

GROUP

**GET
RID
OF
UNETHICAL
PRACTISES**

This is a genuine advertisement from a company which is operating in the industry today.

“Engaging sub-contractors via [REDACTED] puts a “firewall” between contractors and sub-contractors. There can be no claim for Holiday Pay. The Inland Revenue cannot reclassify the sub-contractors as PAYE. It drastically reduces CIS admin and payroll overheads, there are no minimum numbers – and it will even save your clients money!”

What do the professionals have to say?

Liz Bridge, head of tax and pensions at the **Construction Confederation**, was equally cautious over the services on offer.

“I feel about these companies as the AA might feel about the firms that manufacture devices to fool speed cameras,” she says. “The pitfalls are that the worker may turn around and say the whole thing was a sham, he/she was coerced into doing it, had never met the company involved until the employer’s introduction, and had worked before and after the start of the company’s contract in an unchanged arrangement.

“Alternatively, HMRC may find a way to attack these arrangements successfully. I believe the chances of this system working long-term are small.”

Asked whether the process provided by these firms is legal, Bridge replies: “They say it is legal and HMRC does not seem to have been able to stop the arrangements, yet it is certainly on the fringe of what is legal.”

UCATT general secretary **Alan Ritchie** agrees: “The employment status of a worker is decided on the nature of the engagement, but for companies such as these, it is an opportunity to make money out of the industry.

“By playing on the confusion surrounding this area of the law, it is encouraging employers to deny workers their statutory rights. Their activities may not be unlawful, but it does mean that contractors who adopt such a contract run the risk of unforeseen tax and NI liabilities if the scheme does not fully operate within the appropriate legislation.

“We will be appealing directly to government and other major clients of the industry to have no dealings with contractors and subcontractors who use this type of payroll company.”

Kathryn Hiddleston, head of construction at **Grant Thornton** warns: “Although umbrella organisations look attractive, it is important to note that if the worker is genuinely under self-employed terms, there should be no need for an umbrella organisation – if they are not, then the workers could be getting themselves into deep water.

“It is vital that the industry understands that although these umbrella vehicles are being marketed as ‘safe’ for the contractors, this will only be the case if this is a genuine ‘arm's length’ arrangement.

“But if the contractor/engager has had any involvement in introducing workers to the umbrella organisation, or is collusive to any degree, then it is possible that, on attack from HMRC, it could also be in the firing line. HMRC may ‘look through’ the arrangement and pursue the contractor for lost tax and National Insurance.

“A further point to consider is that the contractor will be effectively passing control of its workers to a third party, and will thus lose the right to say how those

individuals are managed or controlled. Just remember, if something sounds too good to be true, it probably is.”

Alan Nolan, director of employment tax in **KPMG**’s construction group, raises concerns over the implications for contractors that sign up to such agency arrangements.

“Often such arrangements are marketed aggressively, i.e. ‘get one over the tax man’ or ‘avoid direct employment’. This is a red rag to a bull to the HMRC, which sees such arrangements as tax avoidance,” he says.

“Any form of what the HMRC considers as ‘avoidance’ involves a risk for the contractor. It is unlikely that the HMRC will allow the agency and other types of approach to continue in the long-term, although it is unlikely that it will be able to legislate in the short-term.

“The more likely course of action will be to challenge the provider of the service on the basis of the tax legislation for agency workers (any payments made by an agency to an agency worker must be subject to PAYE/NIC deductions), or by denying tax relief for payments.

“In the event that the agency cannot meet its PAYE obligation following a successful challenge from HMRC, the department may seek the underdeducted PAYE/NIC from the contractor.”