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### The construction industry blacklist: how the Economic League lived on

Phil Chamberlain

One morning in February, two investigators from the Information Commissioner's Office (ICO) knocked on the door of The Consulting Association based discretely off an alley in Droitwich, West Midlands. 66-year-old Ian Kerr opened it. The investigators announced they had a search warrant and were coming in. A thirty year covert operation to build a database blacklisting union activists in the construction industry had just come to an end. It was also a vindication of one of the ICO's most ambitious investigations. Contents 1 watchdog took unprecedented legal steps during its eight-month probe. It eventually named more than 40 of the country's biggest construction companies as having potentially broken data laws. The ramifications led to questions in Parliament and a promise by the Government to outlaw blacklisting.

Throughout the Cold War the most prominent organisation involved in the blacklisting of so-called subversives was the Economic League. It was paid by companies, and worked closely on occasion with Special Branch, to compile databases of individuals. It was wound up in the early 1990s after pressure from the media and Parliament exposed its personnel and flawed operations.<sup>1</sup>

Many of its operatives went to ground and the files went

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<sup>1</sup> *Blacklist: The inside story of political vetting* by Richard Norton-Taylor and Mark Hollingsworth (London, 1988) covers the history of the League. See also *Spies At Work* by Mike Hughes <[www.1in12.com/publications/library/spies/spies.htm](http://www.1in12.com/publications/library/spies/spies.htm)>

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with them. Kerr was one of them. Michael Noar, former director general of the Economic League, told *The Guardian* that Kerr had worked for the organisation spying on trade unions: 'He was a key guy. He was one of our most effective research people. His information was genuine and reliable.' <sup>2</sup>

### Rumours of blacklists

For years rumours circulated in unions that the construction industry in particular still used blacklists. How they were stored was a mystery. Last summer *The Guardian* ran an article looking at the issue and talked to some construction workers who said they had been blacklisted.<sup>3</sup> One was Steve Acheson, a 55-year-old electrician from Manchester who had barely worked in a decade. He had won an employment tribunal for wrongful dismissal which, unusually, had accepted evidence that Acheson had been blacklisted.

Part of the evidence came from Alan Wainwright who had worked in management for a number of construction companies. He came across Ian Kerr in 1997 and was told that Kerr was a private investigator employed to carry out checks on staff to identify undesirable employees. Wainwright met Kerr twice and Kerr told him many construction companies supplied him with information.

Wainwright worked for Crown House, Drake and Scull and Haden Young and said he found the same system operating with Kerr at all three. Laing O'Rourke, which now owns Crown House, Emcor, which owns Drake and Scull, and Balfour Beatty, owner of Haden Young, say they do not condone or use blacklists.

After raising concerns about fraud, but disillusioned with the company's response, Wainwright left Haden Young in

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<sup>2</sup> *The Guardian* 27 May 2009 <[www.guardian.co.uk/uk/2009/may/27/construction-worker-blacklist-database1](http://www.guardian.co.uk/uk/2009/may/27/construction-worker-blacklist-database1)>

<sup>3</sup> *The Guardian* June 28, 2008. <[www.guardian.co.uk/money/2008/jun/28/workandcareers](http://www.guardian.co.uk/money/2008/jun/28/workandcareers)>

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2006. He launched and lost an employment tribunal and became convinced that he too had been blacklisted. But no-one seemed interested in his story.<sup>4</sup>

However, the *Guardian* article was read by an employee at the Information Commissioner's Office who brought it into the office. It landed on the desk of investigator David Clancy. On the door to the office he shares with his three fellow investigators, all with police, military or Customs and Excise background, there is a sign saying 'Abandon hope all ye who enter here'.

Clancy's first job was to establish if there was a case worth looking into. So he went to talk to Steve Acheson.

'The day he turned up I had just received a letter turning me down for work,' said Acheson. 'I told him he couldn't have come at a better time. To be honest I didn't think he would find much. I told him this but he said "Once I get my teeth into something I don't let go."<sup>5</sup>

After getting copies of Acheson's evidence from his tribunal hearings, Clancy tracked down Alan Wainwright who had a huge amount of information to share. It was clear that there was a *prima facie* case that required investigating.

