

BOGUS SELF-EMPLOYMENT



BOGUS



**THE HARM IT DOES
AND HOW TO FIX IT**

Bogus self-employment:

the harm it does and how to fix it

SUMMARY

- ***Bogus self-employment*** is a threat to workers' terms, conditions, and rights
- ***Bogus self-employment*** is a threat to Trade Union Organisation and bargaining in the industry
- ***Bogus self-employment*** is growing in all parts of the economy – but it is at its worst in construction
- ***Bogus self-employment*** is not just an Irish problem – it is an international one
- ***Bogus self-employment*** is caused by employers who want to:
 - Drive down pay costs
 - Shift risk on to workers
 - Degrade regulation of the industry
 - Undermine workers' rights
 - Undermine workers' unions
 - *Bogus self-employment* leads to Tax & PRSI losses that harm all workers
- ***Bogus self-employment*** can be fought by:
 - Trade Union organising
 - Trade Union action for changes to the law
 - Trade Union action for a Workers Charter to make the employers use direct employment in the industry

Foreword

Colleagues,

I am pleased to introduce to you the updated version of Connect Trade Unions booklet on Bogus Self Employment. This booklet is designed to inform our members, officials, branches, Shop Stewards and the general public on this unfair practice which is designed to undermine worker job security and keep them in a constant state of fear and uncertainty. Bogus Self Employment and other forms of precarious work are part of a strategy by certain unscrupulous employers to stop workers from seeking a just return for their labour. It also undermines public services in the form of revenue forgone through tax and PRSI which is adding to the housing/homelessness and health crises.

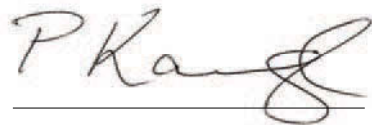
During the last recession many workers including Connect Trade Union members found themselves being forced into various form of precarious employment on a take it or leave it basis and foremost amongst this was Bogus Self Employment. Despite the upturn in the economy pre-covid, precarious work and in particular Bogus Self Employment continues to be enforced by some employers across all sectors of the economy including the public sector and only recently following an investigation by the Scope section of the department of Social Protection (requested by workers) found that over 60% of workers employed by RTE as contractors between 2015 and 2018 were actually employees. If this can be allowed happen by a state funded employer imagine what it is like in the private sector.

As the Irish economy now faces a cost of living crisis, precarious work especially Bogus Self Employment which is designed to undermine workers and drive down their wages and standards of living should not be tolerated and indeed should be fought against at every opportunity by workers, trade unions and likeminded organisations. The state should



be leading the charge but unfortunately through either indifference or ideology they seem to be turning a blind eye. A recent submission to the Oireachtas by Senator Marie Sherlock of the Labour Party for their "Bogus Self Employment Bill estimates that the cost to the exchequer annually as a result of Bogus Self Employment is around 1 billion euro. Imagine how many hospital beds, childcare places, or social houses/apartments could be provided each year should this money be made available. In addition, our research has shown that Bogus Self Employment disproportionally effects younger workers who are already feeling the worst impacts of the cost-of-living crisis by way of lower pay and less secure work resulting in huge difficulty in securing loans and mortgages thus further adding to the housing/homelessness crisis.

Connect Trade Union hope this booklet and the continuing campaign against precarious work and in particular Bogus Self Employment will result not only a great increase in site inspectors as demanded by the Public Accounts Committee but a change of heart and policy by the government that instead of ignoring Bogus Self Employment they would actively legislate against it's continued use by unscrupulous employers. WORKERS AND ESPECIALLY YOUNGER WORKERS DESERVE BETTER.

A handwritten signature in dark ink, appearing to read 'P Kavanagh', written over a horizontal line.

PADDY KAVANAGH

General Secretary, Connect Trade Union

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Five Good Reasons to support direct employment – and to outlaw bogus self-employment

1. Public Revenue

Evidence to the Oireachtas Committee on Employment Affairs and Social Protection points to losses to the state in unpaid tax and PSRI of €1 Billion a year through bogus self-employment. **Bogus self-employment robs the taxpayers: direct employment supports them.**

2. Labour Supply & Security

The 2018 report also noted that 'In addition to impacting Exchequer receipts the use of self-employment arrangements inevitably distorts the transparent and efficient operation of the labour market. **Bogus self-employment erodes efficient labour markets: direct employment supports them.**

3. Skill Shortages

Successful housing policy depends on an adequate supply of skilled labour, able to adapt to new methods and respond to demand. **Bogus self-employment undermines skill formation: direct employment supports it.**

