

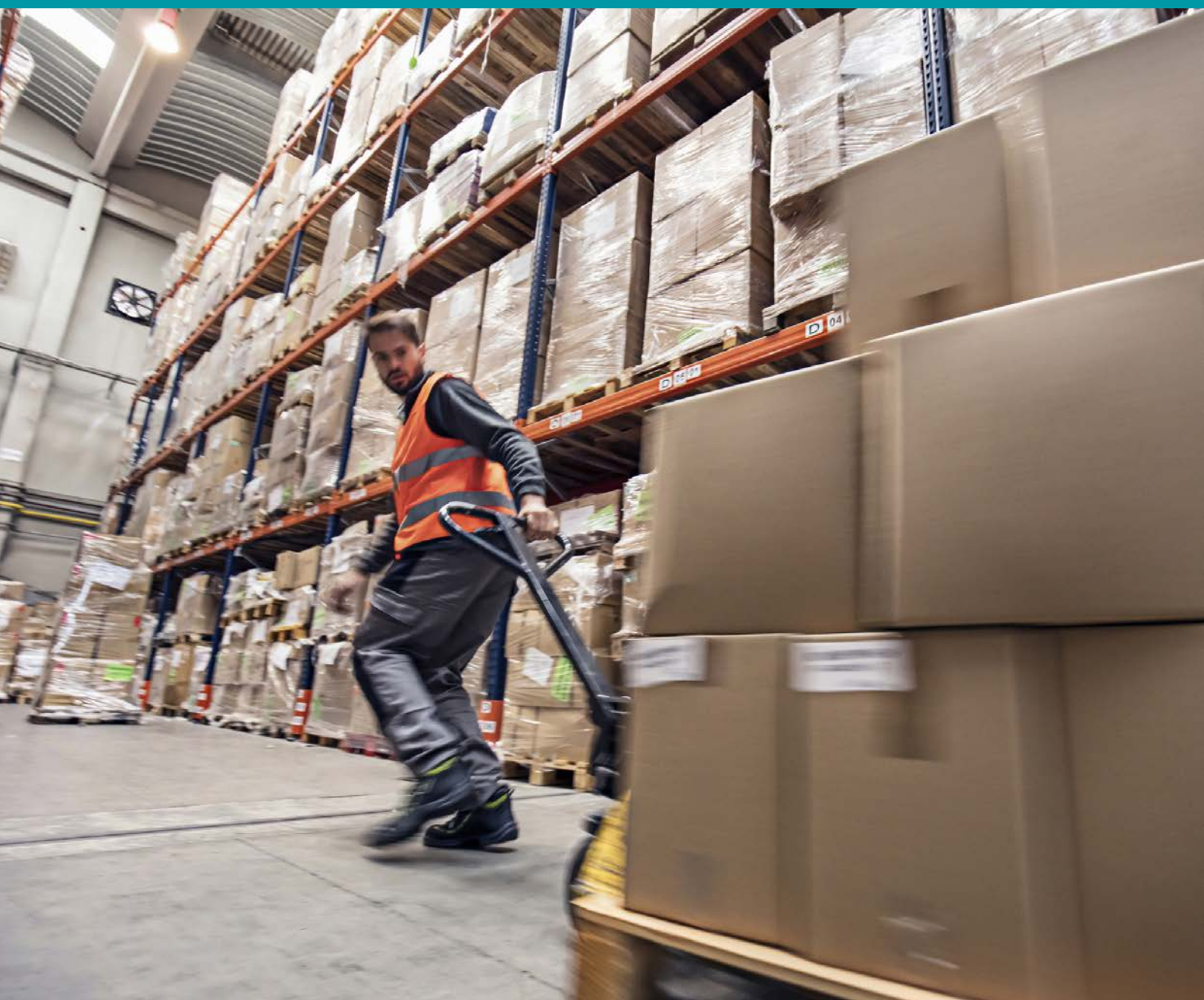
**A Toolkit Guide
Code of Practice –
Ethical Employment in Supply Chains
May 2017**



Llywodraeth Cymru
Welsh Government

Code of Practice

Guide to Tackling Blacklisting



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This Guide forms part of the Toolkit which supports the Code of Practice – *Ethical Employment in Supply Chains*.

