

**UCATT**

Union of  
Construction  
Allied Trades  
& Technicians

# Building Worker



Autumn 2011



# Fighting the blacklist

UNION OF CONSTRUCTION, ALLIED TRADES & TECHNICIANS  
FREEPOST, 177 Abbeville Road, Clapham, London SW4 9BR



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Age (Yr)	<input type="text"/>	Former union details	
Tel/Mobile	<input type="text"/>	Which other unions, past or present, have you been a member of?	<input type="text"/>
Other	<input type="text"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>	
I am a member of UCATT in my local area. My details are: No.		From, (name and address)	<input type="text"/>
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I, the undersigned, agree to abide by UCATT rules and affirm that I am not debarred by UCATT rules.

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# UCATT Building Worker

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Cover: Clive Wakfer



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**BANNERS:** UCATT members made a colourful splash at the annual Tolpuddle Martyrs' Festival in July. The festival commemorates the six Dorset labourers who were arrested in 1834 for forming a trade union and then transported to a penal colony in Australia. The public outcry that followed their judicial persecution is regarded as the start of modern trade unionism in Britain.

Photo: Andrew Wiard



## Shock rise in site deaths during 2010/11

UCATT is calling on the Government to rethink its plans to cut funding of the Health and Safety Executive by 35 per cent over the next four years after new figures have revealed a steep rise in deaths at work.

Statistics released by the HSE in June show that the number of construction workers killed in accidents at work increased by 22 per cent in the 12 months to April.

There were 50 deaths in construction in 2010/11 compared with 41 in 2009/10. The total number of fatalities in all industries rose by 16 per cent from 147 to 171.

UCATT Acting General Secretary George Guy said the HSE's figures must serve as an urgent wake-up call for the Government and its policy of cutting safety funding and legislation. "This rise in deaths occurred before the Government's cuts have kicked in. By slashing the HSE's budget and the organisation's effectiveness the Government is in reality giving a green light to business to avoid taking safety laws seriously."

Confirmation of the increase in fatal accidents came as Employment Minister Chris Grayling launched a "Red Tape Challenge", in which he urged the public and business leaders to "directly change the

# Reverse cuts to save lives in construction

laws underpinning Britain's health and safety culture".

Reacting to this move, George Guy commented: "The Government's constant attacks on safety laws are sickening. The simple fact is that in dangerous industries like construction, there aren't too many regulations. There isn't too high a level of enforcement. There simply isn't enough. Every single day workers are facing unnecessary dangers as basic safety laws are ignored."

## Equates

Construction's death toll equates to a rate of 2.4 deaths per 100,000 workers, compared with 1.9 in 2009/10. The latest figures show that

a building worker is on average four times more likely to be killed at work than a worker in other industries.

Adding its voice to the protests, the union Prospect, whose members include HSE inspectors, said the sharp rise in deaths at work required the Government to reverse its attack on regulation and enforcement.

Meanwhile Linzi Herbertson, of the campaign group Families Against Corporate Killers, told the Employment Minister: "Please stop now before you allow more employers to needlessly kill more workers to satisfy the business lobby's red-tape-slashing fetish. Health and safety law isn't pointless red tape; it's the life-line that protects our lives and it isn't strong enough now so don't slash it."

## Inquiry call at prestige sites

The union is calling for full investigations into high-profile accidents on two prestige London sites that otherwise have good safety records. A crane driver was killed at the Olympic Village on 28 June and there were two serious accidents at the Westfield Stratford site in September. A worker fell from a ladder and a second suffered severe burns after being electrocuted.

UCATT welcomes speedier prosecutions: page 4. TUC congress report: page 9. Blind to the importance of workplace safety: page 14.

## General Secretary election goes ahead

The process of electing a new UCATT General Secretary has begun, with branches deciding which candidates to nominate at meetings in the first two weeks of September.

If there is more than one candidate, a postal ballot will be conducted by Electoral Reform Ballot Services and will run from 11 November to 13 December.

An election was made necessary when the Government-appointed Certification Officer

ruled in March that the 2009 ballot result was invalid because of the way that the union had interpreted its rules in respect of members in arrears with contributions.

At no point did the Certification Officer suggest that any candidate in the 2009 election or the union had acted dishonestly.

Members with queries about the 2011 election should contact the union. Tel: 020-7622 7707 or email: [gsbal2011@ucatt.org.uk].

## UCATT welcomes speedier prosecutions after site deaths

Proposals to speed up the justice system when there is a workplace fatality have been welcomed by UCATT. Currently, it often takes between four to five years following a worker's death for the company responsible to be convicted.

The union hopes that changes to the Work Related Deaths Protocol, which are due to be introduced in October 2011, will significantly reduce this timescale.

The key change to the protocol will mean that in some cases charges relating to health and safety offences can proceed before a coroner's inquest has taken place.

Under the previous procedure, no charges could be made until a coroner's inquest had concluded.

UCATT officials also hope that the reforms will increase the conviction rate of employers whose workers are killed. Currently, roughly only 30 per cent of employers are convicted following the death of a construction worker. Yet research undertaken by the

Health and Safety Executive has found that management failings contribute to 70 per cent of fatal accidents.

As a consequence of the long delay between a worker being killed and a possible court case, many employers opt to take their company into administration and then start another firm with the same equipment and a similar name in order to avoid prosecution.

### Directors

UCATT is also campaigning for the introduction of statutory duties on directors. This would ensure that, if a company acts recklessly and a worker is killed, an individual director could be held accountable – with the potential for a custodial sentence.

Despite the introduction of corporate manslaughter legislation by the last Labour Government, the vast majority of convictions following the death of a worker result in a fine, many of which are just a few thousand pounds.

UCATT Acting General Secretary George Guy said: "Anything which speeds up the justice system following the death of a worker is welcome. The current situation, where a family loses a loved one and then has to wait for many years before justice is done, is simply wrong."

He continued: "Hopefully speeding up the justice process will be the first step in ensuring that workers killed at work receive justice.

"Unless the laws are properly tightened, many companies will continue to fail to take safety seriously as they know that they will not be prosecuted."

A national liaison committee, which includes representatives of the Crown Prosecution Service, the police, the HSE and the Local Government Association, administers the Work Related Deaths Protocol.

In the 12 months to April, there were 50 construction fatalities – a 22 per cent increase on the previous year's figures.



## Cheryl breaks new ground to take senior UCATT post

● Cheryl Pidgeon (left): the union's new Midlands Regional Secretary.

Cheryl Pidgeon, UCATT's new Midlands Regional Secretary, is the most senior woman office-holder there has ever been in the union.

She took up her duties at the head of one of UCATT's biggest regions in August, having previously worked as the TUC's Regional Secretary in the Midlands.

Pidgeon said she was delighted to be in her new role for UCATT. "The challenges facing construction workers in the Midlands are as great as in any other part of the country," she said. "For too long many construction employers have believed that they have carte blanche to hire and

fire workers at will, ignoring even the most basic employment rights. Workers who join UCATT will have their rights fully defended."

She added: "It is essential that construction workers are properly paid and properly treated. If the industry is going to fully recover from the recession, then contractors need to be recruiting and training a far higher number of apprentices in order to meet future demand."

There is one other woman among UCATT's team of more than 40 full-time officials: Sandra Wilson, a Development Officer in the union's Eastern Region.

## Unions unite in anger over 'contempt' shown by local government bosses

Unions representing 40,000 local government craft workers have accused employers of treating workers with contempt and of undermining a national agreement.

The three unions concerned, UCATT, Unite and the GMB, finally met local government employers at the end of June to discuss their comprehensive pay and conditions claim that was submitted earlier in the year.

However, the employers refused even to discuss any part of the claim, including the non-financial matters. Outside of pay, the other issues concerned apprentice training, the use of agency labour, family friendly working practices, the guaranteed provi-

sion of personal protective equipment and access to an occupational health scheme.

Unlike any other group of public sector workers, local government workers earning below £21,000 will not receive a pay raise of £250 this year.

UCATT Acting General Secretary George Guy said: "Local government employers are treating hard-working local government workers with contempt."

He went on: "Even before the official pay claim was submitted, we were told that they would impose a second consecutive pay freeze. To then refuse to discuss any aspect of this carefully formulated pay claim is contemptible."

## Tory attack on minimum wage

A bid by a Conservative MP to undermine the legal status of the national minimum wage is a stark warning about the longer term intentions of the Conservative Party, according to UCATT. Sponsored by Christopher Chope MP, the Employment Opportunities Bill would have allowed employees the "right" to opt out of the minimum wage. But it faced strong opposition from Labour MPs and was kicked out when it was put to a vote in the House of Commons on 17 June.

