

IIRSM Technical Paper:

Ensuring competence in the selection and management of contractors and temporary workers

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I. Introduction

According to a May 2009 BERR paper - Implementation of the agency workers directive – “there are currently 1.3 million agency workers on temporary assignments across the UK in a range of public and private sector roles”.

During research meetings held in July 2011 concern was noted by many H&S professionals that these workers are not being given the same access to effective Health & Safety training as the fully employed people that they work alongside. There may be a number of reasons for this and they are discussed later in this paper.

This concern is also reflected in a number of academic studies that have been conducted in recent years, including the extracts below:

“Over the past decade there has been increased recognition that the growth of flexible work arrangements – often labelled as precarious employment or contingent work – poses a serious challenge to occupational health and safety (OHS). Although there is on-going debate about what constitutes contingent work or precarious employment – or rather definitional boundaries for inclusion or exclusion – there is a wide consensus about the inclusion of some categories of work. These include self-employed subcontractors, temporary, lease and short-term fixed contract workers.” It goes on to say, “There is increasing international evidence that many of these changes to work arrangements are having detrimental effects on the occupational health, safety and well-being of workers. “

- **Statutory Occupational Health & Safety Workplace Arrangements for the Modern Labour Market – 2005** (Richard Johnstone, Michael Quinlan and David Walters – 2005).

“In this review of a range of studies on the health and safety effects of precarious employment in industrialized societies published since 1984, the authors examine the overall findings and methodological issues and identify areas in need of further research. Of the 93 published journal articles and monographs/book chapters reviewed, 76 studies found precarious employment was associated with a deterioration in occupational health and safety (OHS) in terms of injury rates, disease risk, hazard exposures, or worker (and manager) knowledge of OHS and regulatory responsibilities. Of the more than 25 studies each on outsourcing and organizational restructuring/downsizing, well over 90 percent find a negative association with OHS. The evidence is fairly persuasive for temporary workers, with 14 of 24 studies finding a negative association with OHS.”

- **The Global Expansion of Precarious Employment, Work Disorganization, and Consequences for Occupational Health: A Review of Recent Research** (Michael Quinlan, Claire Mayhew, and Philip Bohle – 2001).

This paper will seek to try to understand why H&S provision (to this sector of our workforce) is either overlooked, or in the experience of many H&S professionals, burdensome. It will also discuss where a robust Passport Scheme may help to fill this gap.

II. Background

When we review investigations into workplace injuries and ill health a common thread which runs through many of the outcomes is a failure of maintenance, often associated with the actions of contractors. This issue has become so important that the most recent part of European Agency for Safety and Health at Work (EU OSHA) Healthy Workplace Campaign has been dedicated to the subject. This safe maintenance campaign came to an end in November 2011 having seen initiatives taking place in all member states, organised by partner organisations. This demonstrates that the problem is one which exists throughout the EU. This was underlined by research carried out in a number of the member states which showed that the percentage of accidents which relate to maintenance operations was consistently high. Examples given were:

Belgium (2005 – 6)	20%
Finland	18-19%
Spain	14-17%
Italy	10-14%

In addition to these figures for general workplace accidents, a 2006 study carried out within several European countries showed that between 10-15% of all fatal accidents were related to maintenance.

Why is this significant?

Most of these injuries were found to relate to accidents occurring during corrective maintenance and of the employees involved the most frequent were sub-contractors.

However, with the changes which have occurred in the workplace recently, we are seeing subcontractors not only used for maintenance but increasingly for tasks which have traditionally been carried out by mainstream employees. These are likely to include IT tasks, financial, administrative and even production activities.

III. Why outsource?

If we consider first of all the area of maintenance where subcontracting has been a recognised method of resourcing for a long time, there are contradicting attitudes to the practice. Some organisations have traditionally viewed the activity as too critical to production for it to be outsourced whilst others regard maintenance itself as being a specialised activity which is not core to their own business. What research has shown is that the risk of injury is multiplied where the activity is outsourced. Given the broadening of the practice of outsourcing which we have seen, there is a strong case that the factors which cause this 'multiplier' in the case of maintenance would also apply in the case of other outsourced activities.

Before going on to consider the major causes of accidents to external contractors we need to consider the pressures which have led to the escalation of outsourcing.

