

## Overview and Scrutiny committee response

### Background/Clarification

Please find below our reply which is as detailed as possible given the tight timeframe involved.

As you can no doubt appreciate, we are limited as to what we can say about some of the issues given that the matter is subject to current litigation. However, we have endeavoured to answer your questions in as full a manner as practical in the light of those limitations. We are keen to work with Southwark and will be transparent and co-operative in our ongoing relationship.

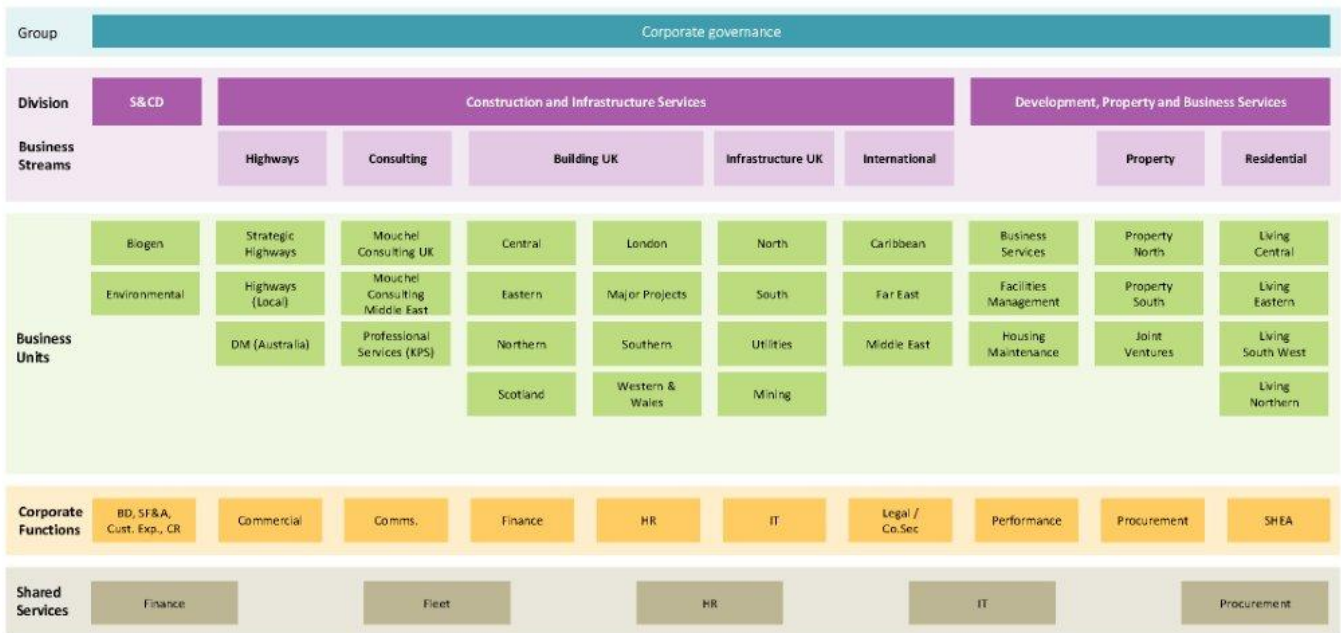
Today Kier is a fully integrated services business. It is quite different from the construction focused business that it was during the period in question. Today we have a Business Unit led and managed organisation with levels of central oversight. This change can be shown by the creation of certain central support functions such a Group Commercial or Compliance.

We have set out below the questions raised in your email dated 11 March, together with our detailed responses:-

- **A statement with respect to Kier Group plc's group structure and how the human resources services are managed at parent and subsidiary company levels. Your responses should include the group and subsidiary company's approach to:**
  - **Policies and procedures**
  - **Recruitment processes and procedures**
  - **Relationship with Trade Unions and how the group and associated subsidiary companies liaise and agree on policies and procedures; and**
  - **The monitoring and reporting of your equalities and diversity and business ethos policies.**

Kier is structured in a way that separates its Construction delivery teams from its Services delivery teams. This is achieved through the composition of our Board. Our Construction and Infrastructure businesses are led by Nigel Brook a main Board Director at Kier Group. Meanwhile, Development, Property and Business Services are led by Nigel Turner who is also a Main Board Director at Kier Group. The KFS MD (Steve Davies) reports into Nigel Turner and as such; the KFS Business Unit does not have a reporting line into Construction and Infrastructure business against whom the allegations of blacklisting have been made.