George Guy, Acting General Secretary of UCATT, warned that Tories wanted workers to opt out of the minimum wage so that they would undercut each other to secure work. "This highlights the true nature of the Conservatives: soft on the bankers but tough on the workers."

Chope said his proposals would create "freedom, flexibility and opportunity" for job seekers. His Private Member's Bill won backing from many fellow backbench Tory MPs.

## Big pay variables

A survey of apprenticeship pay has found massive differences in rates.

The average private sector salary was £13,351. For the public sector it was £11,433.

Carried out by the TUC's Union-learn training agency and Incomes Data Services, the survey shows that female apprenticeships are concentrated in lower-paying sectors such as hairdressing and social care. By contrast, in the all-male oil and gas extraction and mineral processing industries, the average salary is £17,609.

On average, contracted apprenticeship hours were 36.8 per week; actual hours worked were 34.3 hours, with 7.3 hours spent in off-the-job training.

The survey was co-sponsored by UCATT, the CWU communication workers' union and the USDAW shopworkers' union.

## Where do trainees go after 2012?

“The Olympic Delivery Authority reported that its target of 350 apprenticeships on site had been exceeded because, by June 2011, 426 apprentices had had some experience of working on the site. However, of these, only 60 had actually completed their training on the Olympic Park and the Athletes' Village, representing less than 1 per cent of the workforce. Although apprentices may experience work on the Olympics, this does not mean that they are able to complete their training on the site due to the length of apprenticeships and the short period of time before completion in 2012.

As claimed by George Guy, Acting General Secretary of UCATT: “The ODA has so far failed to grasp the opportunity of making apprenticeship training a significant legacy of the Olympics. If apprentices leave the Olympics site, the ODA can only rely on companies' goodwill to ensure that training is completed.”

Extract from “Olympic sites” in 2/2011 issue of CLR News of the European Institute for Construction Labour Research: [www.clr-news.org].



**LEADING THE WAY:** Apprentices Ryan Petch, 17, and Connor Bamford, 19, laid the first bricks of a new £2.2 million sheltered housing scheme in their home neighbourhood of Shiregreen, Sheffield, for builder Frank Haslam Milan in July.

# More apprentices urgently needed, warns UCATT

UCATT is calling on the Government to radically alter its apprenticeship policy following the publication of figures showing that the number of young workers in construction has more than halved since the economic recession began in 2008.

Compiled by CITB-ConstructionSkills, the new statistics reveal that the number of 16 to 19-year-olds working in the construction industry has plummeted from 119,330 in 2008 to just 56,781 in 2010. The number of 20 to 24-year-olds has also significantly dropped, from 250,929 in 2008 to 213,634 in 2010.

Because of the economic crisis, the total workforce declined by 235,000 during the same period. But the number of workers who were 60 or over was virtually unchanged, standing at 196,993 in 2008 and 193,172 in 2010.

UCATT has also learnt that, despite the Government apparently championing apprenticeships by claiming to want to create 250,000 apprentice places, their own policies are undermining these targets.

The Home and Communities Agency (HCA) has dropped its national target for the number of apprentices

employed on publicly funded social housing developments.

This approach, UCATT notes, is in stark contrast to that of the previous Labour Government, which had begun to introduce policies making it compulsory for construction companies to train apprentices. This applied to contractors building new council housing and in some other Government-funded construction projects.

While implementing this policy in 2010/11, the HCA created or safeguarded 2,700 apprentice places.

UCATT Acting Secretary George Guy warned: “Unless new young workers are recruited and properly trained, then the industry will suffer severe skills shortages, productivity will be affected and future growth will be reduced.”

The new CITB-ConstructionSkills statistics, he added, demonstrated that the free market approach to construction apprentice training had been a complete and absolute failure. “Only if the Government forces employers to recruit and properly train apprentices will the fall in apprentice numbers be halted and reversed.”

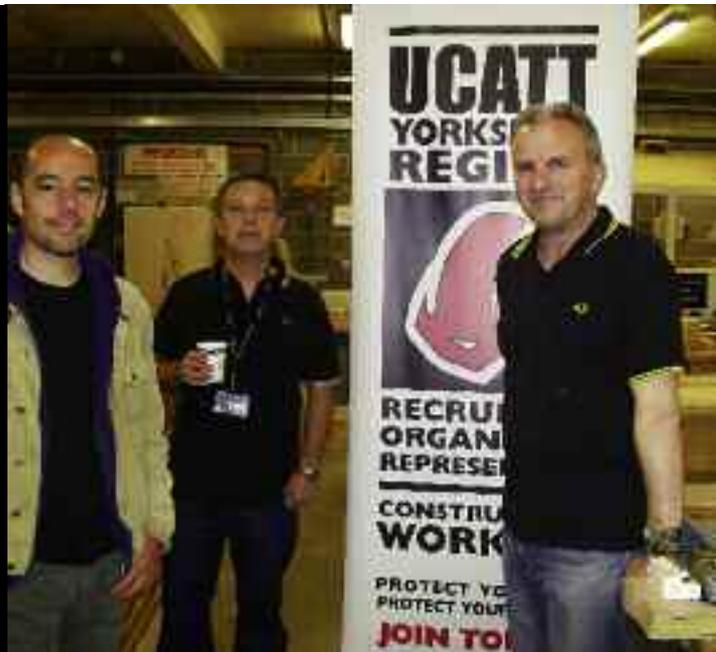
**SPONSORS:** Twenty-two carpentry and joinery students from 10 colleges in South Yorkshire and the East Midlands took part in the UCATT-sponsored Merlane Trophy skills competition at Sheffield City College in June. Pictured at the event are UCATT Yorkshire Regional Organiser Rob Morris (left), Development Officer Mark Martin (right) and Sheffield 1st Branch Secretary Andy Biggin.

Competitors had to build a miniature stud wall in four hours. They were judged not only on the finished product but also on the cleanliness of the work area and safe working practices.

Freddie Prescott from North Lindsay College came first, claiming a top prize of gift vouchers and tools worth over £500.

All the prizes were donated by the UCATT regional council and local companies.

Among the 100 guests were representatives from CITB-ConstructionSkills, Howden Joinery, Northern Power Tools and MKM Building Supplies.





**DECORATORS:** A new adaptation by Stephen Lowe of Robert Tressell's classic working-class novel "The Ragged Trousers Philanthropists" is touring Britain to rave reviews. Pictured left, actors Neil Gore (right) and Fine Time Fontayne take the lead in the play about a group of painters and decorators and their struggle for survival in a complacent and stagnating Edwardian England. The tour marks the 100th anniversary of the death of Tressell. The production is on tour until the end of October. For venues and dates see: [www.townsendproductions.org.uk/tour-dates].

**No solution to housing crisis**

Government proposals to encourage elderly social housing tenants to move to smaller properties in order to resolve the housing crisis have been slammed by UCATT. The suggestion is the equivalent of using a "sticking plaster to stem a haemorrhage", says the union. Grant Shapps, the Conservative Housing Minister, has announced that he wants to provide funding for councils who persuade elderly tenants with spare bedrooms to move to a smaller property. The Government says that a total of 430,000 tenants – mainly the elderly – live in homes with two or more spare bedrooms. However, UCATT points out that there is no evidence that there is spare accommodation for the elderly to move into. While it might make a few extra properties available, says the union, it will barely affect the ever-growing housing waiting list where 1.8 million families need a home. Meanwhile, the Government is slashing the budget for new housing by 70 per cent.

**2012 National Delegate Conference**

UCATT's "parliament", the National Delegate Conference, will be held next year in Scarborough from 28 May to 1 June. At the NDC, delegates from all the union's regions meet to formulate union policy and strategy for the following two years.

**Wood dust probe**

The Health and Safety Executive is to investigate the occupational risks of wood dust in the furniture and woodworking industries. About 50 workers a year are diagnosed with nasal cancer related to their exposure to wood dust, while others develop asthma as a result. Sample checks on employers by the HSE more than a decade ago indicated that workers were exposed to higher than permitted levels of wood dust at more than a quarter of sites.

**TUC's rights website**

The TUC has launched a new website to help people find out more about their key statutory rights at work. Aimed at people who have little knowledge of their employment rights, the "Basic Rights @ Work" site will help vulnerable workers find out about their legal rights and how to enforce them. It includes information on matters ranging from the national minimum wage to working time and annual leave entitlements. Also explained is the role of statutory bodies such

as the Gangmasters Licensing Authority, the Employment Agencies Standard Inspectorate and the Health and Safety Executive. See: [www.tuc.org.uk/workplace/tuc-19833-f0.cfm].