1. Criticality – with initiatives such as Kaizen, 'Lean' and 6 sigma, there has been pressure on organisations to focus only on what is critical to the activity in which they are involved. As a result, resources which are not critical or immediate to the activity are only brought (or bought) in when necessary. As a result factors such as inventory and workforce are kept to a minimum. This allows the company to bring in additional resource as and when they feel it to be necessary. An example of this may be the IT function where many businesses find that the cost of a full time IT specialist cannot be justified. However, they will inevitably have need of specialist help with both hardware and software issues, when changes are made and when problems arise.
2. Seasonality – this is an obvious factor in businesses such as retail, confectionary and postal where at certain times of year there is a peak demand which requires additional workers to meet, e.g. Christmas.
3. Interim management – there is increasing use of temporary staff to manage short-term projects or to provide cover for functional staff such as accountants during holidays or when there is a particularly high workload. Even temporary health and safety posts are becoming increasingly seen.
4. Administration – this has been one of the traditional areas where organisations have made use of 'temps'. Short term posts, normally covering for absent staff or for posts where a full-time employee is being recruited.

Another advantage for businesses is that, in addition to reducing the headcount and hence salary bill, they will also save the associated indirect employment costs such as employer's National Insurance and potential pension contributions.

One of the issues which must be considered is the nature of the employment of temporary staff. Usually the decision is based on the duration of the contract.

In many cases the temporary employee will be taken onto the payroll and will be treated in the same way as a full-time member of staff. This would often be arranged through a recruitment agency. However, increasingly the agencies are actually employing the temporary worker and are then being paid by the employer. In the first case responsibility for the employment costs would be met by the

employer, whilst in the second case, the agency would be responsible for these and would build those costs into their fee.

A third category which must be considered are those who are employed as subcontractor to a company itself working on an outsourced basis. For example, a building contractor working on an extension to a client's premises will usually employ specialists such as electricians, scaffolders and other trades on a subcontract basis. This is an important sector as the extended chain of command brings with it its own particular complications.

IV. How does health and safety law view temporary workers?

This is an issue which varies widely between countries although nominally the standards within EU member states should be consistent. However, in this paper we will focus on the situation in the UK where we witnessed an extreme case of a fatal incident to temporary workers when over twenty Chinese cockle pickers were drowned in Morecambe Bay resulting in the imprisonment of the gang masters and stricter legal requirements for gang masters to be registered.

The foundation of employee protection against workplace injury is provided by the Health and Safety at Work etc. Act 1974, which aims to cover risks to anyone who may be affected by an employer's work activities. Section Two provides for a general duty of care toward employees, who are defined as those where there is a contractual relationship with the employer. Obviously this does not encompass those contractors who are employees of an agency or those working for another contractor. However, Section Three imposes a similar duty of care toward non-employees, which would include some of the other groups which we are considering.

The Act, however, does not only impose duties on the employer but employees are required to do what is reasonably practicable to take care of their own and the safety of others and they must also cooperate with the employer in achieving the safety objectives and they must not abuse anything provided for the purpose of safety. There are also particular duties on managers and other officers of the company. So there is legal protection of outsourced workers from the actions of the employers and other workers but we must also consider the risk of injury posed by the outsourced worker toward others.

V. Capturing the responsibility for Health and Safety training.

Temporary or contract workers generally find their assignments via an Employment Agency and, as a result of the IR35 legislation, they may work under a number of different status types dependant on the type of work they are undertaking, the length of the contract and their own preference. IR35 was introduced by the then Chancellor of the Exchequer in 2000 with the intention of properly taxing "disguised" employees and has led to the need for all contractors to consider their status when entering into a relationship to provide services.

