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<b>AN UPDATE ON THE WORK OF CONSTRUCTION DIVISION</b>			

## A paper by Philip White

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### Purpose of the paper

1. To update the Board about the Construction Division's current work and future priorities.

### Background

2. The construction industry, despite the recent economic downturn, remains one of the largest in the UK, with an estimated 2.3 million workers. Its highly fragmented and transient nature, shortage of skills and casualisation present significant challenges to both the industry itself and HSE as a regulator. Health and safety performance of the industry has attracted considerable political interest in recent years, resulting in Ministerial summits in 2001 and 2005, a Forum in 2007 and most recently a review of fatal accidents in the construction industry which reported in July.

3. The industry has shown itself to be more immediately susceptible to changes in economic climate than others. Whilst the UK economy as a whole shrank by 2.4% in the first quarter of 2009, the volume of construction output over the same period fell by some 9%. However, at the same time, public expenditure on construction was maintained or even grew in some sectors. These economic factors will require a flexible and adaptive approach by HSE.

4. Although the record of the UK construction industry compares well with that of other countries, the fatal accident rate remains over four times the average for all industries. The construction industry remains the largest contributor to worker fatalities of any sector. Figure 1 in **Annex 1** shows the historical picture for fatalities to construction workers from 1987 to 2007-08.

5. Provisional figures for 2008-09 show a total of 57 deaths, comprising 53 workers and 4 members of the public. This represents a 24% decrease in the overall total of 75 deaths for 2007-08. The decrease in absolute numbers has been mirrored by a decrease in the incidence rate of fatal injuries to workers from 3.4 per 100 000 in 2007-08 to 2.4 in 2008-09p. The average rate in recent years was 3.4, so this figure is a welcome drop. Both the number of worker deaths and their incidence rate for 2008-09 are, on the provisional figures, the lowest on record.

6. Figure 2 in **Annex 1** also shows the general downward trend in major and over-three day injury rates, though there were slight increases in the major and over-three day injury rates for 2007-08.

## **HSE's Construction Programme**

7. As an early response to the challenge of securing long-term improvements in construction health and safety via the 2001 Ministerial summit, HSE established a Construction Programme delivered through FOD's Construction Division (CD) and Chief Inspector of Construction. Supported by dedicated sector and policy teams, the Construction Programme is strongly evidence based and outcome driven, using a wide variety of evidence sources to inform its work, and to maximise its impact on those most at risk throughout the supply chain. In particular it makes extensive use not only of RIDDOR data on accidents and ill health, but also draws on the Labour Force, Omnibus and Booster surveys.

8. The Construction Programme makes extensive use of accident causation and an influence network model to target interventions and resources to areas of greatest risk and achievable outcomes. Underpinning the Programme are the principles of ownership of risk by the industry which creates them, leadership from senior industry figures and stakeholders and partnership working between those who create, manage and are exposed to risks.

### **Construction Division priorities for 2009-10**

9. CD's priorities for this work year build on the work of previous years. The aim is to build on recent reductions in the rate of fatal and major injuries and the incidence of work-related ill health and embed the improvements made. The priorities support and deliver HSE's strategy. Proactive interventions are targeted at high-risk activities and sectors with a general focus on small and micro businesses (embodying CD's new Small Sites Strategy), the carrying out of investigations and enforcement activity to secure justice.

10. Six cross-cutting themes form the proactive elements of CD' plan of work:

- well managed projects
- embedding of the Construction (Design and Management Regulations) 2007
- management of occupational health/reducing health risks
- worker engagement
- competence
- leadership

These six themes underpin ten separate operational workstreams which are listed at **Annex 2**.

11. In addition to its operational resource, CD's sector and policy teams contribute significantly to the overall plan of work through a wide range of initiatives. Examples include work to improve safety in the use of cranes and automatic quick hitch devices, work with supply chains to reduce the incidence of manual handling injuries; policy work to develop new legislation on tower crane registration, liaison with other Government departments and improved engagement with local authority regulators.