**CSC national meeting**

The union-backed Construction Safety Campaign is holding its 2011 national meeting and annual general meeting in Durham (Shakespeare Hall, North Road, DH1 4SQ) on Saturday 26 November from 12 noon to 3:30pm. The theme of this year's gathering will be the attacks on health and safety stemming from the economic recession. Admission is £6. For more information contact 07747-795 954 or email [construction.safetycampaign@canhe.fsnet.co.uk].

**DOVE:** Mesothelioma widow Eileen Beadle (below) releases doves outside London's St Barts Hospital to remember all those who have died of the asbestos-induced lung cancer over the past year. The occasion was Action Mesothelioma Day on 1 July, when campaigners also issued a warning that there was a growing asbestos protection crisis throughout the UK as a result of Government cutbacks in health and safety. The Asbestos Victims Support Groups' Forum said Government policy meant that people would continue to die from mesothelioma as a consequence of low levels of exposure to asbestos in social housing and in schools. The group called on the Health and Safety Executive to reinstate its "Hidden Killer" campaign, which unions and campaigners believe was halted as a part of budget cuts.

Andrew Ward



**Union action saves Liverpool house maintenance jobs**

Negotiations led by UCATT have saved the jobs of most workers based in the North West who were formerly employed by failed housing maintenance company Kinetics.

Early in June, the company placed its North West division into administration, thereby threatening the livelihoods of 370 workers.

Kinetics' biggest client in the region was housing association Liverpool Mutual Homes. Following highly complicated joint union negotiations with LMH, which were headed by UCATT, agreement was finally reached for over 200 jobs to be directly transferred to subsidiary company HMS (Housing Maintenance Solutions).

As well as saving jobs, the agreement made sure that workers received back pay from June, along with continuity of service and the preservation of existing terms and conditions.

North West Regional Organiser Ren Davies, who led the union negotiating team, said: "This was an excellent result. Through the workers' high profile campaign to save their jobs and long and complicated negotiations, we have secured the best possible result for workers and tenants of Liverpool Mutual Homes."

UCATT has also been successful in saving a further 60 plus jobs in Preston where the former Kinetics workers have been transferred to local company HT Forrest under the TUPE (Transfer of Undertakings: Protection of Employment) Regulations.

For the 100 workers whose jobs could not be transferred, UCATT will be making employment tribunal applications for a protective award. The union will argue that Kinetics failed to consult on the redundancies.

UCATT Acting North West Regional Secretary Jimmy Woods said: "This is another example of the inherent problems with the private sector running public services. Private companies can go bust and communities can be left without essential services. The decision to take work in-house and save the majority of the jobs is totally the right decision and has averted a crisis for thousands of social housing tenants."

**“Through the workers' high profile campaign and complicated negotiations, we have secured the best possible result for workers and tenants.”**

## Let-off for Wales NHS bosses

Negligent NHS bosses in Wales will escape criminal proceedings if they expose workers to asbestos, UCATT is warning. This is because of errors in regulations behind a recent NHS reorganisation in Wales.

The problem came to light in August when it was revealed that management at Bronglais Hospital in Aberystwyth failed to take proper action after a 2004 survey had found amosite (brown asbestos) in stairwells and lift shafts. Former workers at the hospital have since died of asbestos-related conditions.

Regulations creating seven NHS health boards in October 2009 failed to ensure that prior liability for corporate criminal responsibility was transferred to the new boards. As a result, the Health and Safety Executive cannot prosecute the hospital for knowingly exposing workers to asbestos.

UCATT Wales & South West Regional Secretary Nick Blundell said: "This is intolerable. The Welsh government needs to act quickly in order to restore confidence among workers."

The union is stressing that this legislative oversight does not affect its ability to take civil action in the courts for compensation for NHS workers whose health has been damaged by exposure to asbestos.

## Check your pay slip

UCATT is urging the 500,000 workers covered by the Construction Industry Joint Council (CIJC) agreement to check they receive the pay rise that came into effect on 5 September when rates were increased by 1.5 per cent.

The hourly minimum now starts at £7.87 for a general operative/labourer. This rises to £10.46 an hour for a craft worker.

UCATT says it will make sure that all members entitled to the increase receive it. "Employers who think they can force workers to undertake highly skilled physical work for aittance will be named and shamed."

As part of the CIJC settlement, travel and subsistence allowances increased in line with inflation and have been payable since 27 June.



**DELEGATION:** A meeting with Ed Miliband (third from left) was one of the activities arranged by UCATT when it hosted a group of Danish construction trade unionists in September. UCATT Acting General Secretary George Guy (second from left) took the delegation of shop stewards from the 3F union, led by the union's national officer for construction, Ole Christiansen (third from right), to meet the Labour leader at the House of Commons. The Danes also met union officials involved in UCATT training initiatives, along with representatives of the TUC's Unionlearn training arm. In addition, they visited the St Barts Hospital site in central London.

## New procurement criteria threaten jobs and services

# Watch out! This could be coming to a town hall near you

By Karl Stephenson  
UCATT rep for Kier Hull

In Hull there are around 30,000 council properties. The maintenance is carried out by two contractors: Kier and KWL. The Liberal Democrat administration in the city was planning to break up the current contracts and parcel them up into lots and give them out to small to medium sized contractors on 1 April 2012.

Such a move would have led to the closure of KWL and forced Keir Building Maintenance out of Hull. The draft document drawn up by the council only mentioned the fact that the TUPE (Transfer of Undertakings: Protection of Employment) Regulations might apply to the approximately 300 craft workers employed on these two contracts – these craft workers being mainly UCATT members.

All this would have had a devastating affect on UCATT's ability to organise, recruit, negotiate and generally look after the interests of its members.

So, in light of this danger to UCATT members, the shop stewards at both firms formed an action group to lobby the politicians in Hull's Guildhall.

Events took a turn for the better in May 2011 when the Labour group headed by Steven Brady took control of the city council in Hull. A former union convener, Brady understood that breaking up the contracts would be a bad move for the council on a number of levels.

Firstly, there would be less accountability, as it is harder to keep control of a large number of small to medium sized contractors than just two of them. Both existing contractors are performing well. In fact in a league of councils in the north of England their performance in Hull is regularly ranked in first or second place. So breaking them up would have made no sense in terms of the quality of service provided and may have actually jeopardised these good figures. Also, Brady understood that this had the potential to erode the terms and conditions of the craft worker currently employed on these two contracts. So he decided to kick these plans out.

UCATT's view is that the procurement procedure the LibDems were going to follow was not one that looked at what was the best option to provide a quality service to the council tenants of Hull. The previous contracts had been awarded on a 70 per cent quality, 30 per cent price basis. These criteria were not mentioned in the LibDems' procurement procedure. Instead, they seemed to be following a trend the Conservatives are trying to promote by breaking up existing contracts.

UCATT members should be aware that this procurement procedure could be coming to a town hall near them. We must be on guard. The real reason behind this policy is to break up trade union strength. We must be prepared to lobby hard against this form of attack.



**AROUND THE TABLE:** Karl Stephenson (right) sits down with Steven Brady (centre), the new leader of the council in Hull, and UCATT member Richard Callahan.

 **Topical tips on issues that have been raised on UCATT's 0800-262 467 freephone adviceline for members**

# New rights for agency workers start from day one

From 1 October this year agency workers are entitled to new employment rights. This article outlines how the Agency Worker Regulations 2010 will impact upon construction workers working for an agency.

As most construction workers are all too aware, the construction industry frequently uses long fragmented supply chains with workers operating through agencies as a means of engagement, often to the detriment of a worker's employment rights. These new regulations will help to prevent such exploitation.

From 1 October agency workers, on the first day of their assignment, will be entitled to:

- access to shared facilities and amenities or services provided by the hirer;
- information on job vacancies with the hirer.

These rights are based on those of someone doing a similar job or someone working in the same workplace doing comparable work. If there are no comparable workers then there would be no entitlement to equal treatment.

Moreover, on the first day of an assignment an agency worker should have the same access to shared facilities and amenities. This includes canteens, toilets, car parking, vending machines etc. In terms of job vacancies, the agency worker is entitled to the same information as a direct employee on vacancies with the hirer from the first day.

Agency workers will gain further equal treatment as direct workers after 12 weeks in the same job. This includes: basic pay, holidays, overtime, bonuses linked to performance, annual leave, night shift rates and working time rest periods and breaks. There are, however, some areas where an agency worker will continue to be treated unequally in comparison with a direct employee: sick pay, occupational schemes (share ownership), pensions, redundancy and notice pay, guaranteed pay (in cases of temporary lay off), and bonuses not linked to performance.

The qualifying period of 12 weeks can prove to be complex and workers need to understand how the period is calculated. The qualifying period is reset if you move to a new assignment with a new hirer, if you remain with the same hirer but move to a "substantively different role" or if there is a break between assignments with the same hirer of more than six weeks. The qualifying period is paused if there is a break that is no more than six weeks and you return to the same role with the same hirer, if you are off sick for up to 28 weeks and if you take any break for leave entitlements, shutdowns, industrial action or jury service (up to 28 weeks).