This Guide is aimed at any person involved in the supply of goods, services and works, including procurement, contract management and supplier management.

This guidance has been prepared for information purposes only. The Welsh Government does not warrant the accuracy or completeness of the information contained and does not accept liability for any errors, omissions, or misleading statements included within this guidance. This guidance should not be relied on as a substitute for independent legal advice. Specific advice (legal or otherwise) in relation to an individual's or an organisation's own circumstances should be obtained.

1. Introduction

The Welsh Government is committed to ensuring workers are treated fairly and with respect and to making Wales hostile to slavery.

The 'Code of Practice – Ethical Employment in Supply Chains' is designed to help ensure workers in public sector supply chains in Wales are employed in a fair and ethical way. The Code helps tackle the following employment issues:

- Modern Slavery and human rights abuses
- **Blacklisting**
- False self-employment
- Unfair use of umbrella schemes and zero hours contracts
- Payment of the Living Wage.

The 'Wales Procurement Policy Statement' (WPPS) sets out the expectations placed on every public sector organisation in Wales. The Code of Practice has been developed to reflect the overall aims and ethos of the refreshed WPPS and supports achievement of the following Well-Being of Future Generations Goals, as set out in the Well-Being of Future Generations (Wales) Act 2015:

- **A prosperous Wales** – *An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing decent work.*

The Code of Practice will contribute to the achievement of this Well-Being Goal by providing better employment opportunities

and supporting long term career development through the improvement of employment practices across supply chains in Wales.

- **A more equal Wales** – *A society that enables people to fulfil their potential no matter what their background or circumstances (including their socioeconomic background and circumstances).*

The Code of Practice will contribute to the achievement of this Well-Being Goal through supporting the eradication of unfair employment practices across supply chains in Wales.

- **A globally responsible Wales** – *A nation which, when doing anything to improve the economic, social, environmental and cultural well-being of Wales, takes account of whether doing such a thing may make a positive contribution to global well-being.*

The Code of Practice will contribute to the achievement of this Well-Being Goal through supporting the eradication of modern slavery across global supply chains.

2. What is Blacklisting

Blacklisting, or use of prohibited lists, is the unlawful practice of compiling information on employees on their Trade Union membership and related activities, in order to discriminate against them.

Blacklists can also potentially contain further details on individuals who have reported concerns, for example, regarding health and safety and/or environmental matters.

Background:

In 2009, the issue of blacklisting in the construction industry came to national prominence following the reporting of the Information Commissioner's Office's (ICO) investigation into a private business called 'The Consulting Association (TCA)'.

The ICO found that TCA had been providing a vetting service to over 40 construction companies and had a blacklist and files containing extensive information on more than 3,300 individuals across the UK. It found that the information had been used to vet individuals and deny people employment for reasons including being a member of a trade union or having raised health and safety concerns. It is thought that about 110 of these individuals live in Wales.

The individual who ran TCA was subsequently prosecuted and fined for failing to comply with the Data Protection Act 1998 and register as a data controller.

Prior to the TCA case Blacklisting had been in existence since the 1920s, however this case led to the implementation of specific legislation aimed at ending Blacklisting.



3. Legal and Regulatory Requirements and Standards

The issue of blacklisting cuts across several areas of legislation.

Employment Relations Act 1999 (Blacklists) Regulations 2010 (The Blacklist Regulations 2010)

The Blacklist Regulations 2010, built into the Employment Rights Act in 2010, encourage employers to ensure that data and vetting practices are legal and respect the privacy of individuals.

The Blacklists Regulations 2010 define a 'prohibited list' as 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.

Discrimination is defined as:

- (c) treating a person less favourably than another on grounds of trade union membership or trade union activities.

In addition, the Act:

- Makes it unlawful for organisations to refuse employment, to dismiss an employee or otherwise cause detriment to a worker for a reason related to a prohibited list
- Makes it unlawful for an employment agency to refuse a service to a worker for a reason related to a prohibited list
- Provides for the employment tribunal to hear complaints about alleged breaches of the regulations; and

- As an alternative, provides for the courts to hear complaints from any persons that they have suffered loss or potential loss because of a breach of the regulations.

