

Client's Health and Safety Responsibility to Contractors

Introduction

This Factfile information sheet is aimed at situations where clients use contractors. It clarifies the general health and safety responsibilities of clients and contractors to protect each other, their workforce and anyone else (eg visitors, people living nearby and other members of the public). These responsibilities, if not properly managed, can lead to events that could prove costly to all parties. It includes case studies showing what can happen when things go wrong. As well as the immediate effects, further consequences can arise from delays to the work and claims for damages. All parties must co-operate to ensure that health & safety is properly managed - this will avoid things going wrong in the first place.

Your responsibilities

Work undertaken for a client by a contractor is usually covered by a civil contract. It is good practice for health & safety requirements to be written in to such a contract. However, health and safety responsibilities are defined by the criminal law and cannot be passed on from one party to another by a contract.

In any client/contractor relationship, both parties will have duties under health & safety law. Similarly, if the contractor employs subcontractors to carry out some or all of the work, all parties will have some health & safety responsibilities. The extent of the responsibilities of each party will depend on the circumstances.

Key message:

Both parties will have duties under health and safety law

Contractors provided a scaffold onto a fragile unfenced roof which is 10m off the ground, so that a new leak testing technique requiring access to a roof vent could be tested.

An operator walked onto the roof and fell to his death through a fragile vent. The client was found guilty and fined £27,000 plus costs for failing to provide adequate information and supervision. The contractor was found guilty and fined £3,000 plus costs for failing to implement straightforward controls and safeguards.

What you need to do:

Identify the job

Clients need to clearly identify all aspects of the work they want the contractor to do, including work falling within the preparation and completion phases. The level of risk will depend on the nature of the job. Whatever the risk, clients need to consider the health & safety implications of the job they want done. This will involve selecting someone suitable to do the job, assessing the risks, deciding what information instruction and training is required, how co-operation and co-ordination between all parties is achieved, how the workforce is to be consulted and the level of management and supervision required.

Select a suitable contractor

Clients need to satisfy themselves that contractors are competent (ie they have sufficient skills and knowledge) to do the job safely and without risks to health and safety. The degree of competence required will depend on the work to be done. Make sure contractors know and understand what performance you expect. Explain your health & safety arrangements to them. Show them your procedures, permit systems, health and safety policy statement and make sure they understand and will act in accordance with it. You need to decide how you will determine a contractor's competence. You could, for example, ask prospective contractors:

- What experience they have in the type of work you want done
- What their health and safety policies and practices are
- About their recent health and safety performance (number of accidents, etc)
- What qualifications and skills they have
- Their selection procedure for subcontractors
- For their safety method statement
- What health and safety training and supervision they provide
- Their arrangements for consulting their workforce
- If they have any independent assessment of their competence
- If they are members of a relevant trade or professional body
- Whether they or their employees hold certifications in health and safety training

This is a growing trend in some industries. You can then decide how much evidence (eg references) you need to seek in support of what prospective contractors have told you.

Select a suitable subcontractor

The selection of any subcontractors is probably best left to the contractor. Clients must, however, satisfy themselves that a contractor has an effective procedure for appraising the competence of a subcontractor. When selecting a suitable subcontractor, a contractor may use some or all of the criteria that a client may use in selecting a suitable contractor (see above). Again, the degree of competence required will depend on the work to be done.

Key messages:

Check the competency/co-operation

A contractor was engaged to repair an escalator in retail premises. The work was sub-contracted. During the work, the escalator unexpectedly set off trapping the worker's foot under the comb plate. Part of the worker's foot was amputated. The contractor was prosecuted for failing to check the competency of the subcontractor and failing to co-operate with the subcontractor. The contractor was found guilty and fined £4,000 plus costs. The subcontractor was prosecuted for failing to check the competency of the persons carrying out the work. The subcontractor was found guilty and fined £5,000 plus costs.

Assess the risks of the work

A risk assessment must be done and both the client and contractor should party to it. HSE's free leaflet 'five steps to risk assessment' provides guidance to employers and the

self-employed on assessing risks in the workplace. The client should already have a risk assessment for the work activities of their own business. The contractor must assess the risks for the contracted work and then both parties must get together to consider those risks from each other's work that could affect the health and safety of the workforce or anyone else. The client and the contractor need to agree the risk assessment for the contracted work and the preventative and protective steps that will apply when the work is in progress. If subcontractors are involved, they should also be part of the discussion and agreement.

Key message:

Do a risk assessment

A self-employed electrical contractor was injured while working at a client's premises when a fork-lift truck struck and dislodged the ladder he was working from. The client was prosecuted because no risk assessment had been made nor any steps put in place to ensure the contractor's safety. The client was found guilty and fined £9000 plus costs.

Provide information, instruction and training

Clients, contractors and subcontractors must provide their employees with information, instruction and training on anything which may affect their health and safety. HSE's free leaflet 'five steps to information, instruction and training' sets out what you need to do. All parties need to consider what information should be passed between them and agree appropriate ways to make sure this is done. They need to exchange clear information about the risks arising from their operations, including relevant safety rules and procedures, and procedures for dealing with emergencies. This exchange of information should include details of any risks that other parties could not reasonably be expected to know about. The information must be specific to the work. In other words, you must talk to one another.

