

The Dark Side of Workplace Safety

Blacklisting exposed

Down but not out

Employers can no longer deny that they operated a secret blacklist of trade unionists which banned workers from being employed by them, often for no greater sin than raising safety issues in a workplace. However, the blacklist is far from being defeated, and all who want to see workers have a right to safe workplaces need to act together to make sure this practice is stamped out. Safety reps and other elected reps can only have real rights if they can exercise their role without fear for jobs in future.

The Good News

Recent events have proved beyond doubt that blacklisting has indeed been widespread practice for many years, particularly in the construction industry, and with the involvement of the police and MI5. A major player in the process, the Consulting Association, has had to hand over files on those who have been blacklisted, as well as names of the companies using them. Those who suspect that they were on these lists can now request to see their files. After years of campaigning, this kind of blacklisting is now illegal, but only partially. Compensation is now supposedly available BUT...

The Bad News is that:

- the practice is believed to be still continuing
- the compensation issue is very problematic, with the industry's scheme inadequate: claimants are advised to claim through their trade union via the conventional route
- those who were operating the ban have not been brought to book or to really make up for what they have done
- the law only makes blacklisting illegal when it is for some narrowly defined "trade union activities"
- the powers-that-be are not acting to change this; indeed anti-worker policies are making things worse in many ways.

The Fight Goes on

a) Contract compliance

One way that pressure can be brought to bear on companies to stop this kind of blacklisting is through the contracts award-

ed for construction work in the public sector. The building union UCATT has published "[Blacklisting and Public Procurement](#)" which explains how the relevant law works and what can be done. It shows that some councils have policies, some of which go further than others, to put pressure on the firms e.g. to cancel the contract if a firm is found to be still blacklisting. The Scottish Government has issued a [Scottish Procurement Policy Note](#) which goes further than others in getting the guilty companies to show what remedial action they have taken to put things right before getting a contract.

b) Public enquiry

Despite the public exposure of both the widespread nature of blacklisting and the terrible effects on workers and their families, far too little is being done by governments and local authorities and public bodies, who mostly turn a blind eye to the problem. Unions, campaigners and affected workers are demanding a public enquiry to reveal the true extent of the problem and undercover surveillance of trade unionists, and make recommendations as to what needs to be done.

c) Blacklist Support Group (BSG)

A major new book, "Blacklisted", spotlights how mainstream the practice is, how it has been supported by the State, and the struggles and suffering of the families affected.

One of the joint authors, Dave Smith, who himself was blacklisted, will be speaking in Birmingham at a West Midlands Hazards Trust public meeting. He is one of the people prominent in the Blacklist Support Group, which has been at the forefront of exposing the problem, raising the issues, and providing support for those affected. He has been the subject of court cases with significant outcomes. Come along to hear more about the issue and what you can do about it. For more info or to get in touch with BSG:

book: <http://newint.org/books/politics/blacklisted-secret-war/>

video: <http://www.youtube.com/watch?v=JlCa8yOmZ70>

blog: www.hazards.org/blacklistblog

Facebook: <http://www.facebook.com/groups/blacklistSG>

Details of WMHT public meeting on Blacklisting overleaf.



Important new book on blacklisting



Fundamental Dishonesty

The story overleaf is one example of how employers get away with being fundamentally dishonest. Now, we have a new piece of law in which workers are to be heavily penalised if they can be shown in court to be "fundamentally dishonest". A claimant, even if he was genuinely injured due to the fault of an employer and entitled to damages for the claim, can have the whole of his claim dismissed if the court thinks that he has been "fundamentally dishonest" **in any part of the claim.**

Section 25 of the new Criminal Justice and Courts Act 2015 will apply to a personal injury claim where the court finds that the claimant is entitled to damages in respect of the claim, but is satisfied on the balance of probabilities that the claimant has been 'fundamentally dishonest' in relation to the claim or a related claim (a personal injury claim made by someone else in connection with the same incident.) However, this can't happen if the court is satisfied that this would cause him 'substantial injustice'. The main questions which arise here are: what is meant by 'fundamentally dishonest' and what is meant by 'substantial injustice'? Unfortunately, there is no clear guidance on this.

A claimant to whom s.57 applies will be left without any compensation for his injuries and is also likely to have to pay the defendant's costs, albeit that there will be a deduction from those costs to reflect the damages which he would have received. The fear of such sanctions could discourage claimants with genuine claims from pursuing those claims in case of a finding of fundamental dishonesty.

There would seem to be no good reason for personal injury litigation to be singled out in this manner when there may be 'fundamentally dishonest' claimants in any field of the law. Moreover, the legislation is notable for its imbalance as between claimants and defendants. There is no provision stating that a defence will be struck out if a defendant is found to have been fundamentally dishonest in respect of part of his defence, and it is difficult to see why that should be the case. What is sauce for the goose should be sauce for the gander.

Does this mean there could be more snooping on people?

For a link to the legislation:

www.legislation.gov.uk/ukpga/2015/2/section/58/enacted

Dates for your Diary

Quiz night: Wed 25th Nov

Doors open 6pm. Quiz starts: 6.45pm.

At: BVSC, 138 Digbeth, Birmingham, B5 6DR

Come along for a fun night to help raise funds for Asbestos Support West Midlands. £2 ticket from 0121 678 8853 or asbestosinfo@wmht.co.uk.

Sat 7th Nov, Annual Tim Field Memorial Lecture, on Surviving Bullying at Work

Sumpner Lecture Theatre, 1.30pm. Floor 6, Main Building, Aston University. Register: annualtimfieldmemoriallecture@gmail.com

Blacklisting: WMHT public mtg Wed 18 Nov at 7pm

PCS Midlands Office, New Oxford House, 16 Waterloo St, Birmingham, B2 5UG. Main speaker: Dave Smith of Blacklist Support Group To register: hazardsinfo@wmht.co.uk or ring 0121 678 8853

I/ we want to support the work of the West Midlands Hazards Trust

- I would like to join the West Midlands Hazards Trust
- £12 waged £5 unwaged £25 branch affiliation
- I/we would like to make a donation towards WMHT

(Please make cheques payable to the

West Midlands Hazards Centre)

- I would like to sign up for the email list and receive regular updates on the work of West Midlands Hazards Trust

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The West Midlands Hazards Trust

The West Midlands Hazards Trust
 138 Digbeth, Birmingham, B5 6DR
 Email hazardsinfo@wmht.co.uk Telephone: 0121 678 8853