4. Job Quality and Social Protection

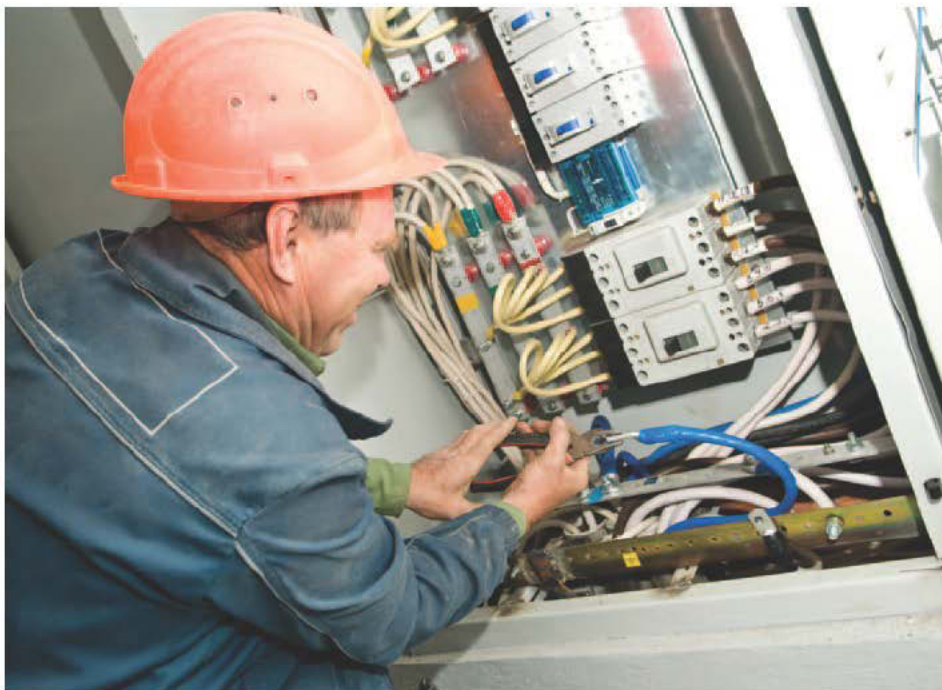
The workers who must deliver Government housing policy need to be well trained, well paid, to be in secure employment in attractive, quality jobs, with access to social welfare and legal protection. **Bogus self-employment destroys job quality: direct employment supports it.**

5. Effective Regulation

The implementation of an ambitious housing policy demands effective regulation for the industry and employees. **Bogus self-employment disrupts regulation: direct employment supports it.**

Bogus self-employment rests on deceit, coercion, and a lack of regulatory willpower in the State.

In this pamphlet CONNECT explains Bogus Self-Employment, explains the damage that it does, and makes the case for radical changes based on a Workers' Charter for Construction



Introduction

The construction industry has been plagued for years by jibes about ‘cowboys’ and tax evasion – and that’s not just make believe. To the public, men in hard hats and high-vis jackets are all building workers – who may or not pay their taxes. But those working in the industry know the picture is much more muddled than that.

Some things are normal in construction that would not be seen as normal elsewhere. Construction workers change jobs, of course, but they may also change employers. Then again, sometimes they change jobs, but stop being employees. One day an employed worker, the next a sub-contractor.

But what *kind* of sub-contractor? Construction has always run on sub-contracting. But over recent years an old sore has reappeared. What was once notorious as ‘the lump’ has come back as bogus self-employment.

This bogus self-employment is a threat to all construction workers. It undermines pay and conditions. It undermines workers’ rights and security. It gives the whip hand to the most unscrupulous employers. It undermines union organisation and negotiating power. It takes all the risks that are common in the industry and off-loads them on to the shoulders of the workers. It also smears the many real self-employed in construction.

WHAT’S DIFFERENT ABOUT CONSTRUCTION?

Most workers, you know, in their career, they would have 7 or 8 jobs. Building workers would have that in a year.
*Union official**

*So, how do we tell
the real thing from the fraud?*

Real self-employment

CONNECT is strongly opposed to all forms of bogus self-employment. But the union has no quarrel at all with the genuine self-employed, many of whom are union members. Self-employment in construction includes small businesses with a few employees. It includes independent craft workers who may employ others sometimes. Such craft workers may specialise in small build and maintenance work. They may also be sub-contractors on larger sites. In fact, they may be all of these things at one time or another – and employed workers too, when times are rough.

Such people work on their own account – they really are their ‘own boss’. The law recognises this. The Revenue includes these points in its guide on self-employment. Someone is self-employed *if, among other things he or she:*

Has control over what is done, how it is done, when and where it is done and whether he or she does it personally. Is free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken.¹

Labour lawyers call this the *independence test*. So shouldn't it be simple to tell the real thing from the fraud?

Well, no.

Lawyers, Revenue officials, officials of the Welfare Office and the Workplace Relations Commission have grown grey trying to pin down a workable definition from their own points of view. The Revenue Commissioners lists 19 factors to help say if someone is employed – and another 19 for the self-employed!

***For CONNECT the question
is more straightforward.***

Bogus self-employment

Bogus self-employment can be found mostly in the use of labour-only subcontracting. Labour-only subcontracting can be legitimate. Think of a software consultant, for example.

But a worker, with only the normal tools of the trade, who doesn't hire or manage other workers, and who works where, when and how their boss tells them, should always be counted as an *employee*.

But, workers like this *can be* engaged properly as a subcontractor. Then they can be treated as *self-employed* for purposes of workers' rights, tax and PRSI.

Worse, they can be treated as labour-only subcontractors, or as sole traders – in effect as companies in their own right.

Workers like these can be taken on or laid off with no notice. They can be laid off for bad weather or materials shortages. They are not covered by the National Minimum Wage (important for the low skilled), or by National Collective Employment Agreements. They have no rights to holidays or holiday pay, occupational pension schemes or other normal benefits of employment.

This is true too of so-called 'posted workers' – those working in Ireland but *employed in another state*, from the North of Ireland, or Romania for example. Under EU law these can be paid according to rates *in their home country*, (unless covered by an existing Sectoral Employment Order) undermining national rates. A German study has shown this has had widespread effects in the EU as low wage countries have seen construction as an 'export opportunity'.²

WORKING FOR A SUBBIE

In the past you would get the hourly rate ... If it rained, the builder would keep you there ... they would get work out of you. I mean if you are working for a subbie, you have 6 men there, a machine breaks down at 10 o'clock – 'You have to go home lads, there's nothing for you today'.
*A Bricklayer**

At the same time, they have no control of costs, materials or work methods. They cannot make a profit from being responsible for their own efficiency. They do not make any *true profit* in fact. They get an agreed payment based on attendance and performance managed by a boss – just like employed workers.

