

## **Council – 27th February 2014**

### **Notice of motion - Blacklisting**

The following notice of motion has been submitted from Councillors Oliver, S. Coughlan, Westley, Chambers, Jeavons and Burley

This Council notes:

- the trade union campaign to highlight the scandalous practice of “blacklisting” used by some companies to keep out union and health and safety activists;
- that the Information Commissioner’s Office seized a database in 2009 of 3,213 workers used by 44 companies to vet new recruits;
- that a number (but not all) of these companies have now accepted responsibility for this unlawful blacklisting and are taking appropriate steps to apologise and make due compensation.

This Council resolves:

- that blacklisting is a deplorable unlawful act and an unacceptable practice which cannot be condoned;
- to make clear to companies bidding for Council contracts that a clause within the Council’s contract prohibits the unlawful practice of blacklisting
- to instruct the Council to conduct a review of its suppliers to identify if they have been previously been found to have blacklisted and if so, to seek details of what measures they have put in place to remedy that situation and to also prevent any future unlawful blacklisting by the supplier.
- that it supports the Information Commissioner’s Office’s ongoing detailed investigation into this activity, and whenever it becomes aware of any of its suppliers maintaining an unlawful blacklist, officers shall report it to the Information Commissioner’s Office.

### **Background information**

The construction blacklist to which the motion refers was a database of personal details of construction workers, including personal relationships, trade union activity and employment history. It is a breach of the Data Protection Act and Employment Relations Act 1999 (Blacklists) Regulations 2010 to maintain such a list. The former of which gives rise to action by the Information Commissioner and the latter a right of any person blacklisted to bring an action in the employment tribunals. The list was used by

construction companies to avoid what the Information Commissioner describes as employing people that the construction companies considered to be 'troublesome' workers.

An investigation by Information Commissioner resulted in 2008 of the closing down of the list. The construction companies that were proven to have used and supplied information to the list were issued with enforcement notices demanding they stopped the practice. The Information Commissioner is continuing with an investigation and, has a standing request to individuals who are concerned in relation to their details being on the blacklist to contact his offices.

The motion proposes to introduce requirements upon contractors who have in the past engaged in blacklisting to demonstrate they have sufficient processes and procedures in place within those companies to prevent future blacklisting as well contractual requirements to not partake in blacklisting.

Procurement law is heavily regulated by European directives and UK regulations, which includes setting out how and when contractors can be discounted from providing services to public bodies. One of the grounds for exclusion includes grave misconduct by an organisation in its business or profession. The term grave misconduct is not defined within the procurement directive or regulations but is generally viewed as being misconduct arising out of breach of an industry or professional body rules. In this case, there has been a breach of legislation resulting in the regulatory body, the Information Commissioner, taking enforcement action. There's also the right of individuals concerned to bring employment tribunal's claims arising from any blacklisting.

What is not clear, however, is the impact that the motion have is in terms of local Government Act 1988, which prescribes that the local authority cannot take into account staffing matters such as terms and conditions of employment and/or the composition of its staff. Traditionally, that is viewed as preventing local authorities from using contractor staff issues as grounds for not appointing organisations to provide goods social services.

Further, appointment of construction contractors is generally done through pre-procured national pre procured frameworks. These frameworks are seen as the most cost effective means of securing best value for public bodies, rather than engaging in time-consuming, costly and protracted procurement activities that ultimately the procurement body has to pay for through the pricing mechanism of the contractors as well as incurring its own costs for such processes. The essence of frameworks is that the procurement activity has already been done and frequently major contract terms already put in place.

The awarding of contracts, setting of criterion and approval of terms of contract is an Executive function of Cabinet and in light of the legal issues it would have to take any decisions in that regard under advisement to achieve the maximum impact of the motion should it be approved.

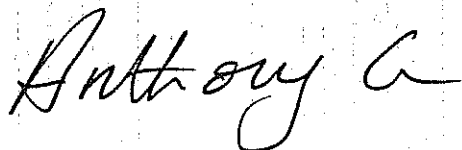
**Author**

Stuart Portman

Head of Law

☎ 01922 654821

✉ [portmanstuart@walsall.gov.uk](mailto:portmanstuart@walsall.gov.uk)

A handwritten signature in black ink, appearing to read "Anthony A.", is centered within a rectangular dotted-line box.

Head of Legal and Democratic Services

19th February 2014