

# Supplementary submission from Carillion plc to the House of Commons Scottish Affairs Committee - Blacklisting in Employment March 2013

## Introduction

1. This document is intended to be read alongside Carillion plc's original submission to the Scottish Affairs Committee inquiry into Blacklisting in Employment. Since our original submission, made on 29 September 2012, the Committee has cross-examined a number of individuals and companies, bringing further information to light. We have continued to conduct our own internal investigations and we are grateful for the opportunity to bring the Committee up to date with what we know, clarify or correct certain points and again make our position a matter of public record.

## Carillion's involvement with the Consulting Association – key facts

2. Carillion repeats that we **do not** condone or engage in blacklisting and we take such allegations very seriously. In addition, we have taken action to ensure that such practices are not present within our supply chain.
3. Carillion is not aware of any evidence of contemporary blacklisting taking place within the construction industry. Such activity was made illegal in 2010 and any company found to be doing so would be breaking the law.
4. The Carillion business, Crown House Engineering, stopped using the Consulting Association's (CA) referencing service in 2004. The practice was proactively stopped because the HR manager responsible for checking the database at that time, Liz Keates, believed it was wrong. This decision to stop using the CA database has been corroborated by the financial records submitted by the late Mr Ian Kerr to the Scottish Affairs Committee.
5. Beyond this, the CA's ledger shows that Carillion received three invoices, together totalling just over £100, for attendance at meetings in November 2005, December 2006, and May 2008. These meetings were not connected in any way with blacklisting activity or use of the Consulting Association's database to reference individuals. The meetings were convened to discuss best practice site security, to help flag up current and future issues, such as thefts of plant from site, and discuss how to deal with them. Carillion's representative at these meetings, John Edwards, had no managerial responsibilities and was unconnected to Carillion's HR and recruitment functions. The meetings, certainly by 2008, were primarily concerned with the threat of terrorism rather than environmental activism. A typical discussion point would be to ensure a consistency in approach to security where several contractors were working together on a large project.
6. There is no evidence to suggest that the referencing service was known about at Carillion board level until the raid on the CA by the Information Commissioner's Office in 2009. Obviously if any substantive evidence emerges in future, we will make every effort to investigate it thoroughly.
7. Carillion cannot speak for other companies, but in the late 1990s and early 2000s Crown House Engineering was concerned to protect itself from serious employment relations issues affecting the Mechanical and Electrical engineering (M&E) sector. During this period, a number of militant electricians were engaging in unlawful and damaging walkouts/industrial action outside official trade union channels. Such behaviour was accompanied by suspected or actually reported sabotage, threatening behaviour and intimidation. In 1999 alone, Crown

House Engineering lost 597 working days to unofficial action, significantly affecting the company's finances, threatening employment and undermining its ability to deliver on contracts. Use of the database was emphatically **not** to deny employment to trade union members or union Health and Safety representatives.

### **Carillion investigation – evidence**

8. Our internal investigation has relied on several different sources of evidence:
  - i. The first-hand account of Liz Keates, who joined Crown House Engineering in 1998, and is currently Head of Employee Relations at Carillion plc
  - ii. Interviews with former Carillion employees
  - iii. The CA's ledger book between 1999 and 2004
  - iv. Testimony supplied to the Committee by individuals such as Ian Kerr and Alan Wainwright, which has been placed in the public domain
  - v. A number of invoices dating from 2001 – 2004
  - vi. Excerpts from the Consulting Association database. In the course of Employment Tribunal proceedings, including Dave Smith's, the ICO was ordered to disclose copies of all of the entries on CA files that refer to the use made of the database by Carillion companies. Carillion will not make direct reference to any personal information from such extracts.
9. Carillion has never had access to the full CA database (although the Information Commissioner's Office has supplied this to several trade unions and individuals). The ICO has refused Carillion's request to view this evidence.
10. Carillion has attempted to investigate the alleged involvement of other named individuals mentioned in the Committee's cross examination. It must be understood that Carillion is unable to compel former employees, some of whom left the company more than a decade ago, to comply with requests for information. We have contacted several individuals (some on multiple occasions) who have declined to respond to our enquiries. We no longer have contemporary contact information for several other individuals, in particular those who have retired, and have been unable to locate them thus far, though attempts are continuing.
11. Carillion has made extensive attempts to locate documentation which may be connected to use of the CA. For example, we have searched our accounts database to seek evidence of any other payments which may have been made to the CA, and we have reviewed extant recruitment databases for any evidence of data or negative comments against individuals. No such evidence has been found.

### **Use of the database – additional numbers**

12. From a review of available evidence supplied to us by the ICO, Carillion believes that:
  - i. Up to 2004, searches undertaken by Tarmac/Carillion and Mowlem resulted in 110 positive matches occurring against **81 different individuals** (some searches being conducted against the same individual on multiple occasions).
  - ii. A proportion of these individuals may not have been employed in any case, as upcoming labour forecasts changed and fewer individuals were needed than originally anticipated. However, it is reasonable to suppose that a proportion of this number may have been refused employment on the basis of their CA record.
  - iii. The entries of interest to Carillion included information about disruptive behaviours and misconduct (including giving false National Insurance numbers and names, criminal offences such as theft, violent or threatening behaviour and unlawful strike activity).