Trade Union and Labour Relations (Consolidation) Act 1992

Trade Union and Labour Relations (Consolidation) Act 1992 regulates British labour law. The Act's effect is to:

- define trade unions and state they are the subjects of legal rights and duties
- protect the right of workers to organise into, or leave, a union without suffering discrimination or detriment
- provide a framework for a union to engage in collective bargaining for better workplace or business standards with employers; and
- protect the right of workers in a union to take action, including strike action and industrial action short of a strike, to support and defend their interests, when reasonable notice is given, and when that action is "in contemplation or furtherance of a trade dispute".

Data Protection Act 1998

The Data Protection Act controls how personal information is used by organisations, businesses or the government. The Information Commissioner's Office (ICO) has powers to ensure compliance with the Data Protection Act 1998 and related laws. These include criminal prosecution, non-criminal enforcement and audit.

Anyone who processes personal information must notify and register with the ICO as a data controller and comply with the eight principles of the Data Protection Act, one of which is that data must be obtained for lawful reasons.

Failure to register is a criminal offence with a maximum penalty of £500k. The ICO will update the register of data controllers, which is available to the public for inspection.

Anyone found to be operating a Blacklist can be prosecuted for failure to comply with the Act and failure to register as a data controller.

Human Rights Act 1998:

The Human Rights Act 1998 sets out the rights to which everyone in the UK is entitled, and requires all public bodies to protect and respect an individual's human rights. Article 11 provides for freedom of assembly and association.

The Act brings the European Convention on Human Rights in to UK law. This ensures that UK individuals can take human rights breaches to a British court rather than the European Court of Human Rights in Strasbourg.

International Regulations:

Rights relating to Freedom of Association, including through Trade Unions, and the right to organise are covered under a number of International regulations including:

- European Convention on Human Rights (ECHR) 1953 Articles 11 and 14
- International Convention on Economic Social & Cultural Rights (ICESCR) 1976
- International Covenant on Civil and Political Rights (ICCPR) 1976; and
- ILO 8 Core Convention – Freedom of Association and Protection of the Right to Organise Convention, 1948 (Convention No. 87).

Welsh Government's 'Blacklisting in the Construction Industry Procurement Advice Note'

The Procurement Advice Note (PAN), first published in August 2013, was produced by the Welsh Government to advise on the issue of blacklisting/use of prohibited lists concerning individuals within the construction industry (or any other industry). The PAN details the background to blacklisting/use of prohibited lists, outlines the relevant legislation that applies in this area and sets out the Welsh Government's policy position. The PAN will be of specific interest to public sector staff involved in the procurement and delivery of construction contracts. The Welsh public sector is expected to deploy the guidance in all relevant contracts, in line with Principle 9 of the Wales Procurement Policy Statement 2015:

Policy Development and Implementation – deployment of policy which supports the achievement of the seven well-being goals for Wales as set out in the Well-being of Future Generations (Wales) Act (2015).

A copy of the PAN can be found at:
<http://prp.gov.wales/toolkit/?lang=en>.

4. Why should you be concerned with Blacklisting?

When blacklisting came to prominence, UCATT (now merged with Unite) commissioned Professor Keith Irwin to prepare the 2010 report “Ruined Lives”.

www.ucatt.org.uk/ruined-lives-ucatt-report-blacklisting

In the report Professor Irwin described blacklisting as “*a nasty, secretive and unaccountable practice that causes untold misery for individuals who are entrapped unwittingly by its covert nature, incapable of challenging what is being said and used against them, and unable to understand why their lives are being blighted by the failure to secure work.*”

Blacklisting can be damaging to the careers and livelihoods of individuals who have been denied employment opportunities. The potential impacts on those workers targeted include:

- Inability to gain employment in their chosen industry without understanding why
- Defamation of character
- Long-term unemployment; and
- Personal issues such as financial, family and serious health problems.

It is known to have been used by construction companies operating in Wales, and to have involved Welsh construction workers.