Owing to the individual nature of the markets we deliver to, this approach makes sense and encourages Business Units to be accountable for their commercial decisions. In support of this, we also provide a range of central functions which ensure our service delivery is uniform. Please see the illustration below which demonstrates how individual business units are supported by appropriate central functions:



## Policies and procedures

Following the discovery of the issues and concerns around The Consulting Association (TCA) back in 2009, Kier carefully reviewed its applicable policies. Kier updated its diversity and equality policy and its business ethics policy to specifically address the issue of blacklisting. It undertook training of key employees on those updated policies. The policies in place today clearly indicate that Kier does not condone or support blacklisting in any form. **Kier has a zero tolerance policy in relation to Blacklisting.**

Kier has also implemented a formal group-wide whistleblowing (WB) policy and added new levels of line management responsibility on addressing WB issues. This leads to direct escalation of these issues to the Kier Group Main Board as necessary. The WB policy was rolled out across the Group in 2010/11 and all offices and sites across the Group have posters in public areas informing people how they can report concerns, either through management or, if they feel uncomfortable doing that then via the free/confidential whistleblowing phone line and web based service, which is run by an independent third party.

The WB policy and hotline is available not just to Kier staff, but also to third parties such as suppliers and members of the public to report concerns, which would include concerns about equality and diversity and business ethics. All reports are investigated and actions taken where necessary up to and including dismissing staff and changing policies/procedures and processes.

The Group's Risk Management and Audit Committee (RMAC) of the Board has overall responsibility for this policy. The Group Compliance team has day-to-day responsibility for this policy and overseeing the effective completion of any whistleblowing investigations and report on these matters regularly to the RMAC.

The business ethics policy says "If employees have knowledge of any activities which they have reason to believe may violate this Policy, they must report such activities immediately. Kier relies on its employees' vigilance to notify it when something isn't quite right."

In Kier today policies are developed by the functional specialists in the Group Functions and then cascaded across the Group. The Group Functions ensure that the policies are made available to the employees and help develop training and awareness programmes to drive compliance with the policies.

Policies are now reviewed annually to ensure they continue to address concerns and issues the Group faces and give guidance to employees on how to act.

All Kier's policies are available to its employees through a number of means including the internal intranet and through company inductions at the time of joining.

## **Recruitment and Selection processes**

Kier's recruitment practices and processes are designed to ensure that we operate a robust and structured approach across all areas of recruitment and selection treating applicants equally and fairly.

An applicant tracking system (ATS) is used, which enables us to monitor and measure our activities. The ATS is a software application which enables all vacancies to be recorded, all applications for roles to be tracked, invite to interviews and assessments to be generated and on-boarding to commence if successful.

To support this we:

- Base all role profiles on objective job criteria and the competencies to perform the role
- Use a wide range of advertising media including Kier careers website, job boards, linked in and specialist websites
- Encourage existing employees to 'Refer a Friend' for which they are recompensed through a formal process
- Attract applicants from community-based organisations by ensuring that local vacancies are advertised through job centres
- Shortlist, involving more than one person, on the basis of objective, job related criteria
- Train managers involved in the selection process on interview techniques and equality and diversity, to raise awareness of unconscious bias
- Obtain written employment references via a reference agency confirming dates of employment and position held
- Utilise data given by an applicant in respect of ethnicity and protected characteristics for monitoring purposes and if successful through the life cycle of their employment including for the succession and talent review process

## **Relationships with Trade Unions**

Kier recognise that open, transparent communications are key in engaging with trade unions building a united vision and sense of purpose. Within Facilities Management, those Trade Union relationships usually begin during the TUPE process but engagement continues throughout the life of the contract enabling us to build rapport, credibility and trust.

Kier Group plc employs a large number of people across the country and has consistently worked hard to maintain a strong and positive relationship with a number of trade unions, including Unite (and there are in excess of 600 Unite members within Kier's workforce. Kier also operates a number of local recognition agreements with the major trade unions in the sector including GMB and Unison. These agreements function well and to the mutual benefit of all parties and exist predominantly in our services business. Kier has established joint consultation committees with the trade unions, which all stakeholders have found to be useful and constructive.

