It was personal protective equipment, so it was a matter of statutory obligations and health and safety.”



One of the annotated clippings on Steve Acheson kept by Ian Kerr