## Recent and forthcoming initiatives

12. In addition to the themes described above, CD has focused significant resources on a series of campaigns and intensive inspection initiatives. Examples of recent initiatives – the Property Developers Campaign and the inspection initiative on refurbishment, are given at **Annex 3**. CD plans further such work this year. This will include further initiatives on refurbishment which will concentrate on roof work, a Property Developers Campaign aimed at smaller to medium sized organisations, a series of head office visits to tower crane companies and visits to small sites in support of the Small Sites Strategy. This work will deploy a range of visiting staff, and will be the primary focus of recently-recruited Inspectors from the industry, thereby freeing up existing Inspector resource for delivery of other elements of the programme.

## Construction Division Resources

13. HSE's resources devoted to regulating the construction industry are currently at their highest levels since CD was created. As at 1 July 2009, Construction Division (CD) had in post:

- 147 full time equivalent (FTE) operational construction Inspectors who visit site on a day-to-day basis;
- An additional 22 fixed-term Inspectors recruited from the construction industry in June 2009, and, for two years; and
- 24 FTEs who are their managers and are also Inspectors.

14. Also in post at that date were:

- 20 specialist construction Inspectors who provide expert input to the causes of accidents and advise on detailed technical issues;
- A further 17 Inspectors within Construction Sector and Policy ; and
- 26 Health and Safety Awareness Officers who support front line Inspectors in the delivery of important health and safety messages on the ground.

This total of 256 compares with an equivalent total of 212 as at September 2008.

15. It is also planned to recruit a further 10 trainee Inspectors to CD as part of the October 2009 recruitment exercise.

16. Early signs are that the exercise to recruit fixed-term appointment Inspectors with construction industry experience is going well. 24 Inspectors took up post on 15 June 2009 in London, Manchester, the Midlands, Scotland and Ashford. Although two have subsequently left HSE, the remainder are well into the initial three month period of intensive training. Some are already carrying out unaccompanied visits and are making a valuable contribution to the work of CD, with their focus being proactive visits to small construction sites.

17. The issue of resources in CD, in particular those in London, continues to be the subject of considerable external interest. One of the 28 recommendations made in the recent report of the Inquiry into the Underlying Causes of Construction Fatal Accidents to the Secretary of State for Work and Pensions states *“There are*

*insufficient HSE resources in London to carry out even the existing workload; this has been a problem for some years. I recommend that HSE should take steps to improve this situation”.*

18. In response to the challenge of adequately resourcing construction work in London, front line staff have been increased through the creation of an additional Operational team. Five trainees joined in April, three direct recruits from the industry joined in June and a further two trainees will join in October. Additionally, Inspectors and other frontline staff in construction teams based around London provide additional support to the London Teams in a variety of ways. For example, CD’s proactive inspection work of the Olympic Games venues is significantly resourced by Inspectors from outside London.

### **Enforcement Activity**

19. Provisional figures for 2007/08 (**Annex 4**) show that CD delivered 32% of the total number of enforcement Notices served and 43% of prosecutions (measured by number of informations laid) brought by HSE. This demonstrates both the high risk profile of the industry and CD’s commitment to delivering and securing justice. Examples of some recent cases are at **Annex 4**.

20. The high incidence of fatal accidents in construction places considerable demands on the Inspectors who investigate them. The investigations which result, routinely involving the Police, can be extremely complex due to the complex contractual arrangements in place and the involvement of multiple dutyholders.

21. The Secretary of State’s Inquiry has made a number of recommendations relating to prosecutions, and in conjunction with other Government departments, CD is considering its response to these.

### **Local Authority Engagement**

22. CD recognises the potential leverage which might be brought to bear by closer working with local authorities who through Building Control, Highways and Planning regulate aspects of construction. CD’s work on improving engagement with local authorities on construction is looking at closer working with these regulatory services and also the contribution of Environmental Health staff. A small team including secondees from local authority environmental health and building control backgrounds is in place to help drive this work forward.

23. Two pilot projects are either underway or planned for the 2009-10 work year. Both entail flexibly-warranted Environmental Health staff inspecting work involving small clients, contractors and projects which HSE staff are not currently inspecting. The pilots include structured initial training for local authority staff together with practical support from CD. A number of small local projects associated with Highways Departments and scaffold safety and working with Building Control on reporting matters of concerns are underway. Over this work year and into 2010-11 the intention is to broaden this work so that the majority of local authorities are covered by these initiatives.