As an illustration of its commitment to "zero tolerance" in relation to the issue, Kier (via UKCG) is a signatory (along with Unite and others) to the Construction Industry Joint Council Working Rule Agreement (revised on 1 May 2013), one of the aims of which is to ensure that blacklisting does not occur within the industry.

## **Monitoring and reporting**

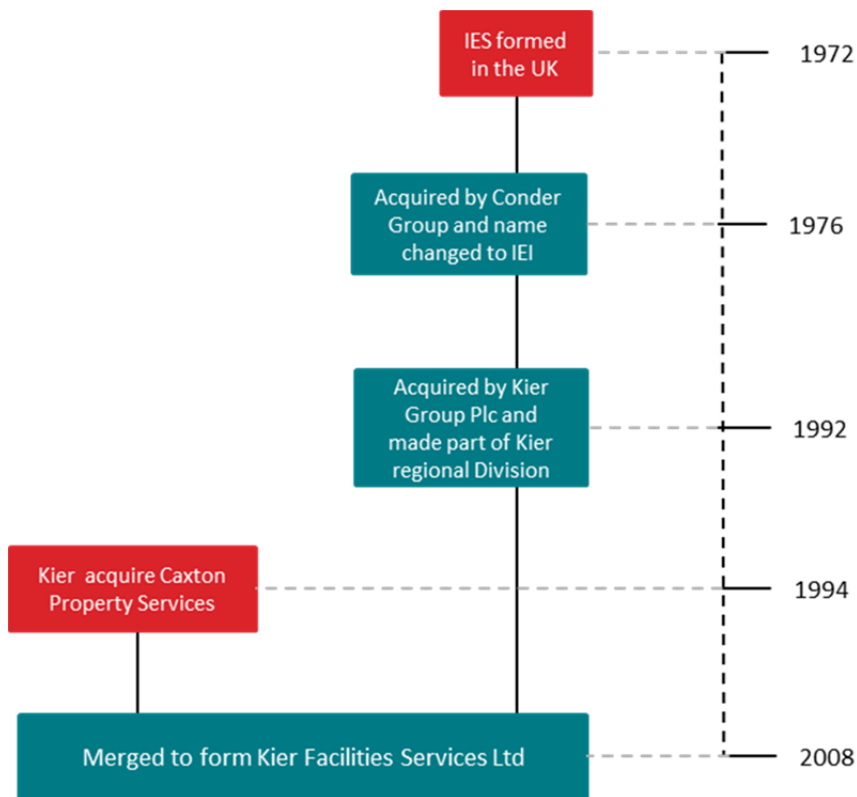
To record all information within our recruitment process we use the information contained within our ATS system. The system enables the tracking and recording of all applications (successful and unsuccessful) for every vacancy. All staff who use the ATS software are given training on the both the system and appropriate policies, with the overall management of the system managed by the business's HR team. Any updates to the software or policy will be rolled out for all recruiting managers with refresher training on any changes and how this will affect the process. To ensure this process has been followed in line with Kier policies sign off for recruitment is undertaken by a manager with responsibilities commensurate with the requirements of the role as well as our Head of HR.

Our policies are reviewed annually with necessary changes actioned as required. This is supported by our Whistleblowing Policy which enables staff, suppliers or the public to anonymously report concerns. The Group Compliance team has day-to-day responsibility for this policy and overseeing the effective completion of any whistleblowing investigations and report on these matters regularly to the board. The Group Compliance team also undertakes trend analysis on whistleblowing reports and where necessary suggests additional actions to ensure compliance (e.g. policy revision, additional training etc.). To provide a full audit trail for these processes and associated reporting In order to monitor and report on our policies and recruitment processes we utilise the information within the ATS system. This provides a full audit trail regarding the application of all HR policies and procedures.

- **A statement on the history of Kier Facilities Services Ltd (KFS) within the Kier Group plc group structure and its relationship with other group subsidiaries. This should include a brief summary of the company’s evolution arising from its initial acquisition. Further, your statement should clarify whether KFS in its current or previous forms are/were involved in commissioning any vetting services and specifically, those services which were provided by The Consulting Association.**

Kier Facilities Services is a wholly owned subsidiary of Kier Group Plc. Owing to the breadth of Kier, the Facilities Services Business Unit, with a turnover of circa £140m is a separate legal entity which undertakes its business seperately from the Construction division. This allows KFS to specialise and engage with customers in a way that is appropriate for the facilities management sector. To provide uniformity of management and compliance KFS is supported by centrally led functions including; HR, Commercial and Compliance.