UCATT expects that some agencies will try to reset the qualifying clock by changing the job description of a worker. To be clear, in order for a role to be substantively different, the role must involve the use of:

- different skills and competences
- different place of work
- change in line manager
- change in working hours
- new training required
- different equipment involved.

In addition, for the qualifying clock to be set at zero the hirer must inform you in writing that the role has substantively changed.

As with the implementation of any new regulations, there will be an educational process required with hirers, agencies and workers. Therefore UCATT suggests that any member who requires any information regarding the new rules should contact their UCATT regional office for advice.

*This article is for information. Always seek the advice of an accredited UCATT official or legal advice before pursuing any course of action to ensure that your rights are fully enforced. See page 2 for contact details of your nearest regional office.*

**“Agency workers will gain further equal treatment as direct workers after 12 weeks in the same job. This includes: basic pay, holidays, overtime, bonuses linked to performance, annual leave, night shift rates and working time rest periods and breaks.”**



**AT THE ROSTRUM:** UCATT delegates at the 2011 annual Trades Union Congress, held in London from 12-14 September, from left: Andy Jones, Dave Allen, Dennis Doody, Terry Palfrey, Neil Hodgkinson, Bill Hutt and Acting General Secretary George Guy. Not pictured is Chris Murphy. All TUC photos: Andrew Wiard

George Guy



Chris Murphy



Dave Allen



Dennis Doody



## Cliff's winning way with safety

THE TUC's safety representative of the year is UCATT's Cliff Mayor, 47, who works for highways contractor A-one+. The accolade was awarded at the TUC congress in London in September.

The Wigan 2nd Branch member has certainly had the experience to do the job of safety rep well. When he began work at the old Ford factory in Wigan as a 17-year-old, he quickly spotted how raising health and safety issues on the shopfloor could easily get union members labelled as troublemakers.

As Cliff progressed through his 20s, he began to wonder if the way members approached safety issues couldn't be improved, and his suspicions proved correct

when he got the chance to put his ideas into practice.

When the Ford factory closed 10 years ago, Cliff began working for a string of service providers for the Highways Agency: McAlpine, Amey Mouchel and now A-one+, where he is a network steward.

Cliff might be mild-mannered, but his patience is tested when people try to wriggle out of work by making unfounded claims about health and safety.

He is proudest of the system he launched 18 months ago to encourage more people to raise health and safety issues. Now anyone can flag up concerns in a dedicated folder, noting whether they've discussed them with fellow



**CERTIFICATE:** Cliff Mayor (right) receives his award from TUC General Secretary Brendan Barber.

members or supervisors and if they're happy with any proposed solutions. People can put their name to an entry or do it anonymously – a solution will be found either way.

Commenting on the award, TUC General Secretary Brendan Barber said: "Millions of workers

up and down the country have benefited from the fantastic work done by union reps. They put in a lot of time, hard work and effort to help their colleagues. I am delighted that their achievements have been recognised at congress and they fully deserve the applause they receive from delegates."

# TUC agrees to target payroll companies

The TUC congress unanimously backed a motion moved by UCATT condemning the activities of payroll companies.

Payroll companies force workers to sign contracts certifying that they are self-employed. Workers are thereby denied even the most basic employment rights such as holiday, sickness and redundancy pay. As they are officially self-employed, they can be dismissed without warning.

UCATT Acting General Secretary George Guy told TUC delegates: "Payroll companies have absolutely nothing to do with construction. They put nothing into the industry yet they make a tidy living from those working within it. They are what you would call parasites."

In passing the motion, the TUC has committed its governing general council to "campaign actively for a change in the law to prevent payroll companies being able to classify workers as self-employed".

Guy added: "At a time when the Government is imposing massive cuts in public spending it seems inconceivable that the money being lost to the Treasury in this manner goes unchallenged."

Recent years have seen a huge increase in the number of workers forced to operate via payroll companies. Well in excess of 100,000 construction workers are on their books. The largest construction payroll company, Hudson Contract Services, claims to have more than 93,000 such workers.

By forcing workers to operate via payroll companies, the true employer is able to avoid paying employer's national insurance contributions of 13.8 per cent per worker. This amounts to a massive hidden subsidy, costing the Exchequer hundreds of millions of pounds every year, says UCATT.

In a perverse twist, it is the workers themselves who pay for the payroll company. They pay directly from their wages for the cost of the company's operations. Charges can be a percentage of earnings or a flat-rate weekly fee of between £15 and £25.

## What they said...

“Government attacks on public sector pensions are a disgrace. They have been assisted by the right-wing press, who pedal myths about gold-plated pensions.

The facts for most public sector workers are totally different. When they retire their pensions are often worth just a few thousand pounds...

The Government wants to undermine that. Our mem-

bers could face paying an extra £60 plus a month. They have already experienced two years of pay freezes. The money is not there.”

**CHRIS MURPHY**, supporting the motion opposing cuts in public sector pensions.

“When the Government talks about deregulation and employment law, they mean one thing: giving companies greater power to get rid of workers – while avoiding any kind of natural justice.

The Government's proposals are a sacker's charter. The

claim that this is being done to encourage companies to hire staff is spurious.

The reason why companies aren't hiring more workers isn't because our employment laws are too strict. It is simply because Government policies have stalled the economic recovery...

To suggest that by extending the unfair dismissal rules from one to two years will result in more construction workers being recruited is the logic of a simpleton.”

**DAVE ALLEN**, supporting the motion condemning the attack on employment rights.

## Delegates deplore health and safety cuts

A UCATT motion critical of the Government's attacks on safety laws and the axing of the Health and Safety Executive's running costs won unanimous support from congress delegates.

The motion deplored the Government's plans to reduce the HSE's budget by 35 per cent by 2015, warning that this meant that the HSE would not be able to do its job properly.

Delegates heard that the budget cuts came at a time when longstanding financial pressures had already resulted in the safety watchdog's enforcement activities falling to an all-time low.

As a result, the number of unannounced inspections being conducted by the HSE will be cut by 33 per cent, with many sectors, including agriculture and quarrying, no longer receiving any unannounced inspections.

While unannounced inspections will continue

in construction, they will in future be targeted primarily at smaller sites.

The motion also focused on the closure of the HSE's Infoline service, which means that from September workers concerned about dangerous working practices will no longer be able to make a discreet phone call to report their concerns.

Moving the motion, UCATT Executive Council member Dennis Doody said: "It is a fundamental right to be safe at work. This Government is destroying that right. The vast majority of workplace accidents are easily preventable. But this Government's policies will increase accidents."

He added: "Now more than ever the trade union movement needs to defeat these policies and show how this Tory-led Government has blood on its hands. If we don't take action, more and more workers will be killed and maimed at work."

For the past two years UCATT has been stepping up its fight against a practice that has long polluted the construction industry: the blacklisting of trade union activists, shop stewards, safety reps and any other campaigners considered by contractors to be undesirable on their sites.

The union has been pressing for:

- effective legislation to outlaw all blacklisting and entitle its victims to compensation;
- justice for the thousands of construction workers who have been blacklisted, many of whom have had their livelihoods blighted as a result.

UCATT is currently supporting an application to the European Court of Human Rights on a blacklisting case involving a UCATT member, Terry Brough. The claim alleges that the UK Government failed to pass laws protecting workers from the effects of blacklisting. The union is saying that the UK has therefore breached Article 11 of the European Convention on Human Rights, which guarantees freedom of association – in other words, the right of individuals to join and form trade unions.

The case has been lodged with the Strasbourg-based court, but a decision is not likely until next year at the earliest.

UCATT is also demanding action by the Information Commissioner's Office – the Government-appointed watchdog on data protection and privacy – on the blacklist that the ICO seized from the Consulting Association in 2009.

The union applied to the ICO for disclosure of all entries relating to the union. However, the application was refused by the ICO, a decision that was upheld on appeal in July this year.

But the door was left open for the union to pursue the disclosure of individual files concerning UCATT. Lawyers for the union are currently in discussions with the ICO on how this can be done.

Meanwhile, a group of blacklisted workers are also applying to the High Court against some of the companies who accessed the Consulting Association blacklist, claiming breaches of the Data Protection Act and conspiracy.

Until 2010 there was no general prohibition of blacklisting. Even the regulations introduced following the Consulting Association scandal of 2009 do not criminalise blacklisting or provide a straightforward right to compensation for victims.

If and when further blacklists are discovered, it is not certain that the victims will be much better off than those on the Consulting Association blacklist, who until now and despite UCATT's efforts have been unable to secure compensation.