From the evidence gathered, the ICO investigators believed that Haden Young had information they required. Powers contained in schedule 9 of the Data Protection Act 1998 meant that the ICO could give seven days notice that they would turn up to look for it. Alternatively they could make an application to the Crown Court for a warrant in order to effect an immediate search if they believed that giving a warning would mean evidence being spirited away. This power

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<sup>4</sup> The full details on his case are available at his blog <[http://alanwainwright.blogspot.com/2009/05/introduction-earlier-this-year\\_13.html](http://alanwainwright.blogspot.com/2009/05/introduction-earlier-this-year_13.html)> See also interview in *The Guardian* 15 May, 2009 <[www.guardian.co.uk/business/2009/may/15/construction-industry-whistleblower-blacklisting-workers](http://www.guardian.co.uk/business/2009/may/15/construction-industry-whistleblower-blacklisting-workers)>

<sup>5</sup> Interview with author.

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hadn't been used before in a case of this kind but a judge granted the search warrant and in September Haden Young was raided. Information was found that ultimately identified The Consulting Association. Now they needed to know more about this organisation.

The Consulting Association

David Clancy said:

'We identified an organisation that held a key piece of information for us. We have powers under Section 58 of the Act to ask an organisation for information for the furtherance of the Commissioners' duties. We served the section 58 notice. They declined and suggested we get a court order.'

The ICO then considered the unusual step of serving a notice under schedule 9, a demand for access with seven days notice. This hadn't been done against third parties before.

Recalled Clancy:

'There was great deal of legal argument about whether we were acting beyond our powers. But we were aware they held evidence and schedule 9 doesn't say our powers of entry are only against perpetrators.'<sup>6</sup>

As it was the organisation capitulated and gave them the name and address of Kerr and The Consulting Association. It was back to court for another search warrant and the Droitwich raid was on.<sup>7</sup>

More than 40 of the biggest names in the industry had, at one time or another, subscribed. Details on the fees

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<sup>6</sup> Interview with the author.

<sup>7</sup> It may just be coincidence but the West Midlands seems to be at the heart of both the Economic League and The Consulting Association. The Association was based in Droitwich, Kerr lived in the Bromsgrove area and Caprim, another company set up by ex-League members and involved in vetting, was based in Alcester, Warwickshire. It was run by Jack Winder, a freemason in the county.

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charged by The Consulting Association and the names of the subscribing firms were released by the Information Commissioner's Office. They were:

Amec Building Ltd  
Amec Construction Ltd  
Amec Facilities Ltd  
Amec Ind Div  
Amec Process & Energy Ltd  
Amey Construction – Ex Member  
B Sunley & Sons – Ex Member  
Balfour Beatty  
Balfour Kilpatrick  
Ballast (Wiltshire) PLC – Ex Member  
Bam Construction (HBC Construction)  
Bam Nuttall (Edmund Nutall Ltd)  
C B & I  
Cleveland Bridge UK Ltd  
Costain UK Ltd  
Crown House Technologies  
(Carillion/Tarmac Const)  
Diamond M & E Services  
Dudley Bower & Co Ltd – Ex Member  
Emcor (Drake & Scull) – 'Ex Ref'  
Emcor Rail  
G Wimpey Ltd – Ex Member  
Haden Young  
Kier Ltd  
John Mowlem Ltd – Ex Member  
Laing O'Rourke (Laing Ltd)  
Lovell Construction (UK) Ltd – Ex Member  
Miller Construction Limited – Ex Member  
Morgan Ashurst  
Morgan Est  
Morrison Construction Group – Ex Member

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N G Bailey  
Shepherd Engineering Services  
Sias Building Services  
Sir Robert McAlpine Ltd  
Skanska (Kaverna/Trafalgar House Plc)  
SPIE (Matthew Hall) - ex Member  
Taylor Woodrow Construction Ltd – ex Member  
Turriff Construction Ltd –ex Member  
Tysons Contractors – ex Member  
Walter Llewellyn & Sons Ltd - ex Member  
Whessoe Oil & Gas  
Willmott Dixon – ex Member  
Vinci PLC (Norwest Holst Group).<sup>8</sup>

Yet for all the money flowing in the investigators were confronted by a shabby two-room office. The furniture dated from the 1970s and 1980s, with an electric typewriter on one of the desks and a sophisticated photocopying machine.

Almost immediately one of the investigators found a ring binder in a rather tatty plastic cover. Inside it were names, addresses and national insurance numbers. Then they found a card index. It very much resembled the way a police local intelligence filing system might work. It was organised alphabetically and each card related to a name in the folder. There were files on 3,213 construction workers. Clancy describes seizing the database as being 'like Christmas'.