In broad terms the options open to a contractor or temporary worker to conform to legislation and hence legally undertake an assignment at a host company, are as follows:

- Private limited company
Small owner managed company with the contractor being the principal shareholder and director. There is a requirement for a contract between the Limited Company and host company for each assignment, regardless of duration. Professional Indemnity Insurance should be taken out by the contractor.
- Permanent employee of the employment agency
Some employment agencies will fully employ staff and send them out for assignments as and when required. These assignments will predominately be short term cover for sickness or absenteeism. The worker is typically covered for PI within the agency insurance policy.
- Employed by an 'Umbrella' organisation
The contractors become an 'Employee' of an umbrella organisation who pays their tax and NI under a formal employment contract. They are then able to change assignments with different host companies as often as required whilst effectively continuing to work for the same employer. PI is typically included with the overhead cost charged buy the umbrella company.
- Self-employed
Working as an individual and, who because of the type of work they are doing, fall outside of the IR35 legislation. They will be responsible for calculation and paying their own tax, national insurance and personal indemnity insurance.
- Short term employment contract directly with the host client
Will have an employment contract with the host company and have the same status and rights as a normal employee.

Thus there can be some clouding to the issue as to where the liability to give basic health and safety training lies. For those working as employees, either with an umbrella company or a short term contract, clearly this lies with the responsibility of the employer, however there is less clarity with the others.

As a result of this blurring of liability, in the worst case the temporary worker may not be given access to any health and safety training at all. In the event of a serious accident the host company could face prosecution under H&S legislation. In practice, many health and safety managers/advisors are spending up to a full day of their own time to give training. This can be very costly to the host company, both in terms of paying the temporary workers while they are having non-productive training and also using the valuable time of the person training them. It can be very disappointing for the trainer, and costly to the host company (both in resource and having to pay the agency for non-productive time) if the contractor/temporary worker accepts a different assignment the following day and the training has to be given all over again to the contract or temporary worker who replaces them.

VI. Ensuring competence - what is a passport scheme?

The HSE publication INDG381 is a good practice guide for passport schemes and in the introduction says:

“Passport schemes ensure the workers have basic health and safety awareness training. They are welcomed by the Health and Safety Executive (HSE), the Health and Safety Commission (HSC) and the Environment Agencies as they are a way of improving health and safety performance. They also help reduce accidents and ill health caused by work. They are especially useful for workers and contractors who work in more than one industry or firm.”

The worker needs some way of evidencing, not only that they have taken basic training and passed a test as evidence of understanding, but also what elements of H&S training they have undertaken. There is normally a photo ID card with effective passport schemes and some of these may even have a web address or QR code to link through to other documents, such as PI insurance.

However good a passport scheme is it cannot mitigate the need to carry out an *effective* induction as soon as the temporary or contract workers reports for work at the host company’s site. This will allow the worker to be shown local issues in relation to their safety and also to ascertain if they will need any further H&S training in relation to either the task that they are to carry out or in respect of any local hazards or environmental issues that are specific to that environment.

Where a temporary worker is being brought in to carry out a specialist or particularly hazardous activity the passport does not provide full validation of the worker’s competence. For example, at a quarry there was an urgent need to recruit a driver for earth-moving equipment. The person appointed stated that he had been operating these vehicles for several years and had worked at another local quarry. On his first day the operator was reversing an 8-wheel drive dump truck up a slope and went over the edge into the quarry, killing him. The subsequent investigation revealed that he had no such experience of this type of work but had been desperate for a job. If there had been a passport system in place this may not have prevented such an accident so it is important to understand what competences the passport actually demonstrates.

The passport will, however, demonstrate that they have a basic understanding in health and safety matters and, subject to no further training being required, allow them to start working as soon as the induction has been completed. This will ensure that the host company is not paying the employment agency for workers that require basic health and safety training before they can begin their assignment. It will also release the safety professionals within the host company to carry out more important tasks than training temporary staff, who may not be on site the following day, making them more productive. Most importantly the employment agency, umbrella company, temporary worker and host company can be confident that the ‘liability’ to give health and safety training has been captured using this process.

What schemes currently exist?

There are a number of successful schemes that are targeted at higher risk workers (such as construction, off-shore, petro chemical etc.), those working in a softer environment, such as IT, warehouse, office etc. have largely (until now) been overlooked.

As discussed earlier in this paper, the principal aim of a passport is to impart basic health & safety information so that when a person commences an assignment they can begin to work profitably as soon as a site induction has taken place. Different passport providers use a variety of training methods.

Classroom

Whilst this can be an extremely effective way to deliver the training, it can also prove to be expensive, both in terms of cost and the resource required, and may be a luxury if a contractor is not going to carry out an assignment in a high risk assignment.