*So, all the risks of self-employment –
but none of the benefits.*

How it looks in construction

The construction industry may have been tailor made for such abuses. Construction has always featured some sub-contracting. But the industry has been changing, and so has the way sub-contracting works.

Self-employment in the Irish construction industry has been growing, but the type of self-employment has also been changing. Official figures count the self-employed as those *with* paid employees – and those *without*. Self-employment peaked at about 38% of all construction employment around 2010, but the use of the self-employed *with no paid employees* as a proportion of all self-employed grew rapidly in the slump – to about 75%.

Just look at the top line in the chart!

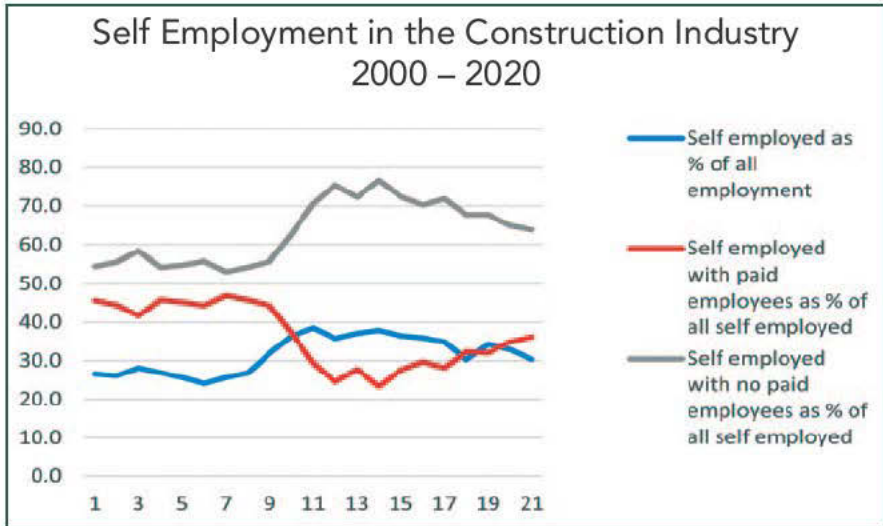
The vast majority in both cases are manual – mostly craft – workers.

THE PRICE OF GROWING SUB- CONTRACTING

They price a job, say, for instance, a 2 million job, on the basis that the job should have been priced at 2.5 million.

And they've won that call on the basis that they are burning all the subcontractors down the way, for the 500 grand. And that's how they make it up.
*Union official**

At the same time the '*sub-contracting chain*' has been growing longer. Large building firms are turning into project management companies that rarely carry employees from job to job. Now the company with its name on the hoardings – may not employ *anybody* directly. The main sub-contractor, likewise, sub-contracts more and more.



Based on QNHS Detailed Employment Series / ESQ04 / accessed September 2021

This can work in several ways. There are sub-contractors who specialise in supplying unskilled labour. In much the same way, many unskilled workers are supplied by Agency companies. At the same time sub-contractors looking for craftsmen try to cut costs by using labour only sub-contracting. Again, craftsmen working as labour only sub-contractors with no employees may hire in other craft workers or labourers if they are getting behind on the job.

All this leads to a sort of competition, but competition based on *exploitation* and not on *efficiency* thus perpetuating Bogus Self Employment.

So, workers get jobs - but *low-quality jobs*. Bogus self-employment “is associated with higher levels of risk, insecurity and long or irregular working hours for workers”, and undermines their well-being.³

Earnings & younger workers

Growth in bogus self-employment also puts downward pressure on wages across the sector, filtering into the conditions of regular/typical/traditional 'employees'.

Recent data from the Structure of Earnings Survey (2018)) shows hourly earnings for Craft and Trades employees are the most unequally distributed of any high-income EU country in Ireland (out of 11). Similarly, earnings for Plant and machine operators are second most unequally distributed. This is driven by an intergenerational earnings gap that has widened more for both of these groups of workers than in any in other high-income EU country (except Belgium) over the past 15 years. The gap between younger and older workers in these categories actually narrowed in most of these countries during the same period. The gap between the earnings of Craft and trades workers under 30 and older ones is now the widest in Ireland of this group and the median hourly rate for young workers is second lowest (behind Italy), adjusted for living costs. The gap between younger and older plant and machine operatives is now second widest, though this relationship was more equal than the EU average before the financial crisis.

This is almost certainly affecting recruitment in the sector and how young people perceive Construction in terms of offering a viable and secure career and their ability to begin a family and secure a mortgage.

<https://www.nerinstitute.net/sites/default/files/research/2021/NERI%20Report%20Series%20no%207%20Hourly%20Earnings%20Inequality%20June%2021.pdf>

https://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=earn_ses_hourly&lang=en

While the full report is available in the links provided, this chart in particular shows the growing gap in pay for older workers and new younger workers in Ireland. The gap in pay is in line with the growth of precarious work especially bogus self-employment and it is no doubt having a particular impact on the earnings capability of younger workers.

Connect Trade Union from conversations with its members along with information garnered from other unions is showing that precarious work

Intergenerational Earnings Inequality

Table 22 shows a simple ratio between average earnings in the labour market (excluding micro enterprises) and the average earnings of workers under 30. The average hourly rate a worker under 30 earns is 68 percent of the wider average. This is the second lowest ratio out of 11, behind the Netherlands (0.63). Other than Belgium, no other high-income EU country has recorded the same level of decline in the average wages of young workers relative to their older counterparts as recorded in Ireland between 2006 and 2018.