- iv. Up until 2003, Tarmac/Carillion and Mowlem apparently supplied information to the CA on **27** occasions, concerning **77** different individuals, mainly in the 1990s.
- v. There is no evidence that any Carillion company supplied information to the CA after 2003.
- vi. Ms Keates was aware that historically Mowlem had subscribed to the CA and following Carillion's acquisition of Mowlem confirmed that this use had ceased.
- vii. Removing duplication this indicates that searches were carried out or data was supplied in relation to a total of 148 individuals.

#### **Who knew what – and when?**

- 13. Liz Keates joined Crown House Engineering, which was part of Tarmac, in 1998 as its Employee Relations Manager. She was delegated responsibility for contact with the CA by her superior, Kevin Gorman, who was Head of HR. Mr Gorman was familiar with the existence of the database and how it operated. As part of its internal investigation, Carillion has attempted to contact Mr Gorman, but he has declined further involvement.
- 14. Contrary to what is alleged in written papers submitted to the Committee by Ian Kerr's family, Mrs Keates has never worked for Laing O'Rourke and was never the CA contact for Laing O'Rourke.
- 15. Detailed knowledge of what the database was and how it operated was confined within Crown House Engineering to Mr Gorman and Mrs Keates. Our internal investigation has confirmed that an individual called John Ball, who was an Employee Relations Manager for Tarmac, and later Carillion, was aware of the existence and operation of the CA database also. John Ball left Carillion in 2000, but responded to our request for information. Another HR Manager, Roy Hay, would authorise occasional searches, and a clerk was also tasked with submitting names on a regular basis. Initials for these individuals can be seen on the database.
- 16. Approval for CA invoices received was processed by Mrs Keates, or Mr Gorman, as the amounts accrued were simply not large enough to require signoff from senior management.
- 17. Carillion is aware of the testimony supplied to the Scottish Affairs Committee by Mr Alan Wainwright, and has sought to establish the veracity of his account. His testimony conflicts with that of Mrs Keates, who expressly states that there was no internally held 'no file' or blacklist held by Crown House and that senior management at Crown House were not aware of how the Consulting Association database was used to reference individuals. Carillion's original submission deals with these points in more detail. We have also made efforts to locate written evidence, either in hard or soft copy, which would substantiate Mr Wainwright's testimony but no such evidence has come to light.
- 18. Analysis of the database entries we have seen suggests that there were many duplicate searches over the years, which would not have occurred if an internal 'no file' existed. To the best of our knowledge, our investigations make it clear that there was no internally operated blacklist.
- 19. To the best of our knowledge, Crown House Engineering never checked the CA database on behalf of any subcontractor.

#### **Allegations of Mr Dave Smith**

- 20. Testimony presented to the committee by Mr Dave Smith made a number of misleading claims about Carillion. Legal proceedings are ongoing by way of Mr Smith's appeal to the Employment Appeal Tribunal; however, we would like to take the opportunity to clarify a number of points as a matter of public record.

21. Mr Smith's claims against Carillion plc were withdrawn by Mr Smith. His claims against two subsidiary companies, Mowlem and Schal, were dismissed by the tribunal. Mr Smith has been given leave to appeal the tribunal decision regarding the subsidiary companies but the appeal relates to the interpretation of UK legislation.
22. Mr Smith has never been an employee of Carillion plc, its subsidiaries or its predecessor, Tarmac. His claims had nothing to do with Carillion plc, nor with Crown House Engineering, which was not a party to the proceedings. Mowlem was not owned by Carillion in 1998 or 1999 – the period to which Mr Smith's claims relate. He has never been a union Health and Safety representative for Tarmac or Carillion employees.
23. The entries made by the Consulting Association on its files during 1998-1999 in question came from Mowlem, which became part of Carillion many years later in 2006.
24. Although Mr Smith did not work for Schal or Carillion Construction's predecessor Tarmac Construction, evidence from Mr Smith's employment tribunal hearing shows that Mr Smith helped organise illegal, unofficial picketing against Schal in 1999, causing disruption to work at its site.

#### **Legacy – contemporary practice**

25. Any use of the CA database by a Carillion subsidiary ceased nine years ago. Since that time, Carillion has not used any such method of referencing to screen potential employees or subcontractors. In addition, the use of proprietary software packages for recruitment, and especially of software as a service (where the system is owned and maintained by an external provider, and the data is owned and maintained by Carillion) would mean that any form of blacklisting would now be immediately obvious. The proprietary software systems that we use would have no facility to maintain that sort of data, and have been built and operated within the current data protection laws. Our recruitment policies are robust and up to date, and very clear about acceptable practice in recruitment.
26. Since the ICO raid brought the use of the CA's database to light, Carillion has taken steps to communicate its position on blacklisting very clearly to subcontractors and suppliers. In December 2012, Adam Green, Managing Director of Carillion Construction Services, wrote to our M&E (mechanical and electrical) sub-contractors to make absolutely clear that we do not condone subscribing to or using any blacklist or similar referencing service to vet potential employees without their knowledge - under any circumstances.
27. As a leader within our sector we are also considering what additional actions we can take with our supply chain to make our position clear and to ensure that there is no further use of any such practices in future.

**ENDS**