Taking a proactive approach to identifying and addressing incidents of blacklisting can help deliver the following benefits to your organisation:

- Improved rights for staff involved in trade

unions or those who speak out

- Improved image and reputation of your organisation resulting in:
 - Attractiveness to potential customers
 - Attractiveness to potential investors
 - Attractiveness to potential employees – key where skills shortages exist
- Increased staff retention leading to better quality products and/or services through skills development being retained within the business; and
- Increased productivity as a result of a more motivated, secure workforce.
- In contrast accepting the practise may impact negatively on your own business:
 - Reputational damage may lead to investors being reluctant to be associated with your business
 - Reputational damage may reduce the morale of your current staff and limit your ability to employ new staff; and
 - Your organisation may be subject to legal sanctions and/or financial penalties if blacklisting is proven.

On July 14 2014 the High Court agreed a Group Litigation Order with workers Unions where parties involved settled with the construction firms identified. To date, settlements have been reached for 771 people totaling £75m. Alongside the settlements firms had to issue formal apologies. www.bbc.co.uk/news/business-36242312

5. How can you tackle Blacklisting?

Within this section you will find practical advice on the actions you can take to tackle blacklisting and the use of prohibited lists.

Area	Key actions:
Policy Development	Produce a written policy on ethical employment and communicate it widely
	Produce (or update) a written policy on whistle-blowing and communicate it widely
Training & Communications	Raise awareness of Blacklisting amongst your staff and deliver appropriate training
	Raise awareness of Blacklisting amongst your suppliers and deliver appropriate training
Procurement and contract management procedures	Review and amend your procurement processes and any related documentation
	Review and amend your contract management processes and any related documentation
	Review and amend your ordering and payment processes
Remedying of problems identified	Work with your suppliers to resolve issues and change working practices
	Terminate your contract

These actions should not be seen as one-off activities but should be carried out regularly as part of your normal business processes.

When reading this section it is important to consider the size of your organisation, the level of risk within your supply chain in relation to blacklisting and what action you have already taken. The actions, and the amount of effort spent on blacklisting should be proportionate and targeted at the issues that affect you and your supply chain the most.

Policy development:

Produce a written policy on ethical employment and a written policy on whistleblowing and communicate them widely.

Ethical Employment Policy:

Before you begin writing your policy you will need to determine your stance on unfair employment practices - see the Example Ethical Employment Policy in the Toolkit for guidance and a list of considerations.

Whistleblowing Policy:

Before you begin writing your policy you will need to determine how members of your staff should raise any concerns or suspicions relating to unfair employment practices. You will also need to establish a system for reporting and investigating problems, tracking progress and monitoring outcomes. For smaller organisations where resourcing such a system may not be feasible, you may wish to involve external agencies to a greater extent (e.g. the Welsh Government's Supplier Feedback Service or Trade Unions). See the Example Whistleblowing Policy in the Toolkit for guidance and a list of considerations.

Once developed you should:

- Ensure the policy is signed off by a member of the Board/ Senior team within your organisation
- Communicate the policy to all of your staff
- Publish the policy on your website in a prominent place
- Communicate it to all of your suppliers, business partners and stakeholders
- Ensure that the policy is reflected within any other policies you have and within your standard processes and procedures, e.g. your procurement policy, tender documents, contracts, recruitment and training documents, supplier code of conduct, employee code of conduct etc.

You should review the policy regularly – at least annually.

Training & communications:

Raise awareness of blacklisting and the use of prohibited lists amongst your staff and deliver appropriate training

It is important your staff understand what blacklisting and prohibited lists are, how they may impact your business and your supply chains and what steps staff can take, or should take, within their daily roles.

You can do this by:

- Including information on blacklisting and other similar unfair employment practices in staff induction processes;
- Reviewing existing staff training in order to include blacklisting in training on unfair employment practices; and
- Introducing specific training on blacklisting and the issues surrounding it for staff in relevant roles e.g. HR, procurement, buying, contract and supplier management.

Raise awareness of blacklisting amongst your suppliers and deliver appropriate training

It is important that your suppliers understand what blacklisting and prohibited lists are, how they may affect suppliers and supply chains, and what steps staff can take, or should, take within their own organisation.

You can do this by:

- Providing copies of any training materials on unfair employment practices highlighting information on blacklisting for use within their own organisations.
- Developing and running training courses for your suppliers to attend. This training could, for example, be provided face-to-face, via video conferencing or online via webinars or webcasts.