Kier Facilities Services was created by the merger of separate companies, IEI and Caxton. Both IEI and Caxton had been trading in their own right before merging to become Kier Facilities Services Ltd in 2008. Please see a timeline below which outlines the acquisition and amalgamation processes for both these companies.



We confirm that Kier Facilities Services (KFS) Limited in its current and previous forms was not involved in commissioning any vetting services and specifically, those services which were provided by The Consulting Association.

- **A statement from Kier Group plc on the measures that its subsidiary company Kier Limited has put in place to ensure that the use of vetting services which may discriminate against prospective employees and effectively “blacklist” such persons cannot occur. Further your statement should clarify what role Kier Group plc fulfils in monitoring and reporting on its subsidiary companies, including Kier Limited.**

Following the discovery of the issue concerning The Consulting Association Kier carefully reviewed applicable policies. The following actions have been taken:

- Updated Equality and Diversity policy
- Updated Business Ethics Policy
- Training of key employees on these policies
- Implementation of group wide whistleblowing policy for all stakeholders (including public and suppliers)
- Company wide roll out of whistleblowing policy
- Whistleblowing policy oversight by Group’s Risk Management and Audit Committee (RMAC)
- Provision of Equality and Diversity and Business Ethics Policies to all new staff within induction
- Availability of Equality and Diversity and Business Ethics Policies to all staff
- Issuing of Hot Topics notes to the Kier HR community in 2013 to ensure ongoing awareness of the issue and re-enforcing Kier’s zero tolerance stance on blacklisting.

Kier’s Business Ethics and Equality and Diversity policies state *‘The Companies will not participate in, contribute to or obtain information from any blacklist or other similar service which undermines these principles and as part of this obligation the Companies will ensure that compliance with the Business Ethics Policy, as well as this Equality and Diversity Policy, will form part of the selection process for appointing subcontractors and other members of the Companies’ supply chain.’* This is supported at every level within our organisation and overseen by the group compliance function.

- **A statement from Kier Group plc with respect to its admissions to date, including evidence of previous statements issued, in relation to the use of the services of The Consulting Association and the accusations that Kier Limited participated in “blacklisting”. This statement should clearly outline Kier Group plc’s position with respect to any current court action and compensation payments paid to date.**

#### Position regarding the litigation

It is difficult for us to comment because this matter is the subject of a current litigation.

In 2009, along with more than 40 other construction companies, Kier was investigated by the Information Commissioner’s Office (the ICO) in relation to the use of a database known as The Consulting Association (TCA). The database contained details of c.3,200 individuals who had worked in the sector.

Litigation relating to the use of TCA began in 2012 (although, Kier was not involved in the litigation at that stage). On 9 October 2015, Kier, along with seven other major contractors (those which set up The Construction Workers Compensation Scheme below), submitted a further amended generic defence to the Court. This included a full and unreserved apology for Kier’s participation in TCA. Although Kier did not admit to blacklisting, it (and the other major contractors) accepted that the vetting system had, in some cases, had an impact on certain workers’ ability to secure or retain employment if a record card was held in respect of them, for which Kier apologises. However, this was not automatic, nor inevitable, in the sense of a “blacklist”. Kier, and the other major contractors, are approaching the High Court hearing in the spirit of openness and full transparency and continue to defend the claims strongly in relation to issues of causation and loss.

Following the closure of TCA, Kier has focused on doing the right thing by affected workers. Along with the seven other major contractors, Kier set up The Construction Workers Compensation Scheme (TCWCS) in 2014 to provide construction workers who felt they had been affected by the existence of the vetting system with a fast and simple way of accessing compensation. Kier and these other

contractors remain committed to TCWCS. Attached is a copy of a leaflet that is available to potentially affected workers.