'This had been going on for years,' he said. 'Steve Acheson and others had never been able to get to bottom of it but suddenly we had got an answer. It was a nice feeling.'<sup>9</sup>

Kerr subsequently pleaded guilty before magistrates in

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<sup>8</sup> <[www.ico.gov.uk/for\\_the\\_public/topic\\_specific\\_guides/consulting\\_association.aspx](http://www.ico.gov.uk/for_the_public/topic_specific_guides/consulting_association.aspx)>

<sup>9</sup> Interview with the author

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Macclesfield to breaking data protection laws.<sup>10</sup> He could not be prosecuted for blacklisting because at the time it was not against the law. The government had included the provision in the 1999 Employment Act but never formally brought that clause forward. It said there was no evidence that blacklisting existed and that this was reaffirmed when it carried out a consultation in 2003.<sup>11</sup>

In court

Magistrates were unimpressed by Kerr's absence at the court hearing and the limited information they were offered on how The Consulting Association was organised. They described their sentencing powers as 'wholly inadequate' and referred the case to Crown Court for sentencing. When Kerr appeared before Knutsford Crown Court weeks later he was given a £5,000 fine which was condemned by almost all involved, including the Information Commissioner, as derisory.<sup>12</sup>

Following the case the ICO did issue enforcement notices against 14 companies which had subscribed to The Consulting Association:

Balfour Beatty Civil Engineering Limited  
Balfour Beatty Construction Northern Limited  
Balfour Beatty Construction Scottish & Southern Limited  
Balfour Beatty Engineering Services (HY) Limited  
Balfour Beatty Engineering Services Limited  
Balfour Beatty Infrastructure Services Limited  
CB&I UK Limited  
Emcor Engineering Services Limited

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<sup>10</sup> See <[www.guardian.co.uk/uk/2009/may/27/construction-worker-blacklist-database1](http://www.guardian.co.uk/uk/2009/may/27/construction-worker-blacklist-database1)>

<sup>11</sup> The background is set out in the consultation document issued by the government this summer which reverses that position and now proposes making blacklisting illegal. See <[www.berr.gov.uk/consultations/page52145.html](http://www.berr.gov.uk/consultations/page52145.html)>

<sup>12</sup> See <[www.guardian.co.uk/politics/2009/jul/16/companies-warning-trade-union-blacklist](http://www.guardian.co.uk/politics/2009/jul/16/companies-warning-trade-union-blacklist)>

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Emcor Rail Limited  
Kier Limited  
NG Bailey Limited  
Shepherd Engineering Services Limited  
SIAS Building Services Limited  
Whessoe Oil & Gas Limited

Essentially these are warnings against their future handling of personal data. There was no other sanction. Despite calls by some councils that named firms shouldn't get public sector contracts this has not been followed through

The companies named have responded with some shows of contrition but generally a steadfast refusal to admit any significant wrongdoing.<sup>13</sup> It is fair to say that in most companies the employment of Kerr would have been kept very quiet. The fact that a particular firm had paid for the services of The Consulting Association came as genuine shock to some.<sup>14</sup>

### Kerr and the Economic League

The Knutsford hearing confirmed several details about Kerr and The Consulting Association. His solicitor admitted that Kerr had worked for the Economic League and, when that folded, The Consulting Association had been set up by construction firms to continue its secret vetting work. Kerr was paid to run the organisation which was not registered as a company but was described by his solicitor as a trade association – a meaningless term. Quite where the hundreds of thousands of pounds in fees went is unclear. Kerr told the court he only

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<sup>13</sup> This article in *Construction News* is a useful summary:  
<[www.cnplus.co.uk/hot-topics/legal/firms-distance-themselves-from-data/5205466.article](http://www.cnplus.co.uk/hot-topics/legal/firms-distance-themselves-from-data/5205466.article)>

<sup>14</sup> One aspect that has not been fully explored is the role of human resources managers. So far that sector does not appear to have taken on many of the lessons or accepted any culpability for the Kerr scandal. See <[www.berr.gov.uk/consultations/page52145.html](http://www.berr.gov.uk/consultations/page52145.html)>

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earned around £46,000 a year. Further details on the operation of the association are buried in the government's consultation document issued in the summer on changes to outlaw blacklisting.

Presumably relying on information from the ICO (which has found Kerr to be reasonably co-operative) the document says:

'The TCA began its vetting activity in 1994 when it acquired information about individuals from a source unknown to the IC. Judged by the age of the information held by the TCA, it appears that a system of this kind was operated for at least 30 years. While that system may have been used more intensively in the past it was by no means dormant.

Around 40,000 checks on individuals were undertaken by the TCA during 2008 at the request of member companies. New material has also been added to the database in recent years.'