Procurement procedures

Review and amend your procurement processes and any related documentation

You should review your supplier procurement processes to ensure that they reflect your 'Ethical Employment Policy'. It is important that you consider the impact of any changes on your suppliers, especially SMEs. Changes that you should consider making are as follows:

- Take a risk-based approach to each tender or procurement to ensure that workforce issues are assessed, understood and managed in all key decisions - this should be completed at the planning stage of each tender or procurement. Although it is designed for

procurement in the Welsh public sector, the Welsh Government’s ‘Sustainability Risk Assessment (SRA)’ might be useful for all organisations for this purpose –

<http://prp.gov.wales/toolkit/>

- Include a copy of your ‘Ethical Employment Policy’ and ‘Whistleblowing Policy’ in all your tender or pre-contract information and raise awareness of them through any ‘Meet the Buyer’ events.
- Encourage suppliers to voluntarily sign up to the Code and agree to implement it during the lifetime of the contract. Where appropriate you may wish to incorporate elements of the Code as conditions of contract.
- As part of the procurement process, ask suppliers whether they have committed an act which contravenes the Blacklist Regulations 2010 within the previous three years. Other questions might include:
- Has the supplier taken any steps to put matters right (“self-clean” in a public procurement context) where the practice of blacklisting has been identified?
 - What processes does the supplier have in place to ensure that details of staff data are protected to ensure they are not included on prohibited lists (blacklisting)? Do these processes comply with the Data Protection Act?
 - What percentage of the supplier’s workforce is engaged through employment intermediaries? Where relevant what processes are in place for ensuring that employment intermediaries comply with the Data Protection Act?
 - What steps do you take to ensure that the supplier’s subcontractors, i.e. employment agencies, have not been involved in the practice of blacklisting?
 - Are all of the supplier’s workers free to leave to find work elsewhere on their own terms?
 - Are all of the supplier’s workers free to join a Trade Union or collective agreement?

- Consider including adherence to the responses to the questions above as a condition of contract.
- Consider asking the supplier to provide information on its supply chain upon contract award, identifying the names of key suppliers. Consider making this a condition of contract.
- If you are looking to establish an agreement or contract with an employment or recruitment agency, ask for information on its recruitment and employment practices e.g. charging of recruitment fees, identity checks carried out, retention of documentation, and its use of sub-agencies. Consider including adherence to its response as a condition of contract.
- Carry out due diligence checks on the information provided by prospective suppliers.

See the Example Tender Questions Contract Conditions document in the toolkit for further advice.

Additional requirements for public sector buyers

Public sector buyers (“Contracting Authorities”) must ensure that they comply with the Public Contracts Regulations (PCRs) 2015, the Public Contracts Directive 2014 and the Treaty (on the Functioning of the European Union) principles of transparency, equal treatment, proportionality and non-discrimination. You should also seek legal advice as this Guide is not intended as a comprehensive statement of the law and each procurement exercise will raise different considerations. The Procurement Advice Note on Blacklisting sets out the Welsh Government’s policy, and the advice within it should be deployed in all relevant contracts.

Making use of the ‘Squizard’ tool on the Sell2Wales website, along with the Sustainability Risk Assessment tool will help you take a risk-based approach to each procurement. Any further relevant selection questions should be added in to the SQuID

as project specific questions. Use of the SRA and the SQuID approach is a requirement of the WPPS. See the Example Tender Questions document in the Toolkit for more detail.

Public sector buyers are referred to the provisions in the PCRs 2015 which support ethical sourcing. Some of those provisions most relevant to the subject matter of this Guide are summarised below; however you must refer to the Regulations themselves for the full terms of the regulations.

(www.legislation.gov.uk/ukxi/2015/102/pdfs/ukxi_20150102_en.pdf).

