

**Open Government status:** Fully Open

**Paper Number:** M3/2009/1

**Exempt material:** None

**Meeting Date:** 17 November 2009

**Type of Paper:** Above the line

**File Reference:** 2009/423301

## **HEALTH AND SAFETY EXECUTIVE**

### **CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)**

#### **HSE's Local Authority Construction Engagement (LACE) Project – a Progress Report**

**A paper by: Mike Harrison**

**Cleared by Philip White, Chair of CONIAC, on 26 October 2009**

#### **Summary**

##### For information only

This paper provides CONIAC with an update on progress with HSE's Local Authority Construction Engagement (LACE) Project over the last 12 months. It concentrates on the areas of working with Environmental Health, Building Control and Highways, where there has been most activity and most to report.

#### **Issue**

1. This paper updates CONIAC on progress with HSE's Local Authority Construction Engagement (LACE) Project, since the report to CONIAC on LACE at the November 2008 Meeting.

#### **Timing**

2. Routine.

#### **Recommendation**

3. CONIAC Members are invited to note the LACE Project's progress to date and proposals for its future development.

#### **Background**

4. The LACE project forms part of HSE's Construction Programme and covers current and potential engagement with Local Authorities (LAs). CONIAC paper (M3/08/04) provided details of the rationale behind the project, including the opportunities it presented for improving construction health and safety. It also outlined the different work streams included in the scope of LACE. As well as the work of the LACE team itself, the Construction Programme for 2009/10 contains several elements of work for the HSE's Construction Division (CD) Teams.

5. Over the last year, the LACE Project Team has concentrated on working with Environmental Health, Building Control and Highways functions. Even by concentrating the efforts of the team in this way, the size of the task involved remains a challenge against a background of continuing reorganisation and changes of personnel within LAs, for example with the establishment of new Unitary Authorities from former District Councils.

### **The Current Position**

6. This paper is not intended to provide a comprehensive review of all the work carried out under the LACE project, but to identify some of the more significant areas of work on which progress has been made over the last 12 months.

### Better Integration of CDM with Planning and Building Control (BC) Regimes

7. The complete integration of the CDM, Planning and BC regimes is necessarily a complex and difficult undertaking and is therefore likely to remain a long-term goal. Over the last year we have continued to seize opportunities to influence the Planning and BC regimes and achieve "quick wins" where opportunities to do so exist.
8. On going liaison with CLG and arrangements for regular bilateral meetings with CLG's Sustainable Buildings Division are in place. One outcome of this contact is the inclusion of links to HSE's CDM guidance on both the Building Control and Planning sections of the CLG Planning Portal: the national website for Planning and Building Control information. Further opportunities to improve web links are under review.
9. A research project has been undertaken by John Carpenter, an external contractor, to review the scope for closer integration of construction health and safety, Building Regulation and Planning Enforcement regimes and make recommendations. This is now complete and will be published shortly. Completion of the research was delayed to enable the researcher to take account of the recommendations of the Secretary of State's Inquiry report into fatal accidents, chaired by Rita Donaghy. The Carpenter report's recommendations are being given detailed consideration. This will involve discussions with other relevant parties, such as CLG.

### Local Authority as a construction client

10. Little work on this aspect of LACE has taken place over the last 12 months. However, an important element of further work is to improve our understanding of current procurement practices in the public sector and the extent of awareness of (and compliance with) the client duties in CDM 2007, OGC guidance and the Common Minimum Standards amongst public sector procurers. HSE has commissioned some research following-up on the results of Research Report 556 "Health and Safety in public sector construction procurement". This is due to report early in 2010. Future HSE interventions will be informed by the findings of this research as will be the need to implement any action arising from

the Government's response (currently under consideration by DWP) to recommendation 7 of the Rita Donaghy report.