Key message:

Provide information

A client was prosecuted for failing to provide information to a contractor working on ceiling tiles in an occupied tower block. Unknown to the contractor, the ceiling tiles contained asbestos and were removed in an uncontrolled manner placing the contractor and occupants at risk. The client was found guilty and fined £35,000 plus costs.

The instruction and training provided by the client, the contractor and the subcontractor needs to take account of the risks from their own and each other's work.

Co-operation and co-ordination

In any client/contractor relationship, there must be co-operation and co-ordination between all the parties involved, to ensure the health and safety of all at the workplace and anyone else likely to be affected. The client should set up liaison arrangements with all parties. This could take the form of regular meetings or briefings. Liaison is particularly important where variations of the work are proposed or where more than one contractor or subcontractor is engaged.

Consulting the workforce

Clients, contractors and subcontractors must consult their employees on health and safety matters. Where there are recognised trade unions, consultation should be through safety representatives appointed by the unions. Trade unions have an important role to play and can provide expertise to help in the area of health and safety. Where there is no recognised trade union, different arrangements will have to be made, eg through representatives elected by their employees. However, the workforce is represented, they should be part of the liaison arrangements set up by the client and should be involved from the outset.

Management and supervision

Clients must decide what they need to do to effectively manage and supervise the work of contractors. The more impact the contractor's work could have on the health and safety of anyone likely to be affected, the greater the management and supervisory responsibilities of the client. Clients will also have greater management and supervisory responsibilities where they know more about the health and safety implications of the contracted work than the contractor. In all circumstances, clients need sufficient knowledge and expertise to manage and supervise the contracted work. It is essential that the nature of the controls exercised by the client is agreed before work starts. An important part of this is the arrangements for the selection and control of any subcontractors.

Clients may need to agree with the contractor how the work will be done and the precautions that will be taken. Again, the extent of the client's responsibilities will be determined by the impact that the contractor's work could have on anyone likely to be affected. Relevant issues include:

- What equipment should or should not be worked on/used
- Personal protective equipment to be used and who will provide it
- Working procedures, including any permits-to-work
- The number of people needed to do the job

- Reporting of accidents and safekeeping of records and plans

Clients, contractors and subcontractors should monitor their health and safety performance. This means checking whether the risk assessment is up to date and that control measures are working. The level of monitoring depends on the risks - the greater the risks, the greater the monitoring. Clients should make periodic checks on the contractor's performance to see if the work is being done as agreed. Contractors and subcontractors should carry out day-to-day checks to see that what should be done is being done. Some work-related accidents, diseases and dangerous occurrences have to be reported to the enforcing authorities. It is good practice to investigate all injuries, cases of work related ill health and 'near misses' to find out what went wrong and why they were not prevented. Clients, contractors and subcontractors should share the lessons learnt from monitoring and investigations with each other and with the whole workforce.

Where health and safety requirements are not being met, the first step is for the client and the contractor to find out why and put matters right. If health and safety performance is not brought up to requirements, the client will need to stop the contractor working on the job until requirements can be met. Both the client and the contractor should review the work after completion to see if performance could be improved in future.

Key message:

Manage and supervise

A client failed to supervise a contractor working under their control and failed to ensure that they were competent. The client also failed to control access to their substations and to issue clear instructions. Low voltage open fuse boards were inadequately shrouded and there was no formal written system for control of minor contracts. The combination of these failings resulted in an apprentice electrician being severely injured. The client was found guilty and fined £50,000 plus costs. The contractor failed to adequately control the installation of two ceiling fans in the substations and was found guilty and fined £30,000 plus costs. The experienced electrician who was supervising the activities of the apprentice electrician failed to take simple steps to prevent contact with live equipment and was found guilty and fined £1,000 plus costs.

Health and Safety Law

The Health and Safety at Work etc Act 1974 and Construction (Design and Management) Regulations 2007 (CDM) are of particular importance in any client/contractor relationship. These Regulations set out requirements for a health and safety management system in all workplaces and

the accompanying Approved Code of Practice (ACoP) gives advice on compliance. Clients and contractors have legal responsibilities under health and safety regulations dealing with specific hazards (eg the Control of Substances Hazardous to Health Regulations 2002, the Control of Lead at Work Regulations 2002 and the Control of Asbestos at Work Regulations 2012).

References

Five steps to risk assessment INDG163 (HSE)
Five steps to information, instruction and training IND9G0213 (L) HSE
Control of Substances Hazardous to Health Regulations 2002
Control of Lead at Work Regulations 2002
Control of Asbestos at Work Regulations 2012
Construction (Design and Management) Regulations 2007
Stating your business: guidance on preparing a health & safety policy document for small firms (HSE)
Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (HSE)
Health and safety training: what you need to know (HSE)
Managing contractors: a guide for employers
Working together: guidance on health & safety for contractors and suppliers

Acknowledgement: This information has been reviewed and updated by Jim Slater (CDM-C and Health & Safety Advisor)
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