

HEALTH AND SAFETY EXECUTIVE**CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)****Minutes of the M1/2012 meeting
held on 14 March 2012 in Rose Court*****Present***

Philip White (Chair)
Anthony Lees (Secretary)
Greg Brown
Peter Caplehorn
Kevin Fear
Rob Gutteridge
Paul Haxell
Kevin Minton
Alan Muddiman
Susan Murray
John Poole
Bill Rabbetts
Jason Rowley
John Scott
Martin Winstone

Representing

Health and Safety Executive
Health and Safety Executive
Construction Industry Council
Construction Industry Council
ConstructionSkills
Federation of Master Builders
Home Builders Federation
Construction Plant-hire Association
Civil Engineering Contractors Association
Unite (T&G section)
Unite (Amicus section)
National Federation of Builders
UK Contractors Group
National Specialist Contractors Council
Construction Clients' Group

Departmental Observers

Gilbert Barron
Andrew Butt

Business, Innovation and Skills
Cabinet Office

Officials

Gavin Bye
Neil Stephens
Michael Ryan (Secretariat)

Health and Safety Executive
Health and Safety Executive
Health and Safety Executive

Members of the public

8 were present

Apologies

Richard Ash
Phil Davies
Gerry Mulholland
Steve Murphy

Representing

Engineering Construction Industry Association
GMB
Specialist Engineering Contractors Group
UCATT

Summary of Actions agreed:

1. **ACTION: Secretariat to provide summary statistical information on the February/March refurbishment inspection initiative.** (See paragraph 1.2(a)) [**Secretary's Note:** A link to an HSE press release was included in an e-mail to Members of 18 April 2012.]
2. **ACTION: Secretariat to send a link to HSE information on the revised Asbestos Regulations to Members.** (See paragraph 1.2(b)) [**Secretary's Note:** A suitable link was included in an e-mail to Members of 18 April.]
3. **ACTION: Secretariat to send a link to HSE RIDDOR guidance to Members.** (See paragraph 1.2(c)) [**Secretary's Note:** A suitable link was included in an e-mail to Members of 18 April 2012.]
4. **ACTION: Secretariat to send a link to the Consultative Document on revocation of the Construction (Head Protection) Regulations and the Notification of Conventional Tower Cranes Regulations when it is published.** (See paragraph 6.5) [**Secretary's Note:** A suitable link was included in an e-mail to Members of 4 April 2012]
5. **ACTION: Secretariat to copy CDM 2007 evaluation report to Members following its publication.** (See paragraph 7.1) [**Secretary's Note:** A link to the report was included in an e-mail to Members of 12 April.]
6. **ACTION: Secretariat to send a copy of the HBF/CECA (NE) Utilities Code of Conduct to Members for information.** (See paragraph 9.1) [**Secretary's Note:** A copy was attached to an e-mail to Members of 18 April 2012.]

1. Welcome and Chair's introduction

1.1 Philip White (Head of HSE Construction Division and Chief Inspector of Construction) welcomed everyone to the meeting. In particular, he welcomed two new members who were attending CONIAC for the first time - Rob Gutteridge (who had succeeded Phil Russell as FMB representative) and John Poole (who had succeeded Mike McCartney as Unite (Amicus section) representative). Additionally, Philip welcomed Gilbert Barron who had replaced Tony Mulcahy as BIS observer. Finally, he gave the apologies of absent members.

1.2 Philip briefed CONIAC on recent developments:

(a) Fourth annual national construction refurbishment inspection initiative – This intensive 4-week campaign was now concluding. The latest provisional figures indicate 2000 site visits by inspectors with 700 notices served on 450 sites. The Secretariat would give more complete and precise information when it was available.

ACTION: Secretariat to provide summary statistical information on the February/March refurbishment inspection initiative. [Secretary's Note: A link to an HSE press release was included in an e-mail to Members of 18 April 2012.]

(b) Revised Control of Asbestos Regulations – Subject to Parliamentary approval these will come into force on 6 April. The main changes are that employers carrying out some types of non-licensed work will be required to notify that work, ensure workers have medical examinations at least once every three years and keep a record of the work done by each worker. The changes result from a legal opinion of the European Commission that the existing Regulations fail to fully implement the relevant European directive. The HSE website has information on the proposals and the Secretariat will provide a link.

ACTION: Secretariat to send a link to HSE information on the revised Asbestos Regulations to Members. [Secretary's Note: A suitable link was included in an e-mail to Members of 18 April 2012.]

(c) Revised RIDDOR Regulations – Subject to Parliamentary approval these will come into force on 6 April. From that date, the period of incapacitation will increase from more than 3 days to more than 7 days before an occupational accident or injury has to be reported. However, employers and others with responsibilities under RIDDOR must still keep a record of over 3-day injuries. HSE published guidance on the changes in January and this will be copied to Members for information.