- Regulation 56(2) allows you to decide not to award a contract to the tenderer submitting the most economically advantageous tender where you have established that the tender does not comply with applicable obligations in the fields of environmental, social and labour law as established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive – www.eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0024. Please note that this provision focuses on the tender - rather than the tenderer (the tenderer being the focus of the discretionary grounds for exclusion).
- Regulation 57 (8) includes a list of discretionary grounds for exclusion, which allows you to exclude a tenderer from a procurement exercise if you can demonstrate by any appropriate means that the supplier has either violated its applicable obligations referred to in Regulation 56(2) or is guilty of grave professional misconduct, which renders its integrity questionable. Tenderers must be offered the chance to show evidence of any ‘self-cleaning’ they have undertaken and, if these are deemed sufficient, can avoid exclusion.
- Regulation 67 stipulates that award criteria must be linked to the subject matter of the contract. You can include social (including workforce matters) and trading

considerations within your contract award criteria provided they are linked to the subject matter of the contract.

- Regulation 70 allows you to include special conditions relating to the performance of a contract, which may include social or employment-related considerations, provided they are linked to the subject-matter of the contract and were included in the contract notice and/or tender documentation.
- Regulation 71 allows you to ask the tenderer to indicate in its tender any share of the contract that it may intend to subcontract to third parties and any proposed subcontractors. Making use of this provision can make your supply chain more transparent.

Review and amend your contract management processes and any related documentation

You should review and amend your contract documents, including your Standard Terms and Conditions, to reflect your ‘Ethical Employment Policy’. In addition, you should consider whether requirements and questions used in the procurement process should be reflected in the terms of the contract.

Changes that you should consider making are as follows:

- Include a link to your ‘Ethical Employment Policy’ on your purchase orders, invoices, goods receipt notes etc.
- Include discussions about blacklisting in contract review meetings with your suppliers, where appropriate. These discussions should focus on steps that each party has taken to tackle any potential or known issues
- Include a termination clause in all contracts which enables you to terminate a contract should any claims be brought against your supplier in relation to blacklisting or prohibited lists

- Ensure your supplier's sub-contractors are contractually bound by the same terms as your supplier in relation to blacklisting and the use of prohibited lists.
- Make it a contractual condition that you must approve all sub-contractors who are to carry out services as part of your contract.

Wherever possible you should look to build these into existing contracts retrospectively, through discussions with your current suppliers. See the Example Tender Questions and Contract Conditions document in the toolkit.

Remedying of problems:

Work with your suppliers to resolve issues and change working practices

Where you have found occurrences of blacklisting within your supply chain you should aim to work with the supplier to further clarify and understand the situation, and help put matters right, where possible.

Your relationship with the supplier is likely to determine how much influence you have to bring about change. Although you may not be a key customer of the supplier, they may be critical to your business. In these situations, co-ordinating with your supply chain partners and other businesses which use the same supplier may be a good way to increase your influence. It may also help to involve organisations such as Government bodies, Trade Unions and Industry bodies.

Steps that you can take include:

- Work with the supplier to understand what the key issues are, why they are occurring and what needs to be done to bring about change.
- Provide copies of your Ethical Employment Policy to your supplier to help them understand your position on blacklisting and why you want these issues to be addressed.
- Provide copies of any internal training materials or guidance on blacklisting for the supplier to use. Alternatively you could invite

suppliers to attend your own internal training courses.

- Develop and agree an action plan with the supplier which clearly outlines what each action involves and who is responsible along with deadline dates, milestones and targets. Major issues should be dealt with as a priority within the action plan.
- Keep in contact with the supplier to assess progress against the plan, but also to ensure that the supplier feels that this is a shared responsibility.
- Establish feedback processes which workers can use to provide updates from an their own perspective.

If you believe that a member of staff has been blacklisted at any point in their career they can check by contacting the Information Commissioner's Office (ICO) Blacklisting Hotline on 0800 587 7539 or by visiting the following webpage – <https://ico.org.uk/for-the-public/construction-blacklist/>.

Terminate your contract

You should consider what you will want to be able to do if your supplier, or a supplier further down the supply chain, is found to be engaged in Blacklisting. If you want to have the ability to bring your relationship to an end you will need to ensure that the wording of your contract allows you to terminate in such circumstances.

Terminating a contract may have a detrimental effect on your own business in terms of continuity of supply, quality of supply and reputation. In those circumstances you may decide it is worth trying to remedy the problem before contemplating termination.

Legal advice should be sought on drafting the appropriate termination provisions of any contract and before any action is taken to terminate the contract.