### Work with Environmental Health (EH)

11. One of the key areas of LA influence is their potential for driving forward improvements in construction health and safety standards through embedding and enforcing the Construction (Design and Management) Regulations 2007 (CDM 2007). To encourage EH participation in this work, CD bid successfully for inclusion of two specific construction-related projects for 2009/10. The aim of both projects is to involve EH more in influencing clients and designers to comply with their duties under CDM, where the completed premises, although not generally the construction phase work, will fall to them for enforcement under health and safety legislation.
12. The first project involves EH Officers identifying Planning Applications or Building Regulations submissions affecting workplaces such as retail, warehousing, consumer services and commercial premises for which they are the Enforcing Authority. EH Officers are then encouraged to write to the clients, advising them of their CDM duties and providing other specific, relevant health and safety information focussing on achieving compliance with the Workplace (Health, Safety and Welfare) Regulations 1992 in the completed workplace.
13. The second involves LA EH Officers "tracking back" to clients and designers where they find newly constructed or refurbished workplaces where there are significant health and safety problems that should have been eliminated by design. One example of this to date has involved LAs identifying concerns over flooring specified for newly constructed/refurbished food retail premises.
14. An increasing number of LAs are signing up to flexible warranting schemes that involve dealing with "matters of evident concern" (MoEC) including construction. For example, such schemes for Berkshire and Dorset were launched in July and September 2009 respectively. Subject to the specific conditions set out in the flexible warranting agreement, these schemes empower EH Officers to deal with MoEC they encounter during their normal work, even where these relate to premises or activities, such as construction, that fall to HSE for enforcement under the Health and Safety (Enforcing Authority) (EA) Regulations 1998. Around 60% of MoEC interventions under existing schemes have related to construction. Some support from CD local teams is being given to these schemes, although they have not been initiated by CD.
15. There are two separate innovative pilots currently underway, one involving LAs in the County of Buckinghamshire and the other smaller-scale pilot, involving a single London Borough: Kensington and Chelsea. Both entail flexibly-warranted EH Officers inspecting construction work involving small clients, contractors and projects that CD teams are not currently inspecting. Structured, initial training for participating LAs before the pilots commenced was built in, together with practical support from CD staff over the course of the pilots. Part of the material produced for the pilots was designed for use as a module in training EH Officers participating in flexible/joint warranting schemes involving construction MoEC,

described above and was used as part of the training for the Dorset scheme mentioned above. Both projects will be evaluated: the Kensington and Chelsea initiative internally, and the larger-scale Buckinghamshire initiative externally.

16. In addition to this training material, LACE has also prepared a range of other material to assist EHOs, including: case studies, a briefing note on the Planning and Building Control (BC) system and draft standard letters that can be sent out in response to relevant notifications. To extend the scope of EH interest and involvement in the CDM approach, the latter include draft letters that can be used by Food and Licensing, as well as Health and Safety teams.
17. Where LA EH Departments have felt unable to participate in any of the activities to promote construction health and safety outlined above, the secondees working on the LACE team have encouraged them to provide specific links to HSE's construction web pages, or to distribute HSE leaflets and information sheets.

#### Work with Building Control

18. In 2009/10, there are specific work streams involving CD operational staff working with BC. Much of this work is being carried out by Health and Safety Advisory Officers (HSAOs) or in London: Compliance Officers (COs), supported where necessary by inspectors. These work streams include:
  - a) Approaches to BC to establish closer joint working arrangements locally. Each CD local team has the target of developing agreements for joint working with at least three BC Departments during the year. One particularly successful line of approach has been to engage with a number of LAs by setting up a local BC Group, which facilitates engagement with most, if not all, local BC Departments at once. There are a number of possible benefits from such closer working, some of which were identified in the previous CONIAC paper on LACE. Similar targets have been set for establishing joint working with Highways and Planning Departments, although to date, most effort has been concentrated on forging improved links with BC.
  - b) A second, but related, work stream involves contacting BC Departments to encourage them to include up-to-date construction health and safety information on BC websites through links to HSE construction web pages. The target is to achieve this for 30% of BC websites by the end of 2009/10. While this work can be carried out independently from the previous work stream, there are clear economies of scale in a parallel approach.
19. In support of the Operational teams' work with BC, LACE has approached the organisations representing both LA and private sector BC professionals: Local Authority Building Control (LABC) and the Association of Consultant Approved Inspectors (ACAI). One practical outcome of this approach was an email from the Chief Executive of LABC encouraging Heads of BC to respond positively, if contacted by HSE locally to discuss improving joint working. The approach has also led to discussions with the Building Control Alliance, the umbrella organisation representing the whole BC profession, and a broad consensus has