24. The Secretary of State's inquiry also provides an impetus to this work and the recommendation on extending the Building Regulations so that health and safety processes are included is currently being discussed with DWP and CLG.

25. Beyond this work with local authorities as regulators, CD also recognises the key role played by local authorities as clients of construction work. To this end, research is underway to establish why government clients generally tend to adopt traditional approaches to construction procurement – with the associated focus on lowest cost as the most desirable outcome. This work will inform future CD interventions and chimes well with the recommendations in the Business and Enterprise Select Committee report of 2008, 'Construction Matters' and the DWP Secretary of State's Inquiry into construction fatal accidents that existing OGC guidance on best practice in public sector procurement of construction work should be made mandatory for local government.

26. More widely, CD plans to take forward work in the 2010-11 work year looking at procurement practices generally within local authorities, and how these practices can be used for positive health and safety outcomes.

### **Occupational health**

27. In common with other industries it is difficult, due to the effects of latency and causation, to make entirely meaningful comparisons between fatal injuries and deaths due to chronic effects of ill health caused or made worse by work. Historically, a lack of awareness of health risks in construction and individual attitudes towards them have made improvements difficult.

28. Much has been achieved, however, through a number of HSE-led initiatives. Recent successes include:

- Construction Occupational Health Management Essentials (COHME) – a simple but comprehensive web-based tool which includes a substantial and growing number of case studies
- Supply chain work on silica, the use of heavy blocks, kerb-cutting, sheet material handling and hand-arm vibration
- New guidance on lead, cement and welfare standards
- Work targeted at licensed asbestos contractors and duty to manage on refurbishment projects

29. More work needs to be done on raising awareness of health risks and their management. In particular, work with stakeholders is focusing on the key message of '*Manage the risks, not the symptoms*'. The occupational health community within the construction industry is a key intermediary in delivering this message. However, some quarters of the industry have a view of occupational health which concentrates on health promotion, first aid and health screening at the expense of health surveillance and prevention of exposure to health risks. There is a growing need for an effective standard for occupational health service providers, and CD is working in partnership with bodies such as Constructing Better Health to deliver this.

## **DWP Secretary of State's Inquiry into the underlying causes of fatal accidents in construction**

30. This Inquiry, which was commissioned on 4 December 2008 reported on 8 July 2009. It makes 28 recommendations, some of which fall to other Government departments to lead on. The Government is committed to an early response to the report, though no firm date has been set. The lead in coordinating the response lies with DWP.

31. HSE is working closely with DWP and other Government departments, in particular DBIS and CLG, in preparing a draft response. A number of the recommendations fall naturally to HSE and DWP has asked us to lead in preparing a response on these. At the time of preparing this paper this work is very much work in progress and an update will be provided at the Board meeting on 26 August.

32. The research and reviews carried out under Phases 1 and 2 of the Inquiry generated a substantial amount of evidence relating to accident causation. Aside from its role as a robust methodology for determining underlying causes, this work has provided a comprehensive overview of drivers for health and safety in the construction industry which will be an invaluable tool in shaping HSE's future interventions in the industry and for the industry to consider in taking forward preventative strategies and measures.

### **Construction Industry Advisory Committee (CONIAC)**

33. CD staff Chair CONIAC and provide its Secretariat. The Board will be aware that authorisation was recently given for CONIAC to proceed with reconstitution. Its previous period of constitution expired at the end of 2008, since when it has run under an informal constitution. At its meeting in July 2009, CONIAC agreed to draw up a new constitution and terms of reference over the summer which will hopefully be endorsed at its November meeting. In parallel with this work it will develop its existing plan of work to make explicit the links between its work and delivery of HSE's strategy.

### **Construction Programme beyond 2009/10**

34. Beyond the current work year CD will need to review its programme of work in the light of the Secretary of State's Inquiry into the causes of fatal accidents. However, the report is broadly supportive of CD's work and current direction of travel.

35. Economic and societal trends will also shape the programme. During the recession, a far greater proportion of construction work is bought by the public sector than in times of growth, and the effects of this are very apparent. CD's work on public sector procurement will seek to influence the public sector – in both national and local government – to act as exemplars through how they procure their work. Recent HSE research has demonstrated that the public sector relies heavily on 'traditional' methods of procurement which concentrate on lowest price, rather than considering the potential health and safety benefits of early contractor appointment

and the use of long-term integrated teams through framework agreements. The pressure to use lowest cost procurement increases during recession, and there may be a need to revisit work such as the 2006 Buying for Life initiative, which sought to get commitment from the largest spending departments to adopt more enlightened methods of procurement.