ACTION: Secretariat to send a link to HSE RIDDOR guidance to Members. [Secretary's Note: A suitable link was included in an e-mail to Members of 18 April 2012.]

2. Agreement of Agenda and matters arising

2.1 Members agreed the Agenda.

2.2 Paul Haxell said that he wished to bring the HBF/CECA (NE) and Utilities Health and Safety Code of Conduct to CONIAC's attention. Philip agreed to take this under AOB (see paragraph 9.1).

2.3 Philip reviewed the actions from the November meeting and recorded that they had all been carried out.

2.4 Members approved the minutes of the 16 November 2011 meeting.

3. Update on CONIAC working groups (Oral update by Anthony Lees) [Paper M1/2012/1]

3.1 Philip asked Anthony Lees (Secretary to CONIAC and Head of Construction Policy Unit) to update CONIAC. Anthony said that detailed

reports from the working groups were in the supporting paper. However, he noted some particular points.

(a) Working Well Together Steering Committee – Anthony indicated that the chair of this group, Neil Stephens, would give an update on it during the agenda item on the Construction Division Plan of Work (see paragraph 5.4).

(b) The Catastrophic Events Working Group has been formed to consider issues around the potential for multiple fatality accidents following research on this subject conducted for HSE by CIRIA. It met for the first time on 6 February and is proposing as an early action to write to 200 businesses challenging them to indicate how they will respond to the CIRIA research. John Scott asked if this group is still seeking to recruit people as members? Anthony thought that the group's chair (Mike Cross, HSE Construction Division, Head of Operations (North East) and Head of Construction Engineering Team) would likely welcome expressions of interest from suitable persons.

(c) The Health Risks Working Group met on 1 February and agreed to modify its 8-point statement *Position on health risks in construction* in response to comment at CONIAC in November that it made no reference to direct involvement of workplace representatives. Anthony asked Kevin Minton, who serves on the group, to describe the change that had been agreed. Kevin said that Point 5 of the statement which says that “Planning and working collaboratively will reduce risk throughout the supply chain, and at all stages of the process.” had been augmented with the following additional words “Workers and their representatives must be consulted regarding the provision of occupational health services and material occupational health issues”.

Jason Rowley enquired about availability of the “Sun safety” DVD produced by Dr Paul Madgwick and mentioned in the paper. Philip said that this would be launched during the summer.

(d) The Safety Working Group met on 25 February and continues to work on its strategy for work at height.

4. Update on Fee for Intervention (Oral update by Philip White) [No paper]

4.1 Philip explained that this initiative is intended solely to recover the resource costs that HSE incurs when an inspector discovers a breach of health and safety law and needs to make a formal written intervention with the duty holder. The hourly rate to be charged (£124.00) reflects all relevant overheads. Whether HSE will be allowed to keep the money raised was under discussion by DWP (HSE's parent Department) and HM Treasury. Philip thanked Members who had commented on an HSE leaflet and guidance explaining *Fee for Intervention* (FFI). He recognised that more needed to be done to explain the scheme and suggested that one approach may be to place articles in trade association and professional institutions publications.

4.2 In response to a question from Jason Rowley, Philip confirmed that the Office of Rail Regulation (ORR) was not included in FFI. Bill Rabbetts asked what insight had been obtained from the trial period during which inspectors had rehearsed the procedures for the scheme. Philip said that there were indications that some duty holders appreciated it as levelling the playing field between themselves and others. Additionally, it was motivating inspectors to consider very carefully the appropriate type of intervention. Bill emphasised the need for consistent approaches between inspectors. Philip agreed with this and said that as part of the rehearsals for FFI decisions were being discussed and peer reviewed with a view to securing consistency.

4.3 Alan Muddiman was concerned that the dispute resolution process outlined in the leaflet was cumbersome and where the decision was unfavourable to the complainant would result in the imposition of more cost. Philip observed that it was essential to sift out genuine complaints from frivolous ones. John Scott was unhappy at the speed of introduction of the scheme and the lack of information. He thought that the trigger for charging (a letter) was too low and that it should have been based on service of a notice. He also hadn't seen any formal assessment of the impact of the scheme as was usually required for legislative initiatives. Philip clarified that an impact assessment was not required since FFI was not imposing any new duties on employers. Susan Murray wondered about the implications for the health and safety of inspectors. Philip responded that the trade union Prospect who represent inspectors had raised this issue and that HSE has a policy on the risk of violence and aggression against its staff. He acknowledged that FFI may have an impact on the dynamics of inspectors' relations with duty holders.