Annex A – Further Support, Guidance and Resource

The following is a list of resources that have been identified in the course of developing this guide and may provide further assistance to you and your organisation. Please note the list of resource is not exhaustive.

Information Commissioner’s Office (ICO)

Blacklisting Hotline – 0800 587 7539
<https://ico.org.uk/for-the-public/construction-blacklist/>

Policy Advice on Blacklisting

Welsh Government
Procurement Policy Advice Note – 10/09/2013
“Blacklisting in the Construction Industry”
<http://prp.gov.wales/docs/prp/toolkit/130910blacklistingpanfinal.doc>

Scottish Government
Scotland Procurement Policy Note 4.13 – 10/11/2013
“Exclusion from public contracts of companies which engage in blacklisting”
www.gov.scot/resource/0043/00438311.pdf

Trade Union Resource and Information

Unite the Union - Building, Construction and Allied Trades - Blacklisting hotline for Unite members – call 0800 587 7539
www.unitetheunion.org/how-we-help/list-of-sectors/construction/constructionblacklisting/

UCATT – Blacklisting Campaign (UCATT has now merged with Unite)
www.ucatt.org.uk/blacklisting

UCATT – Black Listing & Public Procurement Guide
www.ucatt.org.uk/blacklisting-and-public-procurement

GMB – 111 workers blacklisted in Wales
www.gmb.org.uk/newsroom/111-blacklisted-in-wales

TUC – Own Up! Pay Up! Clean Up!
www.tuc.org.uk/workplace-issues/employment-rights/health-and-safety/own-pay-clean-tuc-day-action-blacklisting

Government Resource and Information

Welsh Government
Written Statement on Blacklisting 04/06/2013
<http://gov.wales/about/cabinet/cabinetstatements/previous-administration/2013/blacklisting/?lang=en>

UK Government
Department for Business Information & Skills (BIS) - 18/08/2009
The blacklisting of trade unionists: revised draft regulations
<http://webarchive.nationalarchives.gov.uk/+http://www.berr.gov.uk/consultations/page52145.html>

House of Commons
Commons Select Committee on Blacklisting in Employment
www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/inquiries/parliament-2010/blacklisting-in-employment/

House of Commons – 2012/2013
Blacklisting in Employment: Interim Report
Ninth Report of Session 2012–13
www.publications.parliament.uk/pa/cm201213/cmselect/cmselect/1071/1071.pdf

House of Commons – 2013/2014
Scottish Affairs Committee – Blacklisting in Employment: addressing the crimes of the past; moving towards best practice
www.publications.parliament.uk/pa/cm201314/cmselect/cmselect/543/543.pdf

House of Commons – 2014/2015
 Scottish Affairs Committee – Blacklisting in
 Employment: Final Report
www.publications.parliament.uk/pa/cm201415/cmselect/cmscotaf/272/272.pdf

House of Commons – 06/2016
 Briefing Paper – Trade Unions: blacklisting
<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN06819>

Legislation & Regulation

Trade Union and Labour Relations
 (Consolidation) Act 1992
www.legislation.gov.uk/ukpga/1992/52/contents

The Data Protection Act 1998
www.gov.uk/data-protection/the-data-protection-act

The Employment Relations Act 1999 (Blacklists)
 Regulations 2010
www.legislation.gov.uk/uksi/2010/493/contents/made

Procurement Contract Regulations 2015
www.legislation.gov.uk/uksi/2015/102/pdfs/uksi_20150102_en.pdf

Media Coverage

ICO Blog – 29/08/2012

Prosecution of construction blacklist used
 strongest powers we had at the time
<http://web.archive.org/web/20150210143322/https://iconewsblog.wordpress.com/2012/08/29/ico-blog-prosecution-of-construction-blacklist-used-strongest-powers-we-had/>

The Guardian - 10/10/2013
 Construction firms to compensate unlawfully
 blacklisted workers
www.theguardian.com/business/2013/oct/10/construction-firms-compensate-workers-blacklist

Construction Magazine – 11/07/2014
 Construction Blacklisting cases to be heard as
 one “supercase”
www.constructionmanagemagazine.com/news/blacklisting-victims-cases-be-heard-one-supercase/

