

## Response to the consultation paper “Improving worker involvement - improving health and safety”

### Introduction

The Professional Contractors Group is the cross-sector representative body for freelance contractors and consultants in the UK. Its members operate their own one or two-person companies and provide their services to a range of clients. They work in IT, engineering, project management, oil and gas extraction, marketing and many other sectors.

The UK's freelance contractors and consultants are a highly skilled, highly flexible and highly mobile workforce. The UK's model of freelancing is uniquely sophisticated and, by affording companies the ability to acquire specialist skills on a flexible basis, offers the UK a meaningful competitive advantage, particularly in the knowledge-based industries on which its future growth depends.

PCG's members are among the 1 in 7 workers in the UK who choose to work for themselves in some way. They sit outside the traditional divide of employer and employee; as part of the “third way” of working, they are therefore often overlooked in the policy discourse, which remains dominated by the traditional dichotomy.

This response is intended to complement the completed response form submitted alongside it, and outline in further detail PCG's thoughts on some aspects of the consultation document and its proposals. It addresses two key issues: the desirability of any new measures based on the findings of the Partial Regulatory Impact Assessment; and the definitions used in the document.

Where PCG has not answered a question, it offers no opinion on that issue.

### PRIA: benefit of the proposals?

The PRIA states that the costs of all the new proposals outweigh any benefits considerably; given that there is already a worker involvement programme in operation these new proposals would seem not to be worth the effort and the best option of those presented in the PRIA is “do nothing”.

In particular, we note the observations in paragraphs 12 and 15 of the PRIA that these proposals will not contribute towards achieving current targets for improving health and safety and that health and safety is expected to improve anyway owing to other Government intervention, including the existing Worker Involvement Programme. On this basis, it seems most sensible to PCG to wait until the extent of any such improvements has become clear and can be measured before it is worthwhile even considering a further raft of changes. If a great number of changes is introduced all at once, assessing the impact, beneficial or otherwise, of any of them will be extremely difficult. PCG believes that all regulation should be directed at achieving a defined outcome. Regulatory changes whose impact cannot be assessed are dangerous as they can be introduced without due regard to their outcome.

Part of the function of the impact assessment process is to identify whether or not it is worth continuing with a proposal. In some instances, the process may show that a proposal should not be developed any further. PCG feels that this is the case here, given that the estimated benefits are so low. Even if the figure of £300,000 is indeed an underestimate, as the PRIA suggests might be the case, PCG does not see merit in proceeding further with the proposals, as any benefits in this ball-park would not justify the costs.

On this basis we have responded “no” to most of the questions in the response form that ask whether a certain option should be pursued. Some further brief comments are included in the response form on recommended approaches if it is nonetheless decided to progress the new proposals.

It seems likely to PCG that most workers are essentially uninterested in involvement with worker safety and would regard involvement initiatives as unnecessary interference and distraction (and that the figures given in para 34 of the PRIA are, accordingly, certainly in the right ball-park); this is a significant barrier for any such initiative to overcome and, given that a worker involvement programme already exists and

that these proposals would be more costly than beneficial, PCG feels obliged to question the value of any new initiatives.

PCG notes the figure of 37% given on page 5 to show the proportion of workplaces where workers are “fully involved” in health and safety. This strikes PCG as quite a sound level of involvement: “full” worker involvement is probably unnecessary in some workplaces so long as statutory requirements are met and management is sound.

Para 83 of the PRIA presents a case study in which a series of action plans produced remarkable improvements in health and safety; if this is representative of what the proposed measures could achieve, PCG would expect the benefits to be much greater than the modest £300,000 currently estimated. Presumably the case study is therefore not a very representative example.

### “Worker” involvement

#### i) definitional issues

The consultation document uses the terms “worker” and “employee” seemingly interchangeably. For instance, point 14, on page 7, refers to “consultation with employees” and later observes that “many workers are still not consulted” without explaining why each term is being used.

- If the consultation paper does make a distinction between the two, it is not stated how this is defined, despite the presence of a “Definitions” section (point 2, page 3) allowing an opportunity for this.
- If it does not make a distinction - and PCG’s reading suggests that it does not - this is a serious deficiency.
- If any action to implement any new proposals is to be taken, this issue must be addressed in order to guarantee the desired outcomes.

There is a passing reference to “agency working and flexible work patterns” in point 30 (pages 30-31), but this does not extend to defining the terms and does not make a distinction between temporary employees engaged via an agency and external suppliers engaged on a business-to-business basis.

The domination of the consultation paper by the traditional dichotomy of “employer and employee” is perhaps explained by the informal consultation which the PRIA states has been undertaken with the FSB, IoD and CBI on the one hand, and TUC on the other.

#### ii) When contractors should be involved and when not

Contractors should be involved when the issues involved affect their safety: in practice, these will usually be issues relating to safety practices on the client’s site.

Contractors should not be involved when the issues are purely internal matters for the company and have no bearing on the work of external suppliers who may be working on-site.

Contractors are often extremely experienced people who have worked for a broad range of companies; as well as bringing the benefit of experience, they can also offer a valuable fresh pair of eyes to consider any operation from a new perspective. Aside from these extremely good reasons for approaching contractors for their views on health and, particularly, safety issues, they should have the right to be consulted on issues that affect their safety while on the client’s site or operating in any other theatre in which the client’s decisions have a bearing on their safety.

Contractors will not generally be members of trades unions, so workplaces where worker consultation is conducted exclusively via trades unions will not usually have the benefit of input from contractors.

Ideally, the involvement of contractors should come in the “final stage” of worker involvement, relating to good practice by managers and those working under them (contractors can fall into either category),

rather than being a cumbersome statutory obligation (although statute should not preclude the possibility of consulting contractors alongside employees as part of the process for meeting legal requirements, if this is desirable in a given instance).

The Information and Consultation of Employees Regulations 2004 clearly do not extend to contractors and PCG feels that this is an appropriate balance.

### iii) Role of trades unions

Diverse and flexible ways of working have been on the increase in the UK for many years. PCG estimates that the contribution of freelancers to the UK's GDP is in the region of £100 billion.

At the same time, the role of trades unions has been diminishing. As the consultation paper points out, only about half of the employees in Britain work in workplaces where trades unions are active; this is, in turn, quite different from half of employees being unionised. If all workers are included, and not just employees, the proportion of workers in workplaces where trades unions are active would be something less than half.

Trades unions have undoubtedly developed great expertise and a strong track record on dealing with health and safety issues. Worker involvement in health and safety should be structured so as to allow for their inclusion, but it should not be structured so that they are central to the process; there should not be separate statuses for trade union and non-trade union representatives. We note that the proposals on pages 18-19 of the consultation document go some way to reducing the differences but feel that the easiest solution all-round would be to have one category of representative, who may or may not be a trade unionist.