Once controlled for full-time workers, the difference increases again and Ireland's ranking falls to joint last out of 11 with the Netherlands (Table 23). A full-time worker under 30 in Ireland in 2018 earned 65 percent of the average hourly rate of all age groups in the economy. In 2006, it was 72 percent. The drop between 2006 and 2018 was largest for Ireland out of the sample (7 percentage points) though Belgium also experienced a similar rise in intergenerational earnings inequality over the same period. Germany is the only country where this intergenerational gap in average hourly earnings narrowed between 2006 and 2018 to any notable degree, from 60 to 66 percent.

Table 22 Intergenerational Hourly Earnings Inequality, 2006- 2018, (under 30 average/average)

	2006	2010	2014	2018
EU-28	0.73	0.72	0.73	0.76
EU-19	-	0.69	0.71	0.72
Belgium	0.79	0.76	0.75	0.74
Denmark	0.76	0.74	0.72	0.74
Germany	0.63	0.63	0.67	0.69
Ireland	0.73	0.68	0.76	0.68
France	0.74	0.72	0.73	0.74
Italy	0.69	0.68	0.68	0.70
Netherlands	0.64	0.65	0.63	0.63
Austria	0.72	0.71	0.71	0.72
Finland	0.82	0.79	0.78	0.78
Sweden	0.81	0.80	0.80	0.80
UK	0.72	0.69	0.71	0.73

Industry, construction and services (except public administration, defense, compulsory social security)

Note: Estimates are for firms with 10 or more employees (about 70 percent of Irish employment)

and in particular bogus self-employment are impacting younger workers ability to obtain mortgages and loans which is contributing to the housing crisis.

In addition, as a result of this reduced capacity to earn younger workers are forgoing other important safety nets such as health insurance which then puts a greater load on the state health service and this is without taking in to account the €1 billion lost to state services through bogus self-employment as mention elsewhere in this booklet.

This unfair treatment of younger workers and the race to the bottom has to end.

Not just an Irish problem

These problems are not just a result of the 'tiger boom' and later bust in construction in Ireland.

Ireland follows the UK in some ways, and the 'lump' and bogus self-employment are well entrenched over there.

In 2008 a study commissioned by the construction union UCATT, now merged with Connect, estimated that more than 30% of the self-employed were bogus.

A study by the ILO (International Labour Organisation) documents the degree of casual and bogus self-employment in developing countries. *But it also traces the growth of sub-contracting in Europe and the USA.*⁴

A similar report on bogus self-employment in the industry in 11 European countries shows a growth of self-employment arising in a large degree from deregulation and labour migration. In Germany 50% of construction jobs are estimated to be in the 'black economy'. A similar story is told for Spain, France and the UK. *In Ireland, ten years ago, over 17% of the self-employed were estimated as bogus.*⁵

Now, bogus self-employed has spread to so-called 'Platform Jobs'– such as Uber, Just Eat and couriers.



Why is this happening?

For the last forty years or so powerful forces have been reshaping employment. The big economic crisis in the early 1980s started it off. The crash of 2008 has driven it on. Employers in search of profit have used the weakness of trade unions and labour and socialist parties to unpick the gains that workers made in the long boom of the post-war years.

The effects have been uneven of course. There are many good jobs where workers are secure and well represented and have an effective voice. But there are growing areas where work is not like that anymore. And it's not just in construction.

There has always been casual work. There has always been seasonal work. The bad side of these jobs came to be controlled (more or less) by trade union organisation and the law. But these protections are weaker than they were, and too many employers are ready to take advantage. And governments and political parties have largely helped them to do so.

YOU COULD MAKE A LIST

- Outsourcing - Temporary contracts - Zero-hours contracts
- Globalisation bringing foot-loose multinational companies
- Off-shoring of services and - Exploited migrant labour.

Both here and in Europe employers, governments and most political parties have signed up to the idea that *free markets* produce the most prosperous economies. This means that governments should encourage this through public policy and privatisation (which is where the bin bills come from). These policies are often described as *neo-liberalism*, and are also the basis of what some call *austerity*.

Neo-liberal policies also mean that employers should be able to resist 'interference' from trade unions. The 'Troika' of the EU, the European Central Bank and the IMF made 'reform' of employment regulation part of the price for the 'bail out' of Ireland (*meaning the banks*) during the recession.

Employers piled on legal pressure by wreaking attacks on the Registered Employment Agreements in construction and Employment Regulation Orders, getting the courts to declare them unconstitutional.

Even after new laws setting up replacement Sectoral

Even after new laws setting up replacement Sectoral Employment Orders (SEOs) were introduced in 2019 the Electrical Contractors Association went to court to have them ruled unconstitutional. Only in June 2021 did the courts re-affirm the Orders' constitutional status – and employers finally acknowledged them as binding.⁶

For too many workers work has become precarious – insecure, irregular, and lacking basic protections. In a report on employment practices in Ireland today *An Tasc* calls this '*enforced flexibility*', and they track it in the hospitality, construction, finance and IT industries.⁷ Even RTE has not been immune. Complaints of bogus self-employment led RTE to commission an external review that identified over 150 'free-lance' contracts as being potentially bogus – and over 80 such staff were offered permanent posts.⁸

It is hardly surprising that construction fits so well into these developments.

WELFARE FOR THE BOSSSES

Sources in the industry ... report that many ... workers on Dublin construction sites are brought in ... from Northern Ireland and are able to pay low wages because these workers are also receiving unemployment benefits in Northern Ireland.

Equally, it is claimed that the *Back to Work Scheme* now functions as a wage subsidy – several ... stated that they could only afford to work at the going rates because of the Scheme. *

There is a formula at work.