USB stick or CD

The training program is sent to the contractor or temporary worker in the post which they access on a PC. Once the course is completed and the test passed the final page takes them to an internet link where they can order their ID card.

eLearning

With eLearning the contractor or temporary worker is sent an invitation to undertake the training by email and simply have to click on a link that takes them directly to the training. There are a couple of advantages to this method, one being speed of delivery as upon completion of the training the contractor or temporary worker can commence their assignment immediately, and secondly that the course can easily be branded for specific organisations with site/company specific detail incorporated in the learning.

With all the above training methods it is essential that a site induction is carried out at the start of the assignment to identify if the individual has further training needs related to either their 'task' or specific local environmental issues.

VII. Critical success factors in managing risk resulting from outsourcing

a. Policy

The responsibility toward sub-contract workers must be acknowledged in an organisation's health and safety policy, which should include reference to the responsibilities for managing such staff and the arrangements which have been put in place for ensuring their safety.

These should include issues such as:

- Risk assessments
- Communication
- Competence
- Selection of contractors
- Training
- Supervision & monitoring

b. Safety culture within the organisation

It is essential, where there are risks posed either to, or by, outsourced workers that there is a culture of health and safety within the business, which is communicated to all and demonstrates that the safety of these outsourced workers is important. The single most important factor in this is management commitment at all levels; from the most senior to the line managers with immediate responsibility for the outsourced worker. This will set the standards for the recruitment, competence and management of these staff and will provide motivation for the outsourced worker to work safely.

c. Worker involvement and participation

Many organisations try to involve their employees in the health and safety management process. There are two main reasons for this; firstly, the employees are closer to the work which is actually being carried out and are well placed to identify hazards. Secondly, if a worker has the opportunity to be consulted, they will feel a greater degree of ownership. These points do not only apply to full time employees. However, it is rare for outsourced workers to be consulted in the same way. From a practical point of view it is more difficult as they are often only in place for a relatively short time but that does not mean that they are not in a position to contribute their knowledge and experience. Given that they will have seen how other organisations have managed health and safety and how they have been protected elsewhere there may be valuable lessons to be learned.

d. Safe systems of work

Having carried out risk assessments and put in place appropriate control measures these should be incorporated in a written safe system of work for a particular activity. These safe systems of work must be communicated to all workers for whom they are relevant. These must include outsourced workers. These systems of work should consider unanticipated events and should make it clear that should a situation arise which the worker feels is dangerous or is beyond their competence, they are able to stop work. The effectiveness of this is of course dependent on having in place effective communication.

e. Communication

Poor communication is a key factor in most accidents. In this respect we are not just regarding communication as management *telling* the workforce what to do but having a system which includes upward and sideways communication as well. There must be a channel through which workers can raise issues to the appropriate level for problems to be solved. In many organisations, the principal channel is now electronic, with email, intranet and social networking systems becoming increasingly common. This will raise the question as to whether outsourced workers will have access to these company systems. Where someone has been taken on to carry out administrative activities, they will almost certainly have a temporary email account and may have access to the company intranet but what about contractors carrying out operational or maintenance activities? Are there systems in place by which they can get messages to the outsourced workers? In practice this may have to rely on the line manager realising and accepting that he or she has responsibility for the temporary worker.

VIII. Conclusion

With the increasing use of outsourced labour it is essential that organisations are aware of the altered dynamics around health and safety risks. In particular they need to recognise:

- The risks to the outsourced worker
- The risks which the outsourced work may bring to the organisation
- The risks which the outsourced work creates for themselves through working in an unfamiliar environment

Key to controlling these additional risks are issues which have been addressed in this paper.

- 1) When selecting a subcontractor it is essential that there is a system for assessing their competence.
- 2) There are different competences which must be covered; ability to do the job, health and safety.
- 3) The responsibility for the worker's health and safety is shared between the organisation for which they will be working, the employee and the organisation, e.g. agency, umbrella company.
- 4) The validation of competence is ultimately the employer's responsibility but as far as checking health and safety competence is concerned this can be facilitated where a passport scheme is in use.
- 5) Where a passport is used, the employer must still ensure that risks which are inherent in the way they carry out these tasks and those arising from the workplace, have been assessed and that the safe systems of work are communicated to the worker.