36. Climate change and sustainability agendas will both have a substantial effect on CD's future work. Nuclear new-build, the growth of both commercial and domestic wind generation and other emerging green technologies, for example, will all change the risk profile of the industry significantly, and CD will have to adapt accordingly.

37. At the same time, small construction projects will continue as ever, with the move towards more domestic refurbishment rather than new-build during the recession. CD will need to develop new ways to reach the relevant dutyholders whether they be property developers, contractors or designers.

38. CD's work in raising awareness of occupational health risks will continue, but its focus will increasingly need to shift towards changing behaviours, and instilling a culture which promotes the management of both safety and health. In doing so it will need to be mindful of the changing health needs of an ageing working population.

### **Action**

39. The Board is invited to note the contents of this paper.

### **Paper clearance**

40. This paper was cleared by the SMT on 5 August 2009.

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Trends in fatal accidents in construction

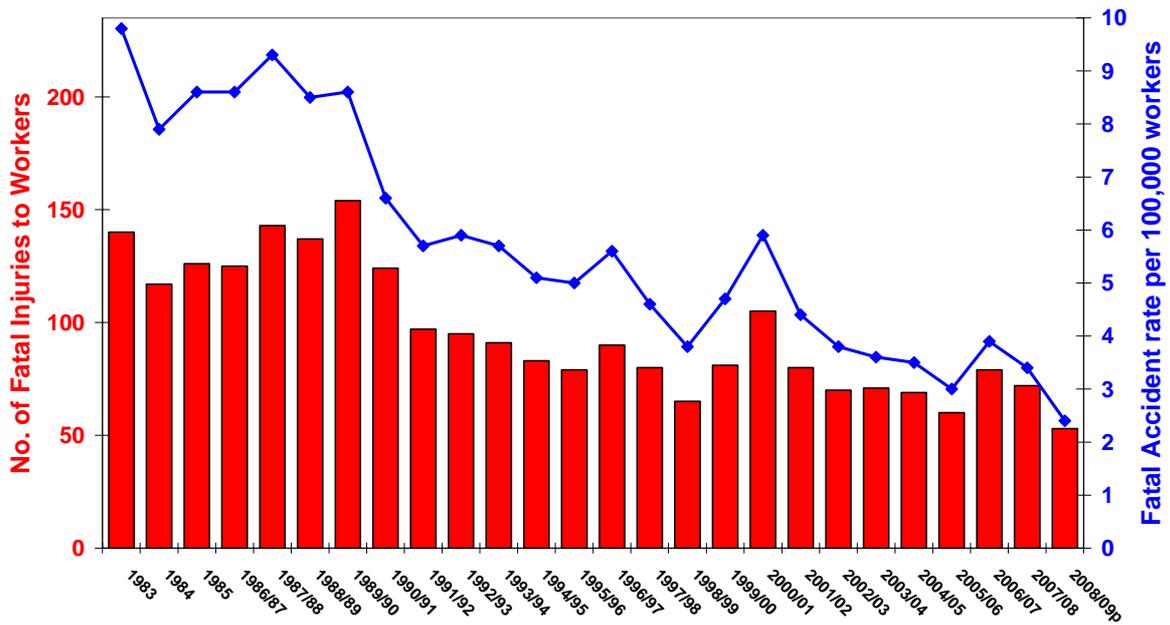


Figure 1: Fatal injuries to workers in construction, January 1983 - March 2009

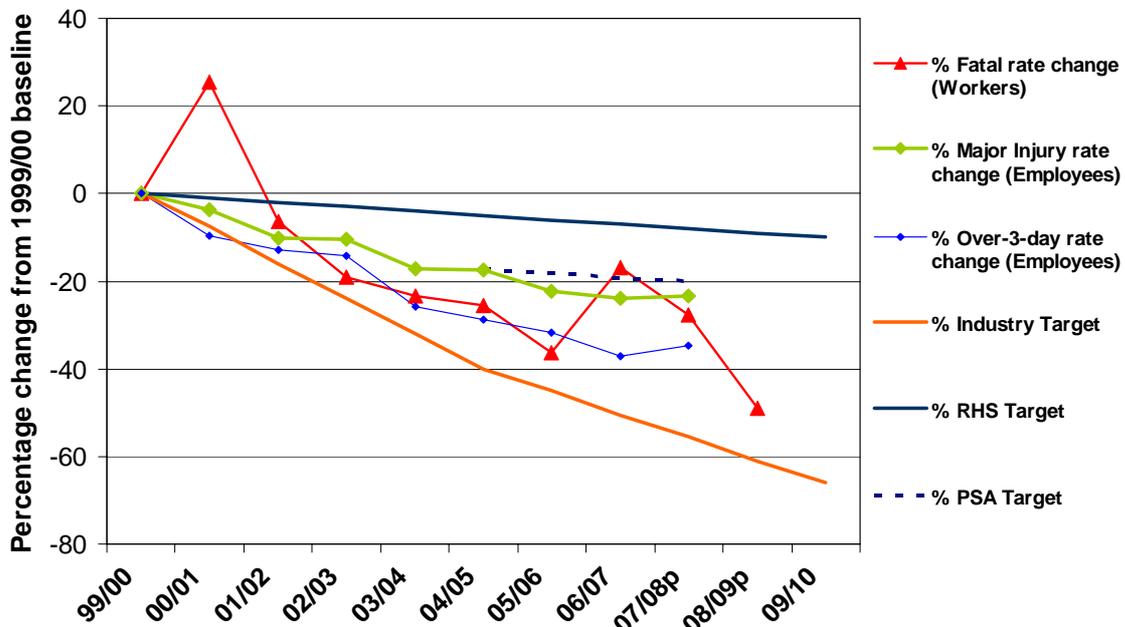


Figure 2: Progress against targets: changes in incidence rates

## Annex 2

### Operational workstreams within the Construction Division Plan of Work for 2009-10

- Major commercial refurbishment
  - *Site inspections and head office visits*
- Other refurbishment
  - *Routine inspection and an intensive inspection initiative*
- Major projects and national/local lead inspector work
  - *Development of early intervention plans focusing on CDM 2007 dutyholders; each inspector involved in at least one national lead inspector (NLI) programme*
- Home building
  - *NLI work with major home builders; head office visits to small developers*
- Asbestos license holders
  - *Head office license assessment audits*
- Crane hirers and suppliers
  - *Head office visits to tower crane companies*
- Builders merchants and hire shops
  - *Establishing links with hire networks to raise awareness of silica and need for control measures*