***Weaker unions + less regulation +
irresponsible employers =
disposable & exploited workers.***

Workers lose: themselves, their union and their class

The victims of bogus self-employment are the workers in the industry – whatever their employment status. And the effects are wider than those felt by individuals.

INDIVIDUAL WORKERS ARE THE VICTIMS OF THIS PROCESS

Bogus self-employment undermines directly employed workers *and* the legitimate self-employed.

With very extended subcontracting chains employers can pay different rates on the same sites for the same jobs. One worker explained it like this:

One fella could be on 12 euro per hour and the other on 16 euro. So that keeps everybody quiet. Divide and conquer as they say. Nobody will open their mouth if they are on different money.⁹

By the use of subcontracting and agencies employers can make negotiated terms and conditions impossible to enforce. This effects the pay of *all* construction workers.

It also undermines the *future* of the industry and its craft employment by starving it of apprenticeships and other training. Employers prefer to poach or import skilled labour to training themselves. Extended subcontracting and bogus self-employment lets employers disguise their own contribution to damaging the industry by hiding behind supposed ‘competition’.

In April 2021 a joint report by the Chartered Institute of Building and An TASC found that bogus self-employment added to problems of bullying and health and safety, while also acting as a barrier to the growth of skills training, apprenticeships and stable employment.¹⁰

The combined effect of these practices is increasing inequality in pay, and falling regulation of Health & Safety.

PAY PROBLEMS

Analysis of EU earnings data by the Nevin Economic Research Institute (NERI) shows that pay in Ireland is more unequal than any other high-income European country.

Importantly, in construction, pay for Craft & Related Trades is the most unequal -and pay for plant & machine operatives comes second.

Worse, pay inequality is worst – and getting worse still – among workers under 30. ¹¹

Sharpening inequality in pay is closely related to extended fragmentation and sub-contractor chains. The scramble for a share of available profits hits the bogus self-employed first, but then depresses pay for the genuinely self-employed and the directly employed. Unfair treatment and competition drive down standards for all.

HEALTH & SAFETY PROBLEMS

Growing inequality and unfairness are reflected in health & safety problems.

Construction has always been a dangerous industry. Indeed, in 2021 the Accessed March Health & Safety Authority (HAS), prioritised it as ‘a key sector for action to reduce the disproportionately high rates of fatalities, non-fatal injuries and illnesses’.¹²

But on-site safety rests on regulation and enforcement. And that means accurate reporting of accidents. But statistics show that while about a quarter of craft workers in the sector are self-employed these accounted for just over 7% of reported accidents.

Inhabitants of cloud cuckoo land may tell you this means that the self-employed are construction’s safety stars. Sensible people will tell you that bogus self-employment is a major explanation.

The HSA’s Construction Safety Action plan has six main aims – among them improving safety consultation, worker engagement and safety representatives. Bogus self-employment makes this much harder than it needs to be.

The HSA has noted that ‘the number of construction related fatalities have risen in last three years, rising from five in 2018, to twelve in, 2019 to sixteen in 2020’.

There is also reason to believe that Bogus Self-Employment is impacting accident reporting on sites as precarious workers are less likely to report accidents and incidents

▲Year	No. of Fatalities
2016	11
2017	5
2018	5
2019	12
2020	16
Total	49

Figure 1 - Construction related fatalities - 2016 to 2020

Accidents at work by NACE Rev. 2 activity and size of enterprise								
	2008	2010	2012	2013	2014	2017	2018	2019
Construction	3180	2480	1408	942	1282	1881	2393	1614
[hsw_n2_05]								

As we can see from the HSA data the share of workers in self-employment in Craft and related trades is 24.4% with self-employed own account workers making up the majority and 17.4% of total (reported) employment in this category. At the same time the share of accidents reported by this group is much lower than the share of employment. As we see no reason that these workers would be less likely to be in a work place accident, we must assume that this is due to issues around sick pay related to self-employment but most importantly bogus self-employment in that this category of worker is less likely to report an accident.

WORKERS' UNIONS ARE VICTIMS OF THIS PROCESS

Workers don't just lose out as individuals. Bogus self-employment undermines trade union membership and bargaining in the industry. In the long term that puts workers at the mercy of employers.

Union membership in an industry is usually measured by something called *density*. This means the percentage of workers that *could be* in the union that *are in* the union. *An Tasc* tells us that in construction '*density has declined by 7% between 2008 to 2015; amongst craft workers the decline was 8% for the same period*'¹³. Density measures are not affected by the huge decline of employment after the crash: with a much smaller workforce the industry is showing the effects of bogus self-employment. In addition, maintaining union density is crucial for maintaining sectoral employment orders, which secure pay and conditions for workers.

When the State loses out on revenue the working class is the victim

When unions lose out the working class as a whole loses out. Bogus self-employment leads to widespread avoidance of tax and PRSI payments. These taxes and charges due to the State pay for our schools, hospitals and welfare protections. *Governments* may worry about loss of revenue. **Connect** worries about the *impact on public service provision*.

Principal Contractors and self-employed workers' taxation is regulated through the RCT1 system. According to answers given in the Dail in 2015:

'there are 34,000 subcontractors in the construction sector that are active in the RCT1 system ... [about] 81% (of these are) operating as sole traders or self-employed.'