It was in 2009 that UCATT finally obtained proof that blacklisting was being systematically carried out in construction. The Consulting Association's blacklist contained details of over 3,200 individuals and was being used by more than 40 contractors, including most major UK construction firms.

This revelation also highlighted the inadequacies

**“ UCATT is currently supporting an application to the European Court of Human Rights on a blacklisting case.”**

# The scandal that hasn't gone away

**Steve Cottingham** describes the union's continuing efforts to seek justice for victims of blacklisting and to have the practice outlawed once and for all.



● How Building Worker reported the discovery of the Consulting Association's blacklist of construction workers in the spring of 2009.

of the legal protection available to victims. Since 1999, legislation had given UK Governments the power to pass regulations against blacklisting, but they failed to do so. Only a year before the blacklist was uncovered, UCATT had been lobbying the Government to pass regulations, only to be told that there was no need for them at the time.

In 1992, the TUC complained to the UN's International Labour Organisation that there was no effective protection against discrimination suffered by blacklisted workers. The ILO Freedom of Association

Committee upheld the complaint as UK law fell short of Article 98 of the ILO convention. Regrettably the Government failed to act.

With no legislation outlawing blacklisting, Ian Kerr, head of the Consulting Association, was convicted under the Data Protection Act 1998 for:

- processing personal data without being registered;
- failing to register with the ICO;
- not being on the registry of data controllers.

On 16 July Kerr was fined £5,000 by Knutsford Crown Court. If his sentence was light, the companies who used the Consulting Association blacklist were treated even more leniently. Those firms who accessed the blacklist were neither charged with any offence nor ordered to pay compensation to the workers involved.

The ICO explained its failure to take action against construction companies in a press release dated 4 August 2009, which stated that "...it is not a criminal offence to breach the data protection principles, which is why the ICO chose only to prosecute Ian Kerr for failing to notify as a data controller".

Some of these companies were warned not to use, disclose or pass on data obtained from the Consulting Association, nor to let individuals know if they had obtained or passed on any information about them. Warning notices were only issued to 14 of the 44 companies identified as having accessed the blacklist. For reasons that have never been explained, notices were not issued against some of the heavier users of the blacklist who made between 12,000-13,000 enquiries in a year.

UCATT publicised the existence of the Consulting Association blacklist to its membership. Many members applied to the ICO for copies of entries against their name, many of which went back 20 years or more. Entries were usually dated and referred to employers in code. Some employers could not be identified.

The ICO hid the names of individuals mentioned in the blacklist before sending out copies. This made it difficult for some members to pursue claims.

In the absence of laws against blacklisting, members could only pursue claims if they could prove that the blacklist had been used to the detriment of their employment rights or had breached the Data Protection Act. Under the DPA workers can only claim compensation if they prove that they have suffered damage as a result of blacklisting.



This resulted in a series of unsatisfactory outcomes. Although settlements were achieved in a handful of cases, the majority of UCATT members who found their names on the Consulting Association blacklist neither got to a full hearing nor received compensation.

Laws against discrimination on grounds of trade union membership or activities are far from ideal. But this was the only legislation that could be used against employers who had accessed the blacklist. Most claims were based on rights contained in the Trade Union and Labour Relations (Consolidation) Act 1992:

- refusal of employment due to union membership or activities;
- detriment due to union membership or activities;
- dismissal due to union membership or activities;
- selection for redundancy due to union membership or activities.

Employment tribunal cases were started by many blacklisted workers. As many of the blacklist entries went back 20 or 30 years, it was often impossible for them to obtain any evidence to prove their case.

The tribunals applied a stringent assessment procedure. Many cases fell foul of strict time limit restrictions. Generally, there is a three month time limit to pursue an employment tribunal case. Clearly three months would be inappropriate to a case involving blacklist entries, many years old, which had only just been discovered.

Nevertheless, tribunals ruled out cases where they took the view that the blacklisted individual had not acted quickly enough. If the tribunal thought that it had taken too long to access the blacklist entries or alternatively too long after that to lodge a claim, cases were struck out at an early stage and could not be pursued any further.

Other cases proved difficult to pursue for practical reasons. Some employers who accessed the blacklists were not identified by the ICO. Other employers had long since gone out of business and could not be pursued through the tribunals.

When it became clear after 2009 and the discovery of the Consulting Association blacklist that the Government would legislate on blacklisting, the union lobbied hard for effective legislation. It commissioned a paper called "Ruined Lives" prepared by Professor Keith Ewing, which explained the background to the blacklisting debate and put forward a series of measures that would achieve justice for blacklisted workers.

In addition to criminal liability for those who

**“As many of the blacklist entries went back 20 or 30 years, it was often impossible for workers to obtain any evidence to prove their case.”**

compile, pass on or use blacklists, the paper proposed a flat rate of compensation for everyone named on a blacklist. It also suggested a compensatory award based on a reasonable estimate of projected loss of earnings for anyone who could show that he/she had applied for specific vacancies at the time that a company consulted the blacklist. Aggravated compensation should be awarded for injured feelings to those whose file was judged particularly offensive.

Professor Ewing suggested that compensation could be funded by a levy on companies which used the blacklist. The money raised could fund retrospective payments to all those blacklisted.

The Labour Government finally passed regulations against blacklisting in 2010. But these were a great disappointment. It is now unlawful to make and use a blacklist; or to refuse employment or subject an employee to a detriment due to a blacklist entry. However, the law does not make blacklisting a criminal offence.

Although blacklisting is described as unlawful, the regulations do not contain a freestanding right not to be blacklisted. They contain no right to compensation for being blacklisted.

That is why UCATT must continue the fight against blacklisting – in the courts and in Parliament; in Britain and in Europe; on sites and in company boardrooms. It remains a fundamental tenet of trade unionism that union reps, campaigners, activists, whistleblowers and their like must be defended by their union and by the law against victimisation. UCATT will not rest until this has been achieved.

*Steve Cottingham is a senior lawyer with OH Parsons, UCATT's London-based solicitors.*



# Back to school for UCATT activists

A successful Activist Academy pilot project in UCATT's North West Region has set a template for the union's proposed national Activist Academy. UCATT officers and activists involved in the pilot tell *Building Worker* how this could rebuild the union's activist base and promote strong, traditional workplace organisation. **Andrea Oates** reports.



The UCATT Activist Academy pilot course in the North West Region was set up as a result of a 2010 National Delegate Conference decision and ran over seven days between November 2010 and May 2011 at the Suites Hotel in Liverpool. It gave 12 UCATT representatives the opportunity to increase their skills, knowledge and confidence as activists and contribute more effectively to the work of the union and the wider labour movement.

The members explored the role and functions of the UCATT activist in learning, organising, recruitment and health and safety; they brushed up their communication skills, preparing short research projects and presentations on a range of trade union-related topics; and they were briefed on the latest developments in employment law.

There was role play and group work as well as formal taught sessions. UCATT Acting General Secretary George Guy and President John Thompson gave a "looking back to the future" presentation and ran a Q&A session on UCATT's history; and the union's main solicitors, OH Parsons, contributed an employment law update.

## Consultation

Before the course began, there was widespread consultation with UCATT officials, Executive Council members, representatives and the TUC's own Activist Academy and its Unionlearn training arm.

National Project Worker Steve Craig, who devised and ran the course, said it was important first to seek views about how to define the role and functions of the UCATT activist. "We needed to know what skills, values and principles would the union rep be expected to have. How should we develop activists' skills, confidence and ability and how should the Activist Academy contribute to UCATT's wider industrial and political agenda?"

He told *Building Worker*: "This is about much more than sitting in a classroom for seven days. Some of the reps had never even been to a branch meeting before they began the course and yet, by the time it finished, they were really active trade unionists, campaigning on union issues in the labour movement and well beyond, using modern and traditional organising methods."

Running the pilot also gave the union the opportunity to test out what works. National Education & Training Coordinator Jeff Hopewell explained: "The pilot project helped us to experiment and test out various techniques and approaches to developing an activists' programme. We explored different ways of delivering the course and tried out different strategies to engage learners and develop the final programme template."

## Mentoring

Outside the classroom sessions, there were evening tutorial sessions, tutor and peer mentoring and "off-course" personal study and research and preparing projects and presentations. Help via the telephone, email, text messaging and social networking media like Facebook ensured there was a high level of additional support.

"These all helped facilitate learning, group-bonding and communication and ensured that individuals were supported outside the classroom," said course convener Lol Hunt, who was

## UCATT training

key to facilitating networking and communications between activists across the region throughout the course.

The mix of new and experienced representatives also provided a good opportunity for older and younger members to learn from one another. "The younger reps learned about broader UCATT activity and campaigns; but in return they could show the older reps how to use new technology to run those campaigns," said Hunt.