Kier does not condone blacklisting in any form. Blacklisting is contrary to Kier's policy of conducting its business in a responsible and ethical manner. As an illustration of its commitment to "zero tolerance" in relation to the issue, Kier (via UKCG) has been a signatory to the Construction Industry Joint Council Working Rule Agreement (revised on 1 May 2013), one of the aims of which is to ensure that blacklisting does not occur within the industry. It is understood that it is likely that Build UK Contractor Members (Build UK is the successor to UKCG but with a broader membership base) will replace the reference to UKCG in due course.



## THE CONSTRUCTION WORKERS COMPENSATION SCHEME

**Were you involved in the UK construction industry between 1993 and 2009?**

**Do you think you were refused work on UK construction sites in those years?**

The Consulting Association (TCA) held records of over 3,000 names, some of whom also had index cards that held further information about them. The information held by TCA was seized by the Information Commissioner's Office (ICO) in 2009 and TCA was closed down.

The Construction Workers Compensation Scheme (TCWCS) is now trying to contact as many of the people affected as possible so they can be compensated.

There is no cost to apply and the scheme is designed to be fast, fair, easily accessible and a genuine alternative to going to court.

The scheme is open to applicants until 30 June 2016.

The scheme has been established and is funded by companies from the construction industry that used the services of TCA in the past.

The companies now recognise that the activities of TCA were unacceptable and they regret their involvement. They are very sorry that information was held about individuals by TCA and for any hardship suffered as a result.

The companies have established the scheme to provide compensation; they are also contributing to the establishment of a code of conduct to help ensure that nothing like this can happen again within the construction industry.

Sir Colin Mackay, a retired High Court judge, is the independent adjudicator for the scheme. The scheme is run by an independent administration specialist, Broadspire.



## SCHEME DETAILS

The Construction Workers Compensation Scheme (TCWCS) has been designed to make it as simple as possible for anyone with a claim to access compensation. If your name was on The Consulting Association (TCA) records and you can prove your identity as a person listed, you can make a claim.

Where a person named in the records is deceased, the personal representative of his or her estate can apply for compensation.

### The process

The first step is to confirm that your name appeared on TCA records. To do that, you need to fill in an enquiry form and send it to us along with proof of identification. The information you provide will be used to contact the ICO, which holds TCA records, to obtain any records that relate to you. This will enable us to confirm you are the person named on TCA records. If it is confirmed that you are the person named, we will send you a scheme pack. This will include information on the level of compensation you can expect to receive via fast track, details of the information held about you in TCA records, and guidance on next steps to help you complete your compensation claim.

There are two possible routes to compensation – fast track **or** full review – depending on the level of information held about you by TCA.

Fast track offers the quickest and easiest access to compensation. Full review is designed to be simpler and provide swifter access to compensation than a High Court claim.

Everyone who is eligible to join the scheme will be able to get compensation through the fast track process. Where TCA records show that an applicant's information was accessed between 1993 and 2009 by companies using the services of TCA, these people can choose between fast track and the full review process.

The scheme will also pay for legal advice to help you make your decision.

Under both fast track and full review, once you have agreed to accept an award you will receive payment within approximately two weeks.

You can submit an online enquiry or download the enquiry form from our website at [www.tcwcs.co.uk](http://www.tcwcs.co.uk). Or, if you prefer, you can contact the freephone helpline on 0800 980 8337 to receive an enquiry form by post.





### Comparing 'Fast track' and 'Full Review'

	Fast track	Full review
Available to all claimants	✓	✗
No cost to you to join the scheme	✓	✓
No need to go to court	✓	✓
No need to prove financial loss	✓	✗
No need to prove TCA activities caused your loss	✓	✗
Process from agreement to join the scheme to anticipated payment	Up to 2 weeks	Up to 4 months
Significantly quicker and simpler than a High Court or tribunal claim	✓	✓
TCWCS pays for preliminary legal advice to help you with your decision to join	✓	✓
TCWCS covers legal costs incurred through the scheme process	N/A	✓
Make an application online or by post	✓	✓
Claim assessed by the administrator	✓	✗
Claim assessed by the independent adjudicator	✗	✓
Clear view of financial award before you agree to join the scheme	✓	✗
Need to withdraw from any legal proceedings before accepting compensation	✓	✓



## ABOUT THE SCHEME

### Independent adjudicator

The scheme is independently adjudicated by retired High Court judge Sir Colin MacKay. He was a High Court judge from 2001 until retirement in 2013, during which time he was the judge for the Selby rail crash and Hatfield rail crash prosecutions. Previously, he was an experienced barrister, involved in a full range of common law work, including construction disputes and regulatory work.