The ICTU concludes that these figures indicate a huge volume of bogus self-employment. It is unbelievable that there are 27,600 'sole traders' operating in the industry. The loss to the State in PRSI payments alone – including the loss of *employers'* contributions – could be as high as €80 million a year.¹⁴

Everyone acknowledges that making these PRSI estimates is difficult, but the problem with tax is much bigger. *An Tasc* says that tax losses arising from bogus self-employment are very hard to quantify, but add that 'The RCT on-line system also leads to losses of tax income *and appears to facilitate actual evasion*'.¹⁵ The ICTU has also criticised the apparent unwillingness of the state to tackle the tax problem.¹⁶

It goes on! In October 2019 the Oireachtas Committee on Employment Affairs and Social Protection was told that bogus self-employment could be costing the Revenue €1 Billion a year in lost taxes and PRSI.¹⁷⁸

***That's €1 Billion not going into solving
the housing crisis, or building hospitals or schools.***

Are the bogus self-employed to blame?

Ireland used to pride itself as the 'land of saints and scholars' - now it seems to be the 'land of entrepreneurs and start-ups'.

So is **Connect** barking up the wrong tree? Is the growth in self-employment simply the *choices* made by increasingly entrepreneurial bricklayers, plasterers and electricians?

No, it is not.

It must be acknowledged that some workers may accept bogus self-employment because it can – in the short term – mean lower tax bills (although, in the longer term it reduces holiday and sick pay – and even pensions).

But the scandal of bogus self-employment is the way employers force workers down this road, and the way this is facilitated by the state employers Michelle O'Sullivan tells us, are incentivised ... because it reduces their obligations to those workers under legal, tax and social welfare systems. Classifying workers as self-employed also offers organisations greater labour flexibility as such workers'.¹⁸ The rewards for employers are large: 'this results in labour cost savings of up to 30% for the employer and a loss to the PRSI-based Social Insurance Fund, as well as creating a significant competitive advantage over "compliant" companies'.¹⁹

This happens in two main ways. The first is the use of simple economic power. If workers want work they will only get it on the employers' terms, so finding direct employment gets harder and harder.

The second way is management manipulation. Under the present system workers can be taken on and designated as self-employed *without even being told by the employer*.

The *An Tasc* report tells this story about a craft-trained bricklayer re-entering the industry after the crash:

'Sean did his bricklaying apprenticeship after leaving school in Dublin. His father was a bricklayer and Sean always intended to follow him into the trade. After his apprenticeship he worked almost continuously until 2008.

In the crisis he had various odd jobs, and then was taken on by a large company. After working for two weeks he was told that the money paid into his account was not his wages but the fee to be shared with several other bricklayers. This led to a dispute and a lockout.

Sean is now working again on the RCT. He used to love bricklaying but now 'it's a nightmare' and the trade has been destroyed. He is studying part-time to start another career'.²⁰

Workers can – and do – challenge their employment status, insisting that they are *really employees*, not self-employed. Workers can do this

by asking the 'Scope' Section of the Department of Social Protection to declare their status as employed rather than self-employed, or by collective action.

But both the Revenue and the Department of Social Affairs have been widely accused of abusing 'Scope' decisions to the advantage of employers.

In his evidence to the Oireachtas Committee on Employment Affairs and Social protection Direct Employment campaigner Mr McMahon argued that the Comptroller General justified special tax arrangements for the Courier sector as 'administratively efficient in collecting tax from a sector which traditionally has been recalcitrant when it comes to paying tax'. He also criticised the SWAO procedures, saying it together with the Department of Employment Affairs and Social Protection were the biggest creator of bogus self-employment in the state.²¹

No, The blame for bogus self-employment lies principally with the employers. Not all of the employers, not all of the time, not in every respect. But principally with the employers.

MARTIN MACMAHON GIVES EVIDENCE AT THE OIREACHTAS COMMITTEE

He said that when he queried the courier's special arrangement with the Comptroller and Auditor General in 2002, asking why courier companies were allowed to evade their tax and PRSI obligations, the CAG replied: "The arrangement employed is administratively efficient in collecting tax from a sector which traditionally has been recalcitrant when it comes to paying tax."

He went on to tell the Committee: "Workers don't get a choice to be 'recalcitrant' when it comes to paying tax."

***The rise in bogus self-employment
is not a result of worker 'choice'.***

***It is the result of bad
employment practice and slack regulation.***

Are employers and the State doing nothing then?

‘Nothing’ would be putting it a bit strongly. ‘Enough’ would be far too generous.

In 2018 an article in the Journal reported that the Construction Industry Federation ‘did acknowledge a reluctance in contractors to directly employ workers and said the government needs to make this more attractive’. However, claims by CONNECT that Bogus Self-employment is a ‘scourge’ on the industry were dismissed as ‘a gross exaggeration’.²² So – not our fault, pass the parcel to the government.

In 2021 the government issued a revised code of practice on employment status. Minister Humphreys said ‘We all want to ensure that workers’ rights and entitlements are protected and in particular that workers are not incorrectly, or falsely, classified as self-employed’.²³

But the Code has been strongly criticised by the ICTU as inadequate. There is nothing in it to make direct employment ‘more attractive to employers’. There is to be no legislative clarification on definitions of contracts. Appeal processes for workers claiming mis-classification remain civil matters, long winded, obscure and difficult.

But the debate is gaining traction – here and in Europe.

- The Labour Party has introduced a Private Members Bill on the protection of ‘platform workers
- Sinn Fein have introduced a Private Members Bill to control bogus self employment
- The EU Commission is preparing a Draft Directive on ‘Platform workers and the Gig economy’.

Small beginnings maybe, but employers and the government are on notice that CONNECT will not give up on this struggle!

The damage done

Before we look at solutions to these problems we should sum up the damage done by bogus self-employment.

■ **Bosses win – well, some of them!**

Bogus self-employment is cost driven. Employers shift the costs and risks of employment downstream. Workers themselves are the principal victims. But the dominant firms exploit the smaller firms too. So big firms chew on small firms – and small firms chew on workers.