Indeed McAlpine's largest checks were made when it won the contract to build the Olympic stadium.

The report continued:

'The TCA is a membership-based body, and when it folded earlier this year, about 25 companies were members, some of which seem to have used the TCA to a small extent only.

These members made various payments to the TCA, including an annual fee of £3,000 and in most cases they also paid a fee of £2.20 for each check on an individual. Member companies appear to have been actively involved in governing the TCA's activities, and their designated persons were invited to annual and quarterly meetings convened by the TCA. The TCA was chaired by a representative of the member companies.'<sup>15</sup>

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<sup>15</sup> <[www.berr.gov.uk/consultations/page52145.html](http://www.berr.gov.uk/consultations/page52145.html)>

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The process by which people were checked was described by an investigator as exactly the same as the one used by the Economic League two decades earlier as described in the exposé *Spies At Work*.<sup>16</sup>

'Before engaging staff in future, a call should be made to 01-681-7346, code number 555, and they will require the full names, the area of living, date of birth and National Insurance number of the proposed employee. You give him the code number, you do not give the company's name or mention it. If there is the slightest suggestion of any information held against the proposed employee from this source you do not engage.'

*Spies at Work* describes the 'service group' of the Economic League as an arm specifically for the construction and associated industries where special funding for dedicated staff was in place. The list of members of this group contains many of the past and present subscribers to the TCA's services.

One unforeseen by-product of the ICO's investigation has been the disclosure of files to the individuals concerned. Some within the ICO argued that they constituted evidence and should be treated as such and not touched. Instead the ICO has turned data controller. Anyone who thinks they might have a file can ring a hotline and, once confirmed, they receive a photocopy of their file. The names of any individuals are blanked out but other than that the file is as the TCA constructed it. As of November 2009, around 1,800 had rung the hotline and some 230 files disclosed. That still leaves several thousand unclaimed.<sup>17</sup>

And what kind of files are we talking about? The best analysis has been carried out by the ICO and it is estimated that about three-quarters of the files concern trade unionists and activities associated with trade unions. Professor Keith

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<sup>16</sup> *Spies At Work*, chapter 9. See note 1 above.

<sup>17</sup> Information to the author from the ICO.

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Ewing, from the Institute of Employment Rights, studied a number of files after he was commissioned by the building union UCATT to write a report on the issue.<sup>18</sup>

'I was deeply offended at the amount of intimate and personal detail so meticulously gathered,' he said. 'At the same time some of the files were hopelessly inconsistent.'<sup>19</sup>

The files were card indexes, sometimes with newspaper clippings or photos attached. Each person had their National Insurance number and other personal data to identify them. The source of the information was hidden by code numbers although Kerr has given a list of these to the ICO.<sup>20</sup>

Steve Kelly, 43, from Essex, was one who received a copy of his file. The 18 page document runs from 1998-2007 and includes minutes from a union branch meeting along with allegations that Kelly was a 'trouble maker', involved in 'intimidating workers to join the union', 'threatening supervisors', and even 'writing abuse on the toilet walls.'

Dave Smith, 44, has a large file which starts in 1999 and includes details on the car he drove, newspaper clippings and union correspondence. He says:

'The file specifically identifies incidents when I raised health and safety concerns. At no point in the file is my competence as an engineer ever questioned. I believe the folder is *prima facie* evidence of deliberate and vindictive discrimination and victimisation.'<sup>21</sup>

Mick Dooley, whose employment tribunal case against Balfour Beatty alleging blacklisting will be heard in the New Year, said:

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<sup>18</sup> *Ruined Lives: Blacklisting in the construction industry*. See <[www.ier.org.uk/node/433](http://www.ier.org.uk/node/433)>

<sup>19</sup> Interview with the author.

<sup>20</sup> For instance 3271/81 stood for Crown House Technologies; 3221/X stood for SPIE; 3223 for Balfour Beatty; 3286 for Emcor (Drake and Scull) and 3292/R for Emcor Rail

<sup>21</sup> Interview with the author.

