

## MUNICIPAL YEAR 2013/2014 REPORT NO. 25

**MEETING TITLE AND DATE:**  
Cabinet 10 July 2013

**REPORT OF:**  
Director of Finance,  
Resources and Customer  
Services

**Agenda – Part: 1**

**Item: 10**

**Subject: Alleged Construction Industry  
Blacklisting**

**Wards: All**

**Key Decision No: 3742**

**Cabinet Member consulted:  
Cllr Andrew Stafford**

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### 1. EXECUTIVE SUMMARY

This report highlights the practice of 'blacklisting' which has allegedly been used by construction companies to restrict the employment opportunities for workers in the industry based on their affiliation to trade unions.

The report sets out Enfield's proposed responses to these allegations and highlights the Borough's ongoing commitment to the creation of well-paid jobs for local people. It also highlights Enfield's commitment to Fairness for All, and the provision of job opportunities for everyone. The Council will not tolerate illegal employment practices, and has set out in this report the steps it will take to minimise the risk of such situations arising in the future.

### 2. RECOMMENDATIONS

Cabinet is recommended to

- a) Condemn the alleged practice of blacklisting by construction companies.
- b) Supports the national union campaign by not allowing tenders from companies who subscribe to the use of unlawful construction industry blacklists from the date of this Cabinet decision.
- c) Agree to the amendment of the Council's procurement documentation for future construction projects, which will request bidders to confirm that they do not subscribe to the use of unlawful construction industry 'blacklists' and exclude tenderers who refuse to do so.
- d) Encourage other publicly funded organisations to adopt the same approach in their procurement practices.

### **3. BACKGROUND**

A number of construction companies have been challenged about allegations of supporting the existence of and subscribing to unlawful construction industry 'blacklists', which detail covertly gathered information on construction trade unionism, militant tendencies, trouble making, etc. Blacklisting is an unacceptable practice and cannot be condoned. Various unions including GMB, Unite and Unison are leading a national campaign aimed at forcing those who have been involved in blacklisting to apologise to those who have been affected by it.

It is alleged that the construction industry blacklist was collated by the Consulting Association (a private consultancy) and was then provided at a cost to construction companies as they sought to recruit/avoid new workers. Action was taken against the Consulting Association for misuse of data under the Data Protection Act..

### **4. ALTERNATIVE OPTIONS CONSIDERED**

Not applicable.

### **5. REASONS FOR RECOMMENDATIONS**

Owing to the concentration of construction activity in and around large cities, many of those alleged to have been discriminated against live in the country's major cities, and this practice may have disadvantaged residents of Enfield.

Given the potential impact on residents of the area, this Council –

- (a) Deplores the use of unlawful blacklisting;
- (b) Supports the national union campaign by not allowing tenders from companies who subscribe to the use of unlawful construction industry blacklists from the date of this Cabinet decision;
- (c) Agrees to the amendment of the Council's procurement documentation for future construction projects, which will request bidders to confirm that they do not subscribe to the use of unlawful construction industry 'blacklists' and exclude tenderers who refuse to do so.
- d) Encourages other publicly funded organisations to adopt the same approach in their procurement practices.

### **6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS**

#### **6.1 Financial Implications**

There are no financial implications arising directly from agreeing the recommendations in this report.

## **6.2 Legal Implications**

- 6.2.1 The Employment Relations Act 1999 (Blacklists) Regulations 2010 (“the Regulations”) generally prohibit the compilation, use, sale or supply of prohibited lists.
- 6.2.2 A prohibited list is a list which
- (a) contains details of persons who are or have been members of trade unions or persons who are taking part or have taken part in the activities of trade unions, and
  - (b) is compiled with a view to being used by employers or employment agencies for the purposes of discrimination in relation to recruitment or in relation to the treatment of workers.
- 6.2.3 Blacklists containing details of trade unions members and activists whose purpose is to discriminate against workers on grounds of trade union membership or activities, would be regarded as a prohibited list. The Regulations gives rights to persons to complain to an employment tribunal if such person has been refused employment or employment agency services or has been subjected to a detriment for a reason related to a blacklist. The Regulations make such conduct unlawful, however, apart from a prosecution under the Data Protection Act of 1998, there is no other legislation in force making such unlawful action a criminal offence.
- 6.2.3 Regulation 23(4) of the Public Contract Regulations 2006 implements Article 45(2) of the Public Sector Procurement Directive (2004/18/EC) and gives contracting Authorities a discretionary right to debar contractors that meet any of the requirements set out in Article 45(2). One such discretionary right is if the contractor is guilty of grave misconduct (a serious wrongful, improper or unlawful conduct) in the course of its business profession proven by any means which the contracting authority can demonstrate.
- 6.2.4 The Council can therefore consider adding elements to the Councils procurement documents requesting confirmation from bidders as to their use of such unlawful construction industry blacklists. Any such additions to the Councils procurement documents will need to be in a form approved by the Assistant Directors of Legal and Procurement.

## **6.3 Property Implications**

None

## **7. KEY RISKS**

Amending the Council's procurement documentation as detailed in the report should significantly reduce the risk of engaging companies that use blacklists.

## **8. IMPACT ON COUNCIL PRIORITIES**

### **8.1 Fairness for All**

Approval of the recommendations will ensure that trade union members are not discriminated against in terms of employment opportunities

## **9. EQUALITIES IMPACT IMPLICATIONS**

If approved, the recommendations will positively impact on discriminatory practices. This will result on positive benefits for all Enfield residents who are union members looking for employment in the construction industry. For this reason, it is not deemed relevant or proportionate to carry out an equality impact assessment/analysis.

## **10. PERFORMANCE MANAGEMENT IMPLICATIONS**

There are no performance management implications arising directly from agreeing the recommendations in this report.

## **11. PUBLIC HEALTH IMPLICATIONS**

This proposal will help ensure that health and safety considerations are not overlooked on construction projects which will contribute to minimising public health issues on major schemes.

## **Background Papers**

None