been reached on working together. We hope that an agreement to this effect will be signed this autumn. While this agreement would extend only to England and Wales, we are seeking to negotiate a similar agreement with Building Standards regulators in Scotland.

20. Agreements to work together locally have already been reached between HSE and the London District Surveyors Association in London and between HSE at Luton and LABC and ACAI representatives in Hertfordshire, Bedfordshire, Buckinghamshire and Cambridgeshire.

### Planning

21. CD Complaints handling staff have long used Planning Departments (PDs) as a source of information on site addresses and contact details. However, with this exception, there has been much less contact between HSE's Construction Inspectors and PDs than with BC. The initiative referred to in paragraph 18 should help to develop relationships and if successful, could result in more of a role for PDs in providing health and safety information to planning applicants, either through leaflets, or through website links.

### Highways

22. As with PDs and BC, CD teams locally have a target to establish closer working relationships with Highways Authorities. In addition, The LACE BC consultant has been working with the Highways Group in the Anglian Region to establish locally consistent scaffold licensing conditions, incorporating appropriate health and safety requirements. This builds on work by CD local teams in the NW and SW of England. The Group has reached agreement on a Regional set of licensing conditions. LACE has also made contact with the Joint Authorities Group (UK): the national organisation for Highways Authorities, to discuss an agreement on a national approach on scaffolding safety through the licensing process.

### Trading Standards (TS)

23. Cooperation between CD and Trading Standards (TS) is less advanced than with other LA functions. However, there has been some recent, interesting work with TS Officers in the Midlands on construction "rogue traders", with more planned. Possible cooperation over competence standards remains to be explored.

### **Next steps**

24. The aim of LACE remains to recruit "pathfinder" LAs or LA Departments that are already undertaking, or are prepared to undertake work that will contribute in some way to improving standards of health and safety in the construction industry. The next stage will be to build on their enthusiasm during 2010/11 to generate the momentum to develop a critical mass of LAs who regard taking action to improve construction health and safety as a legitimate and beneficial aspect of their

business. Creating this bandwagon effect has been an important and effective means of establishing and taking forward CD's work with LAs.

25. Proposals for further EH involvement in construction related activities during 2010/11 are under development and will be included in the Delivery Portfolio for next year as National Priorities. We are seeking to encourage wider uptake by EH of the innovative approach adopted by Bucks. To assist in taking forward the work streams involving the EH function outlined above, LACE liaised with LACORS and a paper outlining our proposals for 2010/11 was presented to the LACORS Health and Safety Policy Forum in June, receiving general support.
26. It is intended that this year's work by CD Operational Teams with other LA functions: BC, Highways and Planning should continue in 2010/11 with the aim of moving towards the position where HSE is engaged in working in a joined-up fashion with a majority of LAs. Consideration will also be given to developing a work stream for Operational Teams, involving LAs as clients.
27. The LACE team will continue to support this work by working where possible with relevant national organisations such as LACORS, BCA, the Scottish Association of Building Standards Managers, and the Joint Authorities Group (UK). In relation to EH, LACE will continue to work with and through HSE's Partnership Managers and Divisional Planning and Partnership Teams within FOD, as the key is to work locally with willing EH partners.
28. While there are encouraging signs of LA interest in undertaking more construction-related work next year, it remains to be seen to what extent this interest is converted into commitment and participation. It is almost certain that the environment for LAs over the next few years will be difficult, with financial stringency and possible structural and organisational change. In this climate, while we remain optimistic that worthwhile LA participation in LACE objectives can be delivered, inevitably achieving this will be challenging.

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