Parliament UK 27/03/2016
 Unilateral blacklisting compensation scheme
 an “act of bad faith”
www.parliament.uk/business/committees/committees-a-z/commons-select/scottish-affairs-committee/news/blacklisting-final-report-published/

BBC Website – 29/04/2016
 Construction firms strike blacklisting
 settlement
www.bbc.co.uk/news/business-36173104

BBC Website – 06/05/2016
 Construction workers win blacklisting
 compensation
www.bbc.co.uk/news/business-36242312

Guardian - 11/05/2016
 Construction firms apologise in court over
 blacklist
www.theguardian.com/business/2016/may/11/construction-firms-apologise-in-court-over-blacklist?CMP=share_btn_tw

Procurement Route Planner

PRP Tool Kit
<http://prp.gov.wales/toolkit/>

Chartered Institute of Purchasing and Supply

Ethical Procurement and Supply –
 E-Learning Module
www.cips.org/en-sg/training/ethical-procurement-and-supply/

Working with Recruitment Companies

HR Magazine 24/04/2013
 Blacklisting report causes concern for HR
 best practice
www.hrmagazine.co.uk/article-details/blacklisting-report-cause-for-concern-for-hr-best-practice

Annex B – SQuID questions on Blacklisting for public sector contracts

Note to buyers: You cannot apply an automatic exclusion to any of these criteria. You will need to consider each one on a case by case basis, **assessing any evidence that suppliers have self-cleaned.**

SAGen002a01v02

Regulation 57 (8) of the Public Contracts Regulations 2015 sets out discretionary grounds on which a bidding organisation may be deemed ineligible to tender for, or be awarded, a public contract. Should it become apparent to the buying organisation that any of the following situations has applied to your organisation within the past three years, or currently applies to your organisation, you may be excluded from the procurement. Select “Yes” if you wish to discuss any of these matters with the buying organisation.

- a) your organisation has violated obligations in the fields of environmental, social and labour law
- b) your organisation is bankrupt or is the subject of insolvency or winding-up proceedings
- c) your organisation is guilty of grave professional misconduct, which renders its integrity questionable
- d) your organisation has entered into agreements with other economic operators aimed at distorting competition
- e) your organisation has a conflict of interest with the buying organisation which cannot be remedied
- f) the prior involvement of your organisation in the preparation of the procurement procedure has resulted in a distortion of competition which cannot be remedied

- g) your organisation has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract which led to early termination of that prior contract, damages or other comparable sanctions
- h) your organisation has been guilty of serious misrepresentation in supplying information during a procurement exercise, or has withheld such information or is not able to submit the supporting documentation; or
- i) your organisation has attempted to unduly influence the decision-making process of the contracting authority; or to obtain confidential information; or has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

Answer: Yes/No

Guidance for bidders: *The buyer may exclude you from participation in a procurement procedure if, having investigated the circumstances, any of these grounds for exclusion is found to apply.*

If you are bidding as, or on behalf of, a consortium, you should check with all members of the consortium whether or not these grounds for exclusion might apply.

The buyer may include additional questions covering some of these grounds more specifically, for example, on conflicts of interest, on employment practices such as Blacklisting and False Self-Employment, and on offences under Equalities, Environmental and Health and Safety legislation. See Regulation 56(2) for more details.

SA.GEN.04

SAGen004a01v01

Have you, or has your organisation been found to have employed the practice of ‘blacklisting’ in the last three years?

Answer: Yes/No

SAGen004b01v01

If you answered ‘yes’ to question SA.GEN.04a please include details here, outlining the circumstances, including actions you have since taken to put matters right, as described in the guidance to this question.

Answer: Explanation outlining actions taken.

Guidance for bidders: *If you or your organisation has used or run prohibited lists within the last 3 years, as defined in The Employment Relations Act 1999 (Blacklists) Regulations 2010, you must disclose this.*

The buyer may deem you ineligible to tender unless you can demonstrate adequate evidence of ‘self-cleaning’ (see Regulation 57 (13)- (17)). The measures you have taken will also be evaluated taking into account the gravity and particular circumstances of the misconduct.

*If you are bidding as, or on behalf of, a consortium, you should check with **all** members of the consortium whether or not these grounds for exclusion apply. Select “Yes” if these grounds apply to any consortium member.*