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'A secret file was kept on me with damning false information, some of which could have come from government sources. Details of my movements, phone calls and conversation I had, all found their way back to my blacklist file.'<sup>22</sup>

John Winstanly, 66, from Liverpool, found that his file dated back to 1975 when it was started by the Economic League. That would have been at the time when the League actively worked with Special Branch to share information. So far there has been no indication that such links were formed with The Consulting Association.<sup>23</sup>

Michael Anderson discovered that on his file there was a note saying that the union Amicus had recommended he not be employed. Several of those who have received their files have raised concerns that information appears to have come from union officials. Anderson said:

'I have written and asked Unite the union to conduct an independent inquiry into who "of Amicus" was responsible for supplying information that I was "not recommended" by my own trade union. I have received no reply. I have also asked how other privileged detailed information about which members attended union branch meetings and discussions held at branch fell into the hands of The Consulting Association. I have received no plausible reply.'<sup>24</sup>

The blacklisted construction workers are taking court cases on

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<sup>22</sup> Interview with author. Dooley has a number of interesting stories to tell about the harassment he received as a union activist. That includes pornographic material posted to his home and a message left on his home answering machine insinuating an affair which was traced back to an employee of the Canadian Embassy.

<sup>23</sup> No evidence has been offered to substantiate rumours that Kerr was a former Special Branch officer, though little is known about his past.

<sup>24</sup> Interview with author and speech given at supporters group meeting

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a number of different avenues. The most popular is an employment tribunal and enough have been started for them to be lumped together into one hearing. Some are looking at action under the Data Protection Act; others through the Human Rights Act. A firm of solicitors has engaged a QC who is an expert on data protection to bring a class action civil claim.

It is likely that a number of these cases will fall by the wayside before they see the inside of a court room. There are high thresholds to meet for these cases to succeed. Nonetheless a few may get to see a construction firm in the dock.

The other way that companies may be forced to explain a bit more about how the blacklisting system worked is by a Parliamentary inquiry. John McDonnell MP told a meeting of the Blacklist Support Group that he wanted to see a public inquiry into what he described as 'one of the worst ever cases of organised abuses of human rights in the UK.'

And one way to get that might be through Parliament's Joint Committee on Human Rights. McDonnell will ask Andrew Dismore MP, who chairs the committee if he will look into the issue. The committee, made up of a dozen members from both houses, undertakes inquiries on human rights issues and reports its findings and recommendations to the House.<sup>25</sup>

What people are waiting for is the government to publish the new rules aimed at outlawing blacklisting as it pledged to do back in 1999. Many Labour MPs were shocked to find that Kerr could only be prosecuted under data protection laws because of this anomaly. Ministers at the Department for Business, Innovation and Skills, led by Lord Mandelson, have promised to make the rules tough. However the draft regulations appear to have a number of loopholes.<sup>26</sup>

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<sup>25</sup> See <[www.hazards.org/blacklistblog/2009/10/21/push-to-strengthen-blacklist-law/](http://www.hazards.org/blacklistblog/2009/10/21/push-to-strengthen-blacklist-law/)>

<sup>26</sup> UCATT press release. Prof. Ewing (see above) also has strong criticisms of the proposals.

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Alan Ritchie, general secretary of UCATT, who has his own file, said:

'For example many of those blacklisted were due to health and safety issues, therefore the regulations should cover all activities associated with trade unions. The regulations should also stipulate that if a blacklist is discovered all those blacklisted should be informed of that fact and receive automatic compensation.'<sup>27</sup>

Also, the rules do not also give people a right not to be blacklisted.

Back at the ICO there is a feeling of satisfaction at how this particular investigation has panned out. It is seen as a case which has helped make its reputation. It's easy to forget that at a number of points it could have ground to a halt. It may not even have started if the ICO employee hadn't seen the newspaper article. The hearing before the judge was setting a precedent and could have failed. When the sudden search of the construction company was made, Kerr was still untouched. A simple phone call would have alerted him to the ICO's interest. If one was made he didn't stop. Indeed material continued to be added to his database subsequently. Even on the day his premises were raided the investigators only got in because the owner of an adjoining property let them in through a communal door. 'The stars must have been all aligned,' says Dave Clancy.

Despite the proposed regulations, uncovering future abuses may require similar levels of luck.

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To see if The Consulting Association held a file on you ring the ICO's helpline on 08456 30 60 60 or 01625 545745 between 9am and 5pm, Monday to Friday and choose option 1.

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<sup>27</sup> UCATT press release. Prof Ewing also has strong criticisms of the proposals.

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For ongoing coverage of this issue see the blog run by *Hazards* magazine <[www.hazards.org/blacklistblog/](http://www.hazards.org/blacklistblog/)> or the author's blog <<http://takingoutthetrash.typepad.co.uk/>>

Photographs by the author relating to this story can be seen at < [www.computerweekly.com/galleries/236324-1/Data-protection-raid-reveals-anti-union-blacklist.htm](http://www.computerweekly.com/galleries/236324-1/Data-protection-raid-reveals-anti-union-blacklist.htm)>

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