■ **An industry in fragments**

The growth of bogus self-employment mirrors the growth in the sub-contracting chain. As the industry fragments it can become less, not more efficient. It loses the incentives for investment and training. It learns to despise the workers that make it work.

■ **Pay & conditions**

Bogus self-employment does not enrich workers. It robs them. It robs the legitimate self-employed, it robs the directly employed, and it robs the bogus self-employed too. It puts downward pressure on rates and undermines agreements.

■ **Workers' rights**

A whole range of workers legal and social rights are undermined by bogus self-employment. The bogus self-employed lose the legal protections available to employed workers: in engagement, discipline and dismissal and others. They effectively lose the right to a voice and representation at work.

■ When the State loses the workers lose

There is some doubt about the *extent* to which bogus self-employment costs the state in lost tax and PRSI revenue. But there is *no doubt* that the State *does lose*. These losses are borne by the people in general, and workers in particular, through lost opportunities to support public services.

■ Welfare for the bosses

By shifting the responsibility for PRSI payments, and by encouraging bogus self-employment (with all its welfare implications) the State ends up *subsidising* poor pay and conditions – a kind of ‘welfare support payment’ for the employers.



What is to be done?

Bogus self-employment is a curse. It causes harm in many ways. Its abuses must be fought – and **Connect** is determined to fight them.

The union will fight them on many fronts. It will *organise* workers to resist the impact and spread of bogus self-employment. It will *campaign* for public recognition of the problem. It will address the *political* and legal issues that need to be changed.

Most of all, **Connect** will propose a progressive programme, a ‘Workers’ Charter’, for the industry.

GETTING ORGANISED

The **Connect** believes that all construction workers – whatever their contract status – benefit from high levels of trade union membership and organisation. The merger with the members of UCATT in the Republic has strengthened our influence, and support our cooperation with other unions in the industry.

The union will also work with our sister unions in other countries. We recognise the part played by regulation at the European level. We recognise the challenges arising from the exploitation of migrant and ‘posted’ workers. We welcome the initiative of the Building and Wood Workers’ International expressed in its 2010 report on fighting precarious work in the building and timber industries.²⁴

Any Connect member or worker who believes they are on a Bogus Self Employment contract, or is aware of this practice in their job or on their site should in the first instance contact their Branch, Regional Office or use the Confidential Construction help line to report the details.

Connect confidential Construction Helpline 01 871 9903

Email: construction@connectunion.ie

THE PUBLIC AND POLITICAL CAMPAIGNS

Connect has, and will continue to expose in public the damage done by bogus self-employment. Further, we will campaign in the Government and in the Dail over a range of legal and administrative changes to bring bogus self-employment under control. This includes action to reform and to enforce the tax and PRSI systems for the self-employed – to benefit the *genuine* self-employed and to *protect* the victims of bogus self-employment.

CONTROLLING THE BAD GUYS – ENCOURAGING THE GOOD GUYS

But changes and enforcement of tax rules is only a part of the action needed. Employers who abuse self-employment must face sanctions. The state, whether through national or local government, is the end financier of many construction and infrastructure projects.

The rules governing direct investment, so-called public private partnerships, and procurement and tendering rules are *political* decisions. In recent years the *neo-liberal* drift in public policy values supposedly ‘free’ markets over purposeful government action.

Instead, the State should act as the promoter of good employment practice. A Code of Practice in publicly financed works should be introduced which would mandate direct employment except in the case of independent contractors and the genuinely self-employed. No company should be able to bid for, or participate in any construction project financed, or partially financed by public funds, unless they:

- 1 Register as *bona fide* independent contractors with the state
- 2 Make a declaration, in respect of each contract, of compliance with a Code of Practice on direct employment and employment protection
- 3 Undertake to recognise appropriate trade unions for collective bargaining purposes

- 4 Undertake to respect the terms and conditions arising from National Collective Employment Agreements with trade unions, or those arising from Registered Employment Agreements and SEOs
- 5 Undertake to facilitate inspection by the relevant state agency or investigation by a recognised trade union in respect of these undertakings.

Companies breaching these undertakings, or otherwise found to be in breach of the individual or collective rights of workers shall be subject to suspension from the register (and thus be barred from undertaking any work for the state).

*The costs of ending
bogus self-employment
should be borne by the principal
beneficiaries of the practice
– the employers.*

A workers' charter:

REAL JOBS, REAL RIGHTS IN AN INDUSTRY SERVING ALL THE PEOPLE

Connect recognises that employment reform in construction is closely linked to the development of a modern, healthy and progressive industry.

Connect will work among its members, in cooperation with other unions, and with other interested civil society bodies and political parties to develop and campaign for a *Workers' Charter for Construction*.

THE CHARTER IS BASED ON THE FOLLOWING PROPOSITIONS:

1. An efficient and well-regulated construction industry is a corner stone of sustainable economic development in Ireland

2. That the needs of society for housing and infrastructure have not been, and never will be met by untrammelled markets and wholly private ownership

3. That the economic interests of the country are inseparable from the interests of workers to secure, properly paid, safe employment with trade union recognition and bargaining rights

4. That the state will support the re-establishment of an effective mechanism for collective bargaining in the industry with legally enforceable agreements applicable to all workers irrespective of employer or contract status

5. That the needs of society and the industry are best served by direct and responsible employment, and such provision is best fitted to support the interests of the genuinely self-employed and small businesses in the industry

6. Accordingly, the state will develop, initially in major centres such as Dublin, Direct Building Operations as publically owned companies empowered to compete for both public and private contracts

7. That the industry *as a whole* must be accounted responsible for its own sustainable development in cooperation with the public authorities and the trade unions through the provision and finance of apprentice and other training

8. **Connect** is calling for the creation of legislation to make the promotion and / or use of workers who are subject to Bogus Self Employment contracts a criminal offence which may involve being struck form the Directors Register, fines based on the loss of PAYE/PRSI revenue to the state for each worker, and / or imprisonment.

