



Northern Ireland
Assembly

Committee for Employment and Learning

**OFFICIAL REPORT
(Hansard)**

Trade Unions: Blacklisting of Members

29 February 2012

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Basil McCrea (Chairperson)
Mr Thomas Buchanan (Deputy Chairperson)
Mr Fra McCann
Mr Barry McElduff

Witnesses:

Mr Conor Brady	Department for Employment and Learning
Mr Andrew Dawson	Department for Employment and Learning
Mr Tom Evans	Department for Employment and Learning

The Chairperson: We move now to the final piece of substantive business. Hopefully, it will not take too long. Tom Evans is staying with us to present on the consultation on the blacklisting of trade union members. Joining Tom is Conor Brady and Andrew Dawson of the employment relations policy and legislation branch.

Mr Tom Evans (Department for Employment and Learning): We will try to keep the presentation fairly short. I will give some background. You asked us to give you some feel for the outputs from the consultation. In 2003, we did a consultation on the regulations to prohibit blacklisting. There was no strong evidence in practice, and it did not happen. In 2009, there was an investigation by the Information Commissioner into an organisation called the Consulting Association. The investigation uncovered that the Consulting Association had a database containing details of more than 3,000 construction workers, including personal information on relationships, trade union activity and employment history. The database was used by more than 40 construction companies, and the owner was prosecuted for breach of the Data Protection Act and fined £5,000. Some of those workers were from Northern Ireland, so we decided that it was important to go out to consultation again. The regulations were introduced in GB from 2010.

There was consultation on draft regulations from July to October 2010. The consultation looked to determine whether there was evidence of blacklisting in Northern Ireland, whether there was a need for regulations to prohibit blacklisting, and for comments on the adequacy of the draft regulations. It ended in October 2010. We had nine substantive responses; Conor will take you through them.

Mr Conor Brady (Department for Employment and Learning): I will quickly go through the questions that we asked in the consultation and give a summary of the responses. The first question was:

"Do you agree that there is a need to introduce regulations?"

Of the nine substantive responses, eight broadly supported the introduction of regulations. The one dissenting voice was the Confederation of British Industry (CBI), which stipulated that in light of what it considered to be a lack of evidence, there should be no further regulations.

We then asked consultees whether they considered blacklisting to be a widespread practice here. The CBI said categorically that it was not. Most of the other consultees said that it was difficult to say whether blacklisting did occur given its covert nature, but there were suspicions that it may be occurring.

The one definitive piece of evidence came from the Information Commissioner, who referred to his investigation into the Consulting Association. He said that a number of companies in Northern Ireland visibly obvious in the Belfast skyline were uncovered during the investigation. During follow-up questions with the Information Commissioner, we were able to uncover that one record relating to a trade union member based in Northern Ireland was found on their database.

The vast majority of consultees agreed with our proposed definition of blacklisting. The National Association of Schoolmasters and Union of Women Teachers said that the definition could be improved to take account of what is, effectively, a one-person list. We feel that the occurrence of a one-person list would, at best, be very rare and could, in any case, be dealt with under article 26 of the Employment Rights (Northern Ireland) Order 1996.

In the consultation, there were suggested exemptions on the Department's part from the general prohibition. Those are listed in the presentation before members. The vast majority of consultees were broadly content with the exemptions. The one dissenting voice was the Northern Ireland Committee of the Irish Congress of Trade Unions, which suggested that the ignorance exemption could allow false claims that an employer was ignorant of the law. It is our view that the exemptions are tightly defined within the proposed regulations, so that would be avoided.

The next question we posed was about enforcement. Consultees said that, on the whole, they were fairly content, although the Northern Ireland Committee of the Irish Congress of Trade Unions wanted the enforcement strengthened.

The Chairperson: Instead of going through your presentation, could you just give us a general sense of what you want to do about this? I will see from members whether they are broadly supportive or not. What is your feeling about what you got back? Do we need to do this or not?

Mr C Brady: The Minister has yet to take a decision. However, the vast majority of consultees said that they were broadly content with the regulations as drafted. To answer your question, departmental officials, depending on the views of the Committee, would like to make a recommendation to the Minister to proceed with the regulations as drafted — if that is short and sweet enough.

The Chairperson: OK. Does anybody have any views?

Mr McElduff: Did the Law Centre express an opinion in the consultation?

Mr C Brady: From memory, I do not think that it did. I do not think that it was one of the respondents. It normally does come back to us for a consultation, but I think —

Mr McElduff: I noticed its omission. I am surprised that it did not respond.

Mr C Brady: On this one it did not respond for some reason.

Mr Evans: I do not think that they felt that it was for them for some reason; I think that was the issue. The Law Centre contacted us on every other consultation on individual rights, but this was slightly different. Yes, it could impact adversely on workers, but —

The Chairperson: What is the overhead? Why is the CBI not happy? Their usual bit is because it is more a level of bureaucracy or something.

Mr Evans: The regulatory burden is very small. The CBI's view is that there is no real evidence, so why do it? I think that is their position.

Mr C Brady: It is a point of principle. It was the CBI's consideration that if there was no evidence, there should be no regulation. Subsequent to the consultation issuing, we received very clear evidence from the Information Commissioner that one individual trade union member from Northern Ireland was on the database. You have to ally that to whether there is a point of principle with regard to the regulations. Again, that would be a decision for the Minister, but we think that there is sufficient evidence, based on what the Information Commissioner produced, to proceed with the regulations.

The Chairperson: In the sense that one person has been affected. That's it.

Mr C Brady: Given the covert nature of this activity, we will never find great swathes of evidence to demonstrate that it is taking place. However, one person is an indication that it has taken place and, therefore, that it could be taking place on greater levels than we are aware of.

The Chairperson: Does anybody have any view on that? Tom?

Mr Buchanan: Not really, no. I am happy enough.

Mr F McCann: One person is still one too many.

The Chairperson: We will cut to the chase: the general view is that you should not blacklist people. There is a clear principle in that. We would like light-touch regulation. You do not need to copper-bottom this, but we would be happy if there was some definition in law so that if people are guilty of it they get penalised.

Mr C Brady: We do not think that our approach is overly burdensome. A good employer has absolutely nothing to fear from these regulations. Any regulations that are brought through will be via the confirmatory procedure, so the Committee will have the opportunity to have a full debate on the Floor of the Assembly on the regulations.

The Chairperson: I think that it is worth doing. Are people content with that? Is that the general feeling?

Members indicated assent

The Chairperson: Do you need us to write to you?

Mr C Brady: We can use the Hansard report as the Committee's confirmation.

The Chairperson: We will write anyway to say that the Committee is in favour in principle but is looking for a light-touch implementation. Thank you very much, gentlemen.