- Local authorities
  - *Various streams of work to increase awareness and/or support LA enforcers to enable them to intervene in construction work effectively*
- Manual handling in supply chains
- Micro and small businesses
  - *Work involving Inspectors and HSAOs to improve awareness of and improve standards at small sites, concentrating on roof work, manual handling and welfare*

Five topics have been identified common to all site-based work:

- Falls
- Welfare
- Good order
- Asbestos (and duty to manage)
- Site transport

Additionally, inspectors will pay particular regard to the topics of silica, fire and roofing where appropriate.

## Annex 3

### Recent Construction Division initiatives

Recent initiatives include:

- **Property Developer's Campaign** - this 1-month campaign kicked off in February 2009 and was aimed at raising awareness among smaller property developers of their duties as construction clients. Targeting cities/towns with high levels of developer activity, it used local advertising and direct marketing to target some 13,000 developers and 11,000 estate agents and auction houses. A dedicated website logged numerous visits and downloads of a specially developed leaflet. Whilst evaluation of the campaign has shown that overall it was well received, with response in terms of persuasion to visit the campaign website high, it has also shown that there is still more work to be done to raise the awareness of small scale property developers of their legal duties. It has been agreed that the campaign should be repeated as a communications-led exercise.
- **Intensive Inspection Initiative** - throughout March 2009, Construction Division inspectors targeted the refurbishment sector looking at risks associated with working at height, good order on site and the correct management of asbestos removal. A total of 1759 sites and 2145 contractors were visited with 491 contractors across 348 sites receiving enforcement notices. There were some welcome improvements in standards compared with the results of a similar initiative last year. However, given the visits were well publicised, the disregard for basic standards was disappointing. Failure to prevent falls from heights was the biggest single issue inspectors found.