Appendix - Bogus Self-Employment:

HOW CONNECT EXPLAINS IT TO MEMBERS:

Joe is a qualified Plumber who worked directly with Big Time Plumbing Ltd for 10 years. Joe was recently made redundant and received his redundancy payment of 2 weeks per year (capped at 600) plus a bonus week. Out of work for over a month Joe starts to feel a little desperate and when he receives a call from his old boss he jumps at the chance to get back to work.

However Big Time Plumbing Ltd. has offered him work as long as he becomes “Self-employed”. Joe has never run a business before and doesn’t know what to do. His boss tells him all he needs to do is turn up for work as he did before and they’ll sort the rest out from there.

When Joe turns up for work he re-joins his old colleagues and takes the instructions as he did before. He fits pipe with his colleagues, he welds alongside his colleagues, takes the same tea breaks as his colleagues and in fact it’s just like old times. When pay day comes around Joe is asked to submit an invoice (just like his time sheet) and then he is paid. Only now he is paid differently to his colleagues who are still directly employed. He has no pay slip outlining the payments made for basic hours, overtime rates, travel time, pension and the deductions for tax and PRSI contributions.

*Joe is faced with several possible scenarios,
here are some by way of example:*

JOE RECEIVES A FLAT RATE AMOUNT

- 2(a) Unhappy with his lot he confronts Big Time Plumbing Ltd. and he is told that he can take it or leave it. Joe trundles on with the work until one day out of the blue he is told by Big Time Plumbing that “we no longer need your services” and “you are finished on site with immediate effect”.

- 2(a) Despite being a relatively fit young man, Joe becomes ill and is absent from work for a number of weeks. He tries to claim sick pay from his boss “Big Time Plumbing” but is told “sorry Joe but don’t you remember that you are self-employed, you have no entitlement to sick pay under the Construction Workers Pension Scheme (CWPS) as per the SEO, you have to be directly employed to receive that.” To make matters worse when Joe contacts the Dept of Social Protection for illness benefit he is informed as he hasn’t contributions like direct employees he is not entitled to benefits.
- 2(b) Joe’s health deteriorates and eventually proves fatal. His wife and children are left to pick up the pieces and they contact “Big Time Plumbing” to check on their entitlements and are horrified to discover that while directly employed plumbers in the industry are entitled to a Death In Service Benefit payment of €100,000* (plus an individual payment for every dependent under 18 years of age) they get nothing as Joe was Bogus Self Employed.

Note: *donates the payment of Death in Service Benefit from the Construction Workers Pension Scheme (CWPS) as prescribed within the National Collective Employment Agreement supported by the legally binding Sectoral Employment Agreement (SEO).

JOE GETS NO NOTICE AND NO REDUNDANCY PAYMENT

Unemployed again, Joe goes to sign on only to realise that he may not be entitled to Job Seekers allowance because he was not making PRSI contributions and neither were Big Time Plumbing Ltd. Sometime later Joe receives a letter from Revenue explaining that as he was “self-employed” he has a shortfall in his tax contributions for which he is now liable.

Joe asks himself the following questions:

Was I ever any different from my colleagues who were directly employed?

Answer: NO

Why are my entitlements less than my colleagues who were directly employed?

Answer: They shouldn’t be

If my boss told me when to start work, when to finish work, what work to do, when to take breaks and how much I was going to receive, then was I not really a direct employee? **Answer; YES**

If you can't put a price on a life, then why was Joe treated less than other workers on the same job?

Answer: Because Bogus Self Employment is wrong Employment is wrong and as a result both workers and their families lose out.

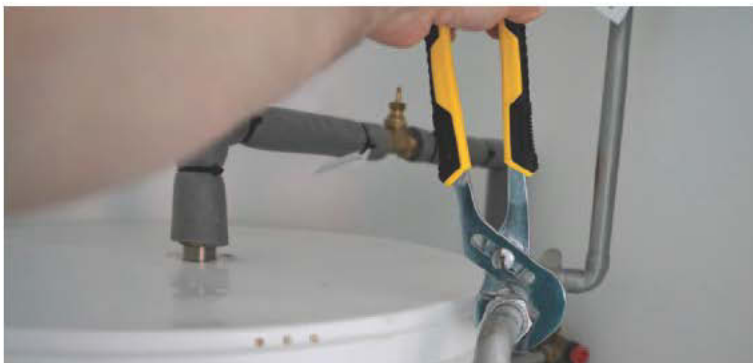
Because Joe was employed through an arrangement which was entirely bogus he may think he's getting near the going rate when in fact this is only because he may be paying less tax initially but **overall he lost out on his entitlements.**

SO HOW DO WE TACKLE BOGUS SELF-EMPLOYMENT AND RECRUITMENT AGENCIES?

Connect are coming after those Contractors who use these methods to undermine our agreements and if you have been unfortunate enough to get sucked into one of these jobs or you decided to take a job so that you can tackle the problem then you need to contact the Union today.

The first step is to contact the confidential hotline on 01 8719 903
Contact the Union today and let's protect our industry and our future.

For more information NOW go to **www.connectunion.ie**
a good link to the Ezine



NOTES

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BOGUS SELF-EMPLOYMENT

AFFECTS EVERY WORKER



**THE
CONFIDENTIAL
HOTLINE**

01-8719 903

**If you or someone you know is the victim of
Bogus Self-Employment please call the Union today.**