

CHESHIRE EAST COUNCIL

Cabinet

Date of Meeting:	1 st July 2014
Report of:	Head of Legal Services and Monitoring Officer
Subject/Title:	Notice of Motion - Blacklisting of Workers
Portfolio Holder:	Councillor J Paul Findlow, Governance

1.0 Report Summary

- 1.1 The Council resolved at its meeting on the 10th April 2014 that a motion concerning the use of blacklists be amended and referred to Cabinet. This report facilitates Council's referral.

2.0 Recommendations

- 2.1 That Cabinet
- i) Fully endorse the motion referred by the Council that Cheshire East Council deplores the practice of blacklisting carried out by some building and construction companies, which have denied employment to workers who were carrying out legitimate trade union activities such as health and safety representatives and the Cabinet, subject to the legal requirements incumbent on a public authority, will not work with such companies.
 - ii) Make clear to all construction companies bidding for Council contracts that any unlawful blacklisting of workers will not be tolerated

3.0 Reasons for Recommendations

- 3.1 To enable Cabinet to consider the matter raised in the motion.

4.0 Wards Affected

- 4.1 All wards

5.0 Local Ward Members

- 5.1 All Ward Members

6.0 Policy Implications

- 6.1 There are no immediate policy implications in relation to blacklisting.

6.2 The Council has developed a clear policy as part of its procurement process to identify via the Pre Qualification Questionnaire whether any bidders have breached legislation such as the Blacklisting Regulations

6.3 The Council also has a policy of including compliance with legislation, which includes the Blacklisting Regulations in contract terms and conditions and has a policy of regularly reviewing the same.

7.0 Implications for Rural Communities

7.1 All similarly affected

8.0 Financial Implications

8.1 No direct financial implications

9.0 Legal Implications

9.1 The background to the Employment Relations Act 1999 (Blacklist) Regulations 2010 "Blacklisting Regulations" is set out in section 11. In summary the Regulations draw on and extend existing legislation to protect employees who are discriminated against because of their current or prior Trade Union Membership.

9.2 The Blacklisting Regulations stipulate that it is illegal to discriminate in relation to the employment of an individual simply because of their current or prior membership of a trade union. In particular the Regulations:

- Make it unlawful for organisations to refuse employment to or to dismiss any individuals because they appear on a blacklist
- Make it unlawful for employment agencies to refuse to provide a service on the basis that an individual appears on a blacklist
- Make it unlawful to compile, use, sell, or supply blacklists containing details of people who are, or were, trade union members, or who are taking part, or have taken part, in trade union activities, where the blacklist may be used by employers to discriminate in relation to the recruitment or treatment of existing workers.

10.0 Risk Management

10.1 The content of this report aims to mitigate the following risks:-

Key Risks

- That Cheshire East Council fails to properly develop, implement

and demonstrate an effective procurement and contracting framework which ensures that its suppliers comply with Employment Relations Act 1999 (Blacklist) Regulations 2010 impacting upon its objective of being a responsible organisation and resulting in possible reputational damage.

- That Cheshire East Council fails to take action if it becomes aware that a supplier breaches the Employment Relations Action 1999 (Blacklist) Regulations 2010 resulting in possible reputational damage to the Council.

11.0 Background and Options

11.1 A motion titled Blacklisting of Workers was proposed to Council on 10th April 2014 by Councillor Roy Cartlidge and Seconded by Councillor Sam Corcoran.

11.2 The content of the Motion was as follows:

“Cheshire East Council deplores the practice of blacklisting carried out by some building and construction companies, which have denied employment to workers who were carrying out legitimate trade union activities such as health & safety representatives. In noting the Prime Minister’s comments that blacklisting is ‘a completely unacceptable practice, and the previous government were right to bring in legislation to make it unlawful.’

Council resolves:

To make clear to all construction companies bidding for Council contracts that any unlawful blacklisting of workers will not be tolerated.”

11.3 In accordance with the Council’s Procedure rules within the Constitution, Council resolved that this matter stand referred to Cabinet.

11.4 In March 2009 the Information Commissioner’s Office raided the offices of the Consulting Association (TCA) and exposed the existence of a blacklist containing the details of 3,213 construction workers including active union members and shop stewards, health and safety representatives and political activists which appears to have been used by over 40 UK construction companies for employment vetting purposes.

11.5 The Blacklisting Regulations and related guidance are silent in respect of third parties, such as the Council, who enter into contracts with companies who have compiled or used blacklists and there is no other legislation which covers this aspect.

- 11.6 Therefore the Council has developed its own provisions within its procurement procedure to identify whether any potential bidders have breached the Blacklisting Regulations.
- 11.7 The Council has checks and balances in place to ensure that it remains vigilant when entering into contracts to ensure that it does not do so with contractors who have breached The Blacklisting Regulations and the Cabinet endorses this continued approach.

12.0 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

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