Both of the above were linked to the second phase of HSE's larger scale *Shattered Lives* campaign.

**Figure 3: All Enforcement Notices (Improvement, Deferred and Immediate Prohibition) served by HSE Construction Division 2003/04 – 2007/08p**

Year	Construction Industry	All Industries
03/04	3,487	11,335
04/05	2,484	8,471
05/06	1,846	6,593
06/07	2,343	8,274
07/08p	2,505	7,740

**Figure 4: All informations laid by HSE Construction Division 2003/04 – 2007/08p**

Year	Construction Industry	All Industries
03/04	617	1,720
04/05	574	1,320
05/06	453	1,056
06/07	441	1,051
07/08p	417	1,028

### **Examples of recent prosecutions brought by HSE Construction Division**

#### **Director sentenced to 12 months in prison for manslaughter following death of employee in fall.**

Colin Cooper, owner and Director of IC Roofing Ltd was sentenced to 12 months in prison after being convicted of manslaughter on 22 January 2009. Mr Cooper had previously pleaded guilty to health and safety offences and was banned from being a company director for three years. IC Roofing was fined £10,000 for manslaughter and ordered to pay full costs of £20,000.

On 29 November 2005, 20 year old Darren Hoofe, an employee of IC Roofing, fell through a skylight of a factory whilst carrying out roof repairs at the Bellbrook Industrial Estate, Uckfield. He was not wearing a safety harness and had not received full safety training. He died in hospital the following day from his injuries.

#### **Company fined for fall and failing to report incident to HSE**

On 20 July 2009 Property People (NW) Ltd. were fined £92 000 with £11 000 costs for an incident in which an employee who fell ten feet through open joists was paralysed. The heavy fine reflects the fact that the company failed to report the incident under RIDDOR as required, as well as the obvious breach of the law and the serious consequences.

### **Two companies fined following scaffolding collapse.**

On 13 December 2006 scaffolding, measuring between up to 50ft high and spanning 100ft along the side of a building, collapsed across Needless Alley, Birmingham as it was being used by pedestrians.

On 13 March 2009 SGB Services Ltd was fined £4,000 and ordered to pay costs of £6,000, and John Davies Interiors Ltd was fined £5,000 and ordered to pay costs of £2,000. Both had pleaded guilty to breaches of the Work at Height Regulations 2005.

### **Prosecution of developer after collapse of building.**

On 27 April 2007 Bukan Singh Hoti was fined £10,000 and ordered to pay costs of £7,500 after pleading guilty to breaching HSWA S3(1) for failing to ensure the health and safety of persons not in his employment during his role as Director of 426 Leicester Ltd.

This followed the collapse of a Victorian Mill in Nottingham on 11 January 2007 that was being converted into four residential units. The collapse of the building nearly resulted in tragic consequences as one of the workers was in the building and only just managed to get out in time.

### **Company fined after worker dies and another seriously injured at Wembley Stadium**

One worker was killed (Patrick O'Sullivan) and another was seriously injured during construction works carried out at Wembley Stadium on 15 January 2004 when a platform became dislodged during a lifting operation, causing it to fall and hit the two workers. Both men were working on the building of the concrete superstructure of the stadium at the time.

On 9 July 2009, the employer, PC Harrington Contractors Ltd pleaded guilty to a breach of HSWA S2(1) and were fined £150,000 and ordered to pay full costs of £25,000.

### **Council and contractor fined for exposing staff and public to asbestos**

Contracted workers and members of the public were exposed to airborne asbestos fibres as a result of refurbishment work in council properties in Inverkeithing in November 2007.

On 9 July 2009 Fife Council was fined £10,000 and the contractor, ECG Building Maintenance Ltd, was fined £3,700. Both defendants pleaded guilty to charges under HSWA.

Fife Council contracted ECG to replace water storage tanks within some of its properties. Some of these tanks were insulated with asbestos. ECG was not licensed by HSE to remove asbestos nor were they competent to do the work. Their workers had not been adequately trained so did not recognise the presence of asbestos, or the risks posed by it. They also failed to implement established control measures to minimise exposure to themselves as well as to other people in the vicinity.