### Scheme administrator

The scheme is managed by Broadspire, an independent administration specialist based in Milton Keynes.

### Scheme sponsors

The Construction Workers Compensation Scheme has been established by a group of construction companies working together to develop a scheme to compensate construction workers whose names were on The Consulting Association (TCA) records. The companies are Balfour Beatty, Carillion, Costain, Kier, Laing O'Rourke, Sir Robert McAlpine, Skanska UK and VINCI PLC.





## FAST TRACK

Fast track is the quickest and simplest way to receive compensation from The Construction Workers Compensation Scheme. It provides set levels of compensation linked to how much information was held about you by The Consulting Association (TCA) and whether that information was accessed by any company.

Following confirmation that you are the person named on TCA records, we will confirm your eligibility to join the fast track and send you a scheme pack.

You will receive a copy of the information that was held about you by TCA and details of the compensation you will be offered. Simply take your legal advice (paid for by the scheme), sign the applicant agreement and the fast track offer to confirm your acceptance, and return them to us.

To claim under fast track, you don't need to prove any loss and you don't have to go to court; TCA records are enough to determine your level of compensation. Fast track is available to all eligible claimants.

Once your eligibility has been established and you have decided to join the scheme, payment under fast track will take approximately two weeks.

You cannot start or continue with a court case for compensation related to TCA once you join the scheme.

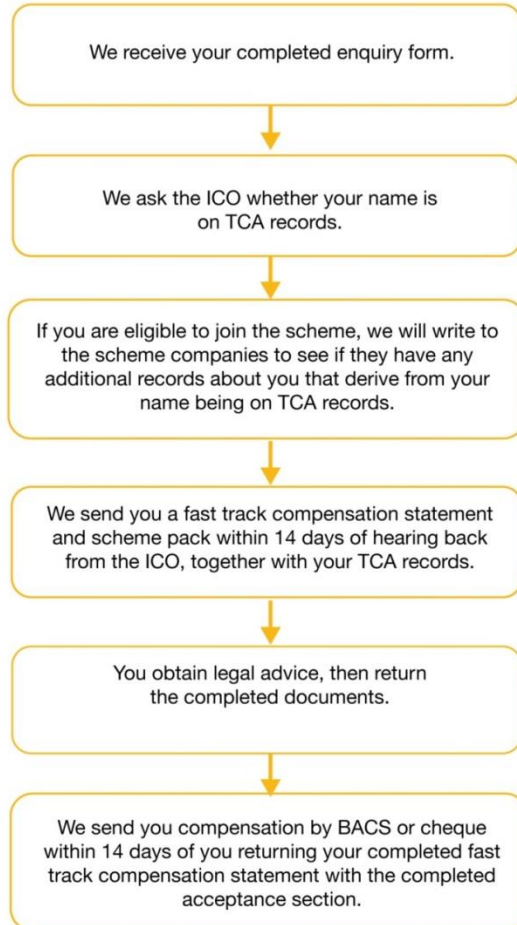
### Compensation bands – fast track

If you are eligible to join the scheme you will be entitled to **one** of the following payments.

Compensation band	You receive
An applicant's name appears on the basic list and if an index card exists for that individual it contains no narrative entries.	£4,000
An applicant's name appears on the basic list and an index card with narrative entries about that individual contained on the index card.	£7,000
An applicant's name appears on the basic list and an index card which was accessed (see scheme rules for definition) on or after 1 April 1993 and the records show that employment was not denied.	£8,000
An applicant's name appears on the basic list and an index card which was accessed (see scheme rules for definition) on or after 1 April 1993 and the records show that employment was denied (or does not record the result of the access).	£20,000



### Fast track flowchart





## FULL REVIEW

The full review process is designed for applicants who are named in The Consulting Association (TCA) records, who have an index card and where there is evidence that their information was accessed between 1993 and 2009. Eligible applicants are not obliged to follow this process, however – fast track is also available.

The preliminary legal advice, paid for by the scheme, will help you assess whether full review or fast track is best for you.