Wigan and Leigh College rewarded the course participants' efforts by assessing and accrediting them via the Open College Network. All gained a Level 3 certificate qualification on completing the course.

Feedback from the course suggests that all the elements are now in place to roll out a national UCATT Activist Academy and that this would have enormous benefits for the union by:

**Providing** the union with a more engaged and effective network of activists keen to progress union policy at local, regional and national level;

**Raising** awareness and increasing understanding of UCATT's history, structure, rules, values and campaigns in order to help the union support members, increase organisation and recruitment activities and increase the union's influence at an industrial and political level;

**Building** the capacity of UCATT's network of

activists and developing self-sustaining workplace networks to represent members and promote union activity across the construction industry;

**Developing** activists' industrial and political awareness and involvement, both within UCATT and in the wider labour movement, through the Labour Party and local councils and in their local communities;

**Introducing** activists to UCATT's traditional values and modern strategies, especially in relation to the union's organising and recruitment "tools and techniques", such as workplace mapping and using social networking media and the internet; also examined was European and international trade unionism and the impact of globalisation;

**Promoting** the skills, confidence and ability of current and future UCATT activists to help them make a more informed and effective contribution to the work of the union.

The pilot project has had a very definite thumbs-up from the activists who took part. Shop steward Jamie Bramwell told *Building Worker*: "It really opened my eyes and ears and took the blinkers off about the challenges we are facing as a union, particularly in relation to the Government's programme of aggressive cuts. Before attending the course I felt I was just a UCATT rep, but I've been inspired and politicised by going through the academy."

### Changed

Said shop steward John Shepherd: "The Activist Academy changed a lot of things. I've got more involved in negotiations, in meetings and in branch life in general. The sessions on making presentations and speech-writing have been more than helpful and I'm more confident about participating in negotiations and meetings. I used to go to full-time officers like Acting Regional Secretary Jimmy Woods for help with grievances and disciplinary hearings, and I know he is still there for support and information if I need it, but I go in with the lads myself now."

He added: "It has been an invaluable experience for me and I hope that it will now be rolled out nationally. I think it's also essential for the future of the union."

● *Below: Participants and tutors at the North West Activist Academy (seen in action on facing page) with certificates.*



### Teaching trade unionism

The TUC has launched a set of learning resources for use by teachers in schools and colleges and other activists looking to introduce young people to the world of trade unions. The "Unions into Schools" website (above) aims to help extend students' understanding of unions, their history and the role they play in the contemporary workplace and society. It includes a beginner's guide to unions, what they are, who they represent and what they do, as well as a guide to unions, the modern world of work and a basic guide to rights and responsibilities at work. The website also looks at 200 years of British trade union history, featuring a series of four-minute documentaries on different periods of history. The site can be found at [www.unionsintoschools.org.uk].

### Anti-racism guide

Acclaimed poet and writer Lemn Sissay (right) has launched the latest edition of the TUC's "Tackling Racism" guide. Produced by the TUC's training arm Unionlearn, the guide is used on TUC courses, which last year saw some 57,000 union reps trained on over 4,000 courses. Lemn is the first poet commis-



sioned to write for the London 2012 Olympic Games, and his poem "Spark Catchers", inspired by the striking match girls at the Bryant & May factory in the late 19th century, will be etched into a structure in the Olympic Park.

### Diploma online

The TUC's Unionlearn training arm is now offering its Contemporary Trade Unionism Diploma as an online course. Aimed at union reps who want to extend their skills and confidence, the course gives them the freedom to learn from home, at a time that suits them. Areas of study include the history and current face of trade unions, the future of unions and much more. For course information and an application form, go to: [www.unionlearn.org.uk/diptuonline].

### For more qualifications

A new website, Higher Learning at Work [www.higherlearningatwork.org], has been launched to help trade union members discover the opportunities available to get better qualifications. The site offers advice and a range of resources created by Unionlearn, the TUC's training arm, as well as information about funding.

## Activities for activists

During the course, the student activists also took part in some of the following activities:

- joined the Labour Party;
- attended meetings of branch officers and shop stewards, UCATT branches, the TUC regional council and local Labour constituency parties;
- "shadowed" full-time UCATT officers;
- attended introductory computer skills and lifelong learning courses and assessor training;
- wrote letters and emails to their local MPs and newspapers;
- joined the TUC March for the Alternative demonstration;
- attended TUC Unionlearn seminars and conferences;
- used social networking media to promote union campaigns.





**PM: "No holds barred" attack on "health and safety culture".**

# Blind to the importance of workplace health and safety

Prime Minister David Cameron and Employment Minister Chris Grayling have felt no need to comment on the sharp increase in fatalities in their first year in charge of UK workplace health and safety. Nor do they have anything to say about the Health and Safety Executive's failure to investigate 95 per cent of all reported major injuries. But some things they do feel are worthy of comment...

First, Cameron made the extraordinary link between the looters who trashed England's inner city centres in August and the country's "obsession with health and safety".

Then Grayling decided to go public with his concerns about the decision by Butlins to instruct staff to stop customers crashing into each other in dodgem cars, saying it had "no basis in health and safety rules".

Of course, like his boss, Grayling has said repeatedly that he wants the "burden" of safety regulation lifted from businesses.

But what has shocked UCATT is that the HSE, no doubt bending with the political wind, now

appears to agree. The HSE went so far as to include the dodgems story in a list of "Top 10 bizarre health and safety bans" that it published in August. It even posted the minister's letter to Butlins on its website.

The HSE list prompted a stiff rebuke from unions. It featured non-work-related bans, including action stopping kite flying on a beach and sack races for children.

TUC General Secretary Brendan Barber explained: "Every example listed in the HSE top 10 relates to public safety or insurance issues and has nothing to do with health and safety as it applies to workers. The failure to find one example from a workplace shows that the idea that the UK has an over-zealous health and safety culture is a total myth."

He added: "Official statistics show that 1.2 million people currently at work have health problems caused by their jobs. The problem is not employers using health and safety as an excuse but the Government using myths like this as a reason for cutting back on regulation, enforcement and guidance."

## Who do you agree with?

“I and ministers from across the coalition Government will review every aspect of our work to mend our broken society... including the obsession with health and safety that has eroded people's willingness to act according to common sense. Health and safety where regulations have often been twisted out of all recognition into a culture where the words 'health and safety' are lazily trotted out to justify all sorts of actions and regulations that damage our social fabric. So I want to make something very clear: I get it. This stuff matters. And as we urgently review the work we're doing on the broken society, judging whether it's ambitious enough, I want to make it clear that there will be no holds barred... and that most definitely includes the human rights and health and safety culture.”

● Prime Minister David Cameron speaking about the inner city riots on 15 August

“Cameron's linking of the recent social unrest to health and safety legislation is an insult to the lad who died in the crane incident in Lancashire yesterday, the lad who died on the Woolwich ferry last week, the lad who died on the tug on the Thames last week and the family of Noel Corbin whose employers have just been fined only £1. Noel's employers went into liquidation, thus avoiding any accountability or paying the penalty for the crime. This is not a get-out clause available to rioters, so why should it be available to killer employers? Blaming health and safety for rioting is a disgraceful insult to the more than 20,000 people who die in the UK every year because their employers failed to manage health and safety at their workplaces.”

● A spokesman for Hazards Campaign, reacting on 16 August to David Cameron's speech

## Some recent cases settled...

● A member working for Derby City Council was coming down a ladder with his colleague at the foot of it. The plastic fascia of the guttering against which the ladder was resting broke, causing the ladder to slip sideways. His colleague was unable to hold it and the member fell, sustaining serious injuries to his left wrist and elbow. The council denied liability, saying the accident was totally unforeseeable and there was no way that it could have known that the plastic fascia would have broken. After court proceedings started, the case settled for £25,000.

● An Inverness-shire ganger secured compensation of £11,000 from insurers of previous employers for hand arm vibration syndrome caused by excessive use of vibrating power tools.

● A trainee lift engineer for Laing O'Rourke was told to pass a bed plate up to a colleague through a tight space onto a scaffold. As he attempted to push it upwards, and his colleague was trying to lift it, the bed plate fell. He tried to hold on to it to prevent it falling down the lift shaft in case anyone else was working there. As it fell, he took the weight on the thumb of his right hand, which was forced back, causing injury to his hand, thumb and wrist. The company admitted liability and the case settled without the need for court proceedings for £25,000.

● Compensation of £32,000 was obtained for a North Lanarkshire member who fell through scaffolding and suffered back and arm injuries. The employers had used a rotten piece of wood which gave way when the member stepped on it.