Full review provides a more detailed assessment of an individual's claim. It is designed to be simpler and quicker than going to court. The process requires you to prove that TCA records caused you financial loss. You must provide evidence of that loss through written evidence and supporting documents.

Full review is not like going to court, but in some cases the adjudicator may wish to meet or speak with you to clarify some aspects of your claim. More details are in the scheme rules. The independent adjudicator's word is final, with limited rights of appeal.

The scheme will pay for legal advice incurred in the full review process, up to a maximum of £3,000.

Once your eligibility has been established and you have decided to join the scheme, assessment of your claim and payment of your compensation will take approximately three to six months.

If you opt for full review, you can return to fast track at any point before the adjudicator makes his final decision, but you may not be entitled to recover your legal costs.

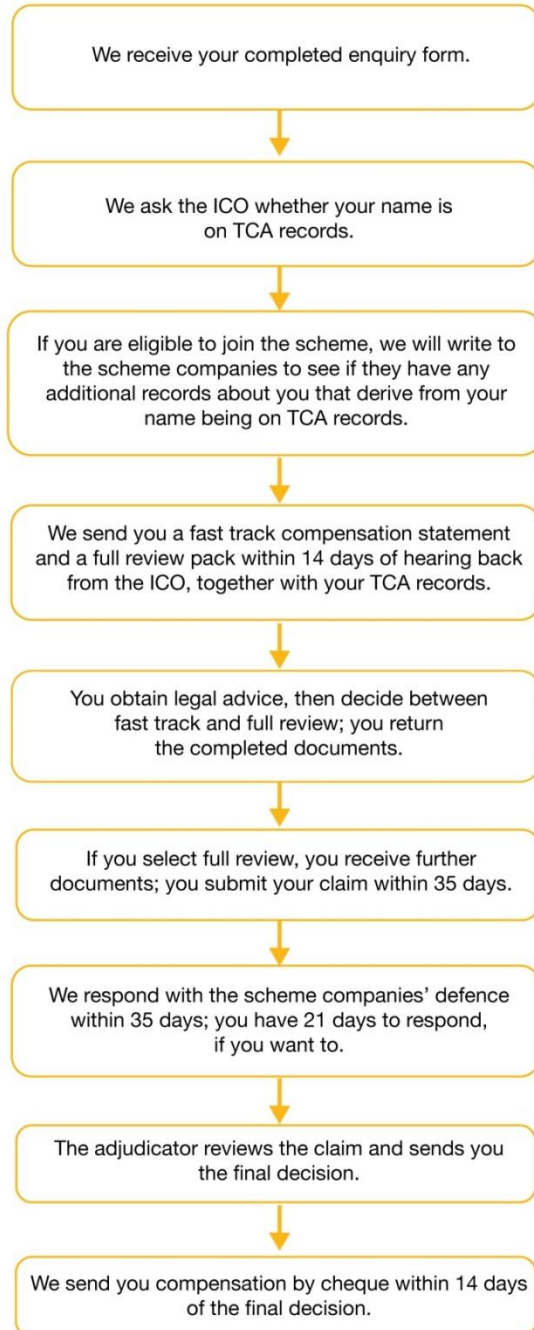
At the point where you send us your applicant agreement, you cannot start or continue with a court case for compensation related to TCA.

### Compensation levels – full review

Unlike fast track, levels of compensation under full review are not set at the outset – the adjudicator sets the level of compensation, based on the evidence provided, up to a maximum of £100,000.



### Full review flowchart





## JOBS & TRAINING

It's not possible to promise jobs for workers whose names were on TCA records, but the companies behind the scheme guarantee that all job applications are treated the same – it's a level playing field.

If you are eligible to join the scheme, you could also qualify for refresher training, to ensure your skills, experience and certification are up to date and to help you with employment in the future.

You will receive more details about this when you receive your compensation, including a form where you can set out your trade qualifications and any training you need to improve your skills.

The form will be shared with the relevant industry training body, such as CITB or JIB. They will assess your needs, taking into account:

- Your current level of competency, based on your qualifications and valid cards
- Your eligibility to renew an expired card
- The training you'll need to be considered competent in your area of expertise
- The relevant training body will then work with you directly.

The training is funded by the companies behind the scheme and is separate to the compensation scheme.