● A Lancaster member who had worked for the city council for over 25 years was forced to leave his job as an HGV driver after he was involved in a head-on collision on the M6. The member suffered serious injury to his shoulder and eye. The medical evidence was that the accident had accelerated problems with his vision by five years, which meant he could no longer drive an HGV. The other driver's insurers accepted liability. They argued for some time about how much the member had lost in earnings, but the case eventually settled for £87,500 shortly before a court hearing.

● A Perthshire member working for a private firm was not paid holiday pay by the company due to his CIS4 status. An employment tribunal upheld his claim for payment on the basis that, looking at the whole circumstances, the member was not genuinely self-employed but instead a "worker" for the purposes of the Working Time Regulations and therefore entitled to paid annual leave.

● A groundworker foreman from Ipswich was steadying a load of floor beams with the palm of his hand. The load had not been properly slung. Only one chain had been used and spacers had not been employed. The load folded, trapping his right hand, resulting in the traumatic amputation of the tips of his index and middle fingers. Though the company said the member was partially at fault, UCATT lawyers negotiated £40,000 on his behalf.

# Agreeing that you're 'self-employed' doesn't mean that you really are

**ELLIE REEVES** of OH Parsons, UCATT's London-based solicitors, hails a Supreme Court ruling that so-called self-employed workers are employees even if they've signed contracts with "no obligation" and "substitution" clauses.

A recent Supreme Court judgment could now make it easier for construction workers who have signed a "self-employed subcontractor" contract to claim that they are actually workers or even employees.

In *Autoclenz v Belcher*, 20 claimants all worked for Autoclenz as car valeters. They claimed that they were workers for the purposes of the National Minimum Wage Act and the Working Time Regulations. The employment tribunal agreed but the case was appealed all the way to the Supreme Court.

All of the valeters signed similar contractual documents which contained statements to the effect that they were self-employed, and they were taxed on this basis. In 2007 Autoclenz required the valeters to sign new contracts – if they did not sign they would not be offered further work.

The new contract contained a clause which stated: "For the avoidance of doubt, as an independent contractor, you are entitled to engage one or more individuals to carry out the valeting on your behalf, provided that such an individual is compliant with Autoclenz's requirements of sub-contractors as set out in this agreement..." The contract added: "You will not be obliged to provide your services on any particular occasion nor, in entering such agreement, does Autoclenz undertake any obligation to engage your services on any particular occasion."

As a matter of law, "no obligations" and "substitution" clauses are inconsistent with employee or worker status. Therefore, in the *Autoclenz* case it

was common ground between the parties that, if the terms of the written contract were valid, then the valeters could not be workers. Such terms are often found in contracts in the construction industry.

The employment tribunal held that these contractual terms did not reflect the true agreement between the parties and could be disregarded. They said that in reality the valeters were employees – they had no control over the way in which they carried out the work or their hours of work; they were subjected to the control of Autoclenz's employees on site; they had no other real source of work; they were required to provide personal service notwithstanding the substitution clause introduced in 2007; and despite the clause saying there was no obligation to offer work or on the valeters to accept work, this was

**“The employment tribunal held that these contractual terms did not reflect the true agreement between the parties and could be disregarded.”**

inconsistent with what happened in practice.

The Supreme Court agreed, saying that the courts must be alive to the possibility that employers may include terms aimed at avoiding a particular statutory duty, even where such terms do not reflect the real relationship.

Crucially, the Supreme Court said that, where one party to an employment contract seeks to challenge the genuineness of the terms, there is no need to show an intention to mislead anyone – in other words, that the contract was a "sham". Instead, the question in every case is: "What was the true agreement between the parties?" This means that the tribunal will have to examine all the relevant evidence. That will include the written term itself, read in the context of the whole agreement, as well as evidence of how the parties conducted themselves in practice and what their expectations of each other were.

## Recognised

The Supreme Court recognised that the circumstances in which contracts relating to work are concluded are often very different from those in which commercial contracts between parties of equal bargaining power are agreed. This has to be taken into account in deciding whether terms of any written agreement in truth represent what was agreed.

The case is likely to be good news for UCATT and those who work in the construction industry. In every case it will be important to assess the reality of the situation and not just the words of the contract. If someone is really an employee or a worker, an employer cannot get out of their legal obligations by labelling them "self-employed" even where there is no intention to mislead.

See advertisement on back cover; visit website at [www.ohparsons.co.uk].

## CITB levies and unlawful deductions from wages

By **GORDON BELL** of UCATT's Scottish solicitors Dallas McMillan

We were recently successful in an important employment tribunal claim pursued on behalf of a member who had suffered a series of deductions from his wages by the employers. The member had been employed for nearly five years with the company and in each week of these years a sum had been deducted from his pay by his employers

under the heading "CITB Levy".

Section 13(1) of the Employment Rights Act 1996 provides that: "An employer shall not make a deduction from wages of a worker employed by him unless (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract or (b) the worker has previous signified in writing his agreement or consent to the making of the deduction."

In this case, the member had not signed a written contract of

employment or signed any form of authority permitting the employers to make a deduction from his wages. At the tribunal hearing the employers produced a copy of an employment contract they said had been issued to the member. However, there was no signed copy. The tribunal held that the weekly deduction of the CITB levy was unlawful and awarded compensation for the full five years of deductions.

We hope this decision will greatly assist members whose wages are subject to a CITB levy

deduction, and also help members who suffer any other forms of unusual deduction from their wages. Members should be aware that, if they have not given written consent (in an employment contract or other document), then any such deductions are unauthorised by them and may well be deemed to be unlawful.

Scottish members please note that the Dallas McMillan freephone number for members needing assistance is 0300-303 1606. Please do not use the previous number 0800-652 7646.



**MANPOWER:** Chinese worker on the motorway between Warsaw and Berlin.

# Cheap labour deal backfires on Polish government

By **WERNER BUELEN**

Poland is currently preparing itself for the European football championship, Euro 2012, which will take place in Poland and the Ukraine. In order to connect several cities, Poland needs to build additional motorways.

For the construction of a 35-mile stretch of the A2 motorway that links the Polish and German capitals Warsaw and Berlin, the Chinese state-owned company Covec participated in the public tender procedure. To everybody's astonishment the Chinese company offered a price that was 30 per cent lower than the offers of Polish or European companies. The Chinese bid was accepted by the Polish authorities.

From the beginning of the construction work, critical problems emerged on the building sites. Covec tried to transfer its low offer to its local subcontractors. As a consequence, many subcontractors refused to work for Covec, simply because they could not fulfil their legal obligations for the budget proposed by Covec.

After serious delays, the Chinese company asked the Polish authorities to issue residence and work permits for 800 Chinese workers.

After three months, the Polish authorities realised that the motorway would not be finalised before the deadline and therefore the contract with Covec was terminated. The Polish government is claiming a penalty of €186 million.

Despite prior warnings regarding the abnormally low price offer, the Polish authorities decided to go for the lowest price. By disregarding the respect of mandatory minimum wages, health and safety and quality aspects, the authorities gambled – and lost! At this stage there are only losers: the motorway will cost much more than initially foreseen, the works will not be finished on time and the Chinese workers will be sent back to China, losing their employment opportunities in Poland.

The European Union is currently discussing the facilitation of access of non-EU companies to the European labour market. Without serious preventive controls and adequate sanctions, we will see more cases in Europe like Covec's contract in Poland.

*Werner Buelen is the Secretary of the Brussels-based European Federation of Building and Woodworkers.*

# Workers at Ikea subsidiary in US vote for union representation

In a secret ballot conducted by the US federal government's National Labor Relations Board, workers at the Ikea-owned Swedwood factory in Danville, Virginia voted to be represented by the IAM machinists' union. The final vote was 221 workers (76 per cent) who voted for the union and 69 against.

Since 2008, the IAM has been pressing Ikea and Swedwood for union recognition for the more than 300 workers at the woodworking plant. After two years of failed talks, the IAM filed for trade union representation elections on 20 June 2011.

Swedwood management had continued to follow the advice of its "union avoidance" law firm and conducted activities designed to alter the outcome of the election. Tactics ranged from "voluntary" staff meetings with Swedwood management, rumours of plant closure and promises of bonuses should the union be defeated.

Issues of safety and health, racial discrimination, dignity and basic human respect were the main grievances that the workers had expressed as reasons for voting to join the union.

**Last year was another difficult and dangerous year for trade unionists around the world, with 90 murdered for their efforts defending workers' rights.**



In its "Annual Survey of Violations Against Trade Union Rights in the World", the International Trade Union Confederation (ITUC) details abuses of workers' rights in 143 countries. It reveals that Colombia – where 49 trade

unionists were murdered – and the Americas still hold the grim record for murder and oppression of workers involved in union activities.

Published in June, the survey says that in addition to those killed, many more trade unionists were arrested, attacked, or subjected to harassment and intimidation.

The report reveals 75 recorded death threats against trade unionists, at least 2,500 arrests and around 5,000 sackings of union members for promoting decent working rights and conditions. In Turkey alone, an estimated 350 trade unionists were dismissed solely for their union activities.

The global trends highlighted in the survey include governments not enforcing labour laws, insufficient funding of health and safety at work, a lack of rights and abuse of migrant labour across the world, but particularly in the Gulf States, and the exploitation of mainly female workforces in the world's export processing zones.

Among the abuses affecting construction workers that are featured in the ITUC report are the following:

**Argentina:** On 10 June, the home of Ricardo Cheuquepal, general secretary of the UOCRA-CGT construction workers' union in Comodoro Rivadavia, was riddled with bullets. The trade union leader's young children were inside the house at the time of the attack.

**Australia:** Australian Building and Construction Commission (ABCC) inspectors continued to harass trade union members and officials, including conducting secret interrogations of individual workers without a guarantee of legal representation of their choice. The ABCC has the power to impose fines of up to A\$22,000 on workers, and those who refuse to submit to the interrogation procedure can face prison terms of up to six months.

**Canada:** The Saskatchewan government has introduced legislation that will eliminate sectoral bargaining in the construction industry, allow the establishment of employer-dominated company unions and greatly reduce the power of unions in the construction industry by restricting their long-standing right concerning the supply of labour.

**China:** In December a group of over 30 young men attacked a group of migrant workers, one a woman in her 80s, with knives and iron pipes in Shanghai. The workers were seeking payment of unpaid salaries and had been occupying the company's offices for several days in protest against the owner, who they said owed them salaries totalling about two million Yuan (£185,000) from



**HATS OFF:** Brazilian construction workers at the Arena Fonte Nova Stadium in Salvador met union leaders and representatives of the BWI (Building and Woodworkers International) to discuss working conditions in the stadium and

at other World Cup 2014 sites. Global union leaders reported on progress in implementing the Campaign for Decent Work for the finals. Among the workers, there were major concerns about outsourcing and deadline pressure.

# Union survey slams violations of rights around the world

a construction project four years ago. Before the attack the case was being handled in a local court.

**El Salvador:** Members of the SUTC construction workers' union denounced the refusal of the Labour Minister, Dr Victoria María Velásquez de Avilés, to register the SUTC executive body freely elected by the workers in January, based on claims of legal flaws that have no judicial foundation. The minister's decision has affected the working conditions of over 30,000 workers, as their collective agreement has expired and cannot be renegotiated until the union's leadership-elect is registered.

**Panama:** In December, construction workers brought a case against the Panamanian state before the Inter-American Court of Human Rights. The workers are accusing the authorities of persecution and assassinations, as well as denying them the right to form unions. The measure is backed by the Conusi national trade union confederation, the Suntracs national construction workers' union and the Frenadesso national front for the defence of social security.

**US:** Immigrant painters and drywall finishers in the Phoenix Valley and Las Vegas areas, along with sheet metal workers in Arizona, are organising at a number of companies. In many cases, residential construction workers in this industry work under harsh working conditions (such as under a payment system called "piece rate," in which they are paid based on the amount of work performed and

hence long hours) and face rampant wage and hours violations. Some have filed lawsuits against the contractors that employ them, using the federal Fair Labor Standards Act to claim the wages legally owed them.

**United Arab Emirates:** The downturn in Dubai's construction sector continued, with hundreds of migrants trapped in camps for months, with no electricity or running water, after being dismissed. Their employers fled the United Arab Emirates in the wake of the crisis, leaving months of salaries unpaid. Many dismissed migrant workers did not have enough money to get home and owed large sums of money to the recruitment agencies that brought them to the Emirates. Suicides among these workers increased in 2010.

**Yemen:** Most construction workers and those in trades such as painting, ceramics and shipment services who work in the capital, Sana'a, are employed on a daily basis without a written contract or legal protection. They are frequently cheated by employers and have no recompense in case of accidents. Specific legal provisions are also needed for the protection of workers' organisations and sanctions against anti-union activity by employers.

*To read or download the ITUC report in full, go to: [www.ituc-csi.org/worldwide-survey-repression-of.html](http://www.ituc-csi.org/worldwide-survey-repression-of.html).*

## Asbestos ruling puts pressure on Canada

Canada and other countries that still produce and use asbestos are under increased pressure to ban it after the UN's International Labour Organisation issued a landmark ruling on a case brought by the Canadian Labour Congress (CLC).

The CLC and other unions argued that Canada had consistently ignored scientific and technical information that pointed to the need for a total ban on the cancer-causing substance.

Other countries that have not introduced bans include Bolivia, Bosnia & Herzegovina, Brazil, Cameroon, Colombia, Ecuador, Guatemala, Russia, Serbia, Macedonia, Uganda and Zimbabwe.

The decision of the ILO Committee on the Application of Standards is expected to add impetus to campaigns by the International Trade Union Confederation and the BWI (Building and Woodworkers International) for a total worldwide ban.

### Strictest

The ILO has told the Canadian government to adopt the "strictest standard limits for the protection of workers' health as regards exposure to asbestos" and to engage in consultations with its worker and employer organisations to review national laws and regulations.

The ILO called on Canada to "take into account the evolution of scientific studies, knowledge and technology" as well as the findings of the World Health Organisation, the ILO and other recognised organisations concerning the dangers of exposure to asbestos.

## Presentations



● **Bob Robson** of South Shields 1st Branch receives his UCATT long-service merit award and plate.



● **Frank Young** (right) of Easington Branch receives a 50-year presentation from Branch Secretary Peter Turnbull and branch member George Younghusband. Twenty-seven of his 50 years were served as Branch Secretary.



● Two members of Huyton Branch, Branch Secretary John McCarthy and John Molloy (second and third from left), receive 40-year membership certificates from North West Regional Council Chair Bill Parry (left) and Acting Regional Secretary Jim Woods.



● **Everton Branch's Gerry Morris** (fifth from left) receives his 40-year membership certificate and Branch Secretary John Winstanley (third from right) receives his 50-year certificate. Also in attendance are a number of branch members, including Acting North West Regional Secretary Jim Woods (third from left) and Regional Council Chair Bill Parry (second from right).

## Obituaries

### GEOFFREY COOK

York 1st Branch member Geoffrey Cook, one of the UCATT members with the longest record of continuous membership, died on 3 July at the age of 84.

Geoffrey left school at the age of 14 and started work with joinery firm Hepples, but soon moved to Shepherd Building Group, where he was indentured as an apprentice and at the same time joined the Amalgamated Society of Woodworkers (a forerunner of UCATT). The date was 16 December 1944, and he remained a member for 67 unbroken years.

Geoffrey stayed at Shepherds for the rest of his working life, serving for a while as a union shop steward and representative on the work's committee. Even after retirement he was a regular attendee at retired union members' meetings. He always recalled the many changes he had seen in construction, particularly in health and safety, welfare and working conditions, which he put down to union action.

### CHRISTIFF

It is with deep sadness that I have to report that Chris Tiff, London & South East Regional Organiser, died suddenly on 11 July, aged 53.

Originally from Belfast, Chris had been a prominent figure on London construction sites as a UCATT official for more than a decade.

One of Chris's many achievements was the establishment of the George Brumwell Learning Centre based at Canary Wharf. The centre gives construction workers the opportunity to further their skills in such subjects as information technology and English. It is also a prominent CSCS test centre, where many thousands of construction workers have successfully passed their CSCS health and safety test. Without the energy and enthusiasm of Chris, this centre would not be in existence today.

Chris came to prominence as a UCATT shop steward on the Bluewater project in Kent, where his actions ensured UCATT was the dominant union on site. Many workers recruited by Chris on this site remain UCATT members today.

Chris was a charismatic person, full of energy and enthusiasm, devoting his time to championing the cause of construction workers, never afraid to speak his



**UNION MAN:** Chris Tiff demonstrating outside the Government's Construction Safety Summit in February 2005.

mind and always determined to ensure the voice of the underdog was heard.

### JERRY SWAIN

London & South East Regional Secretary

### Son donates dad's tools

Officials in UCATT's Liverpool office were touched to be given the tools of carpenter William Lea, who died aged 96 in 2005. A note from his son, also called William, said that Lea was always pleased to receive the union's magazine and the family was grateful for the £100 funeral allowance. Perhaps the tools could be of use to an apprentice or donated to a museum, said William Jnr. Lea started work on building sites in Liverpool, but transferred to the shipbuilding sector during the Second World War. He was once flown out to New York as part of a gang of joiners to work on the cabins on the QE2.

Andrew Wliard



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