[Secretary's Note: HSE announced on 15 March that FFI "will not be introduced in April but at the next available opportunity, which is likely to be October 2012. HSE is taking advantage of the extra time to work further with businesses to improve their understanding of the scheme and how it will affect them."]

5. Construction Division Plan of Work 2012-2013 (Presentation by Neil Stephens) [Paper M1/2012/2]

5.1 Philip asked Neil Stephens (Construction Division Programme and Communications Manager) to give his presentation. Following the presentation he asked Members for comments.

5.2 John Scott noted that the Small Sites Strategy targeted sites with 15 or fewer workers and asked what is the mechanism to identify such sites? Neil said this is a key challenge and a variety of intelligence sources are used including the F10 database, information uncovered by Visiting Officers and from Building Control. Kevin Fear observed that an emphasis on small sites will attract FFI to those duty holders. Neil agreed but suggested that it would act as a leveller. Philip stressed that HSE would target areas where performance is poor for that reason and not to make money under FFI.

5.3 Paul Haxell asked would HSE focus on solar panel work in new construction or retrofit? Neil said retrofit as this is where the challenge is. Greg Brown asked about HSE's approach where there are questions of competence? Neil indicated that HSE will seek to distinguish between incompetence and where there is outright criminality. Kevin Fear suggested that targeted areas should include the designer community. However, Neil said that the current focus is contractors on small sites. Philip added that there could be some variation from place to place as inspectors have freedom to track back to designers and clients where appropriate. Bill Rabbetts asked what HSE is doing in relation to clients? Philip indicated that once the pilot exercise for larger contractors is rolled out more broadly HSE will look to take a similar approach to tackling larger clients. Additionally work on major projects involves a focus on clients as will planned work on asbestos.

5.4 Neil concluded with some information on the Working Well Together campaign. He said that during 2011/2012, 71 events had been held which had reached about 4,500 persons. The WWT Steering Committee would meet on 15 March.

6. Löfstedt Review/Red Tape Challenge (Presentation by Anthony Lees, HSE) [Paper M1/2012/3]

6.1 Philip asked Anthony to give his presentation. Following the presentation he asked Members for comments.

6.2 Susan Murray thought that it was unfortunate that the "compensation culture" had been linked to health and safety. She was concerned at any possible reduction of protection for workers and criticised the removal of the Construction (Head Protection) Regulations (CHP) and the Notification of Conventional Tower Cranes Regulations at short notice when they were not identified as involving high cost. She said that the CHP guidance is very good, better than the corresponding material in the PPE guidance, and suggested that it should be kept available. Susan hoped that there would be adequate consultation on the review of ACOPs.

6.3 John Scott asked for an indication of timescale for the work to examine strict liability in health and safety regulations. Anthony suggested that there might be proposals towards the end of this year.

6.4 Jason Rowley was confident that the PPE Regulations maintained the standard for head protection in CHP but agreed that it would be useful to keep the CHP guidance. Anthony accepted that the CHP guidance was very good and indicated that it would be looked at. He pointed out that there had been recent changes in the style of guidance, for example, the *Busy Builder* sheets. Susan Murray emphasised that, as a matter of principle, reductions in protection for workers were not acceptable.

6.5 Philip said that the key issue is to make the framework of law and guidance clearer in terms of risk protection. There would be a paper to CONIAC later in the year updating members on the strategy for construction related guidance. He suggested that it may be worthwhile to have a standing

item on progress with Löstedt/RTC issues. The Secretariat would send a link to the consultation on the CHP and tower cranes regulations when it began.

ACTION: Secretariat to send a link to the Consultative Document on revocation of the Construction (Head Protection) Regulations and the Notification of Conventional Tower Cranes Regulations when it is published. [Secretary's Note: A suitable link was included in an e-mail to Members of 4 April 2012]

7. Update on CDM Regulations (Oral update by Philip White, HSE) [No paper]

7.1 HSE was now looking at how to take forward the CDM Regulatory package in relation to the findings of the evaluation and Löstedt/RTC, together with relevant European directive considerations, although no timescales for delivery of this work had yet been fixed. The evaluation report would be published in April.

ACTION: Secretariat to copy CDM 2007 evaluation report to Members following its publication. [Secretary's Note: A link to the report was included in an e-mail to Members of 12 April.]

7.2 With regard to the matters to be considered, Philip said that the CDM package would be looked at as a whole and in particular with a view to making it work better for smaller projects. He believed that there were no arguments on the technical precautions required by the Regulations (eg excavation safety) but there were problems around the management framework to deliver the technical standards, particularly prior to construction. For example, there was evidence of significant challenges related to unnecessary bureaucracy and the assessment of competence. A further point was that careful consideration would have to be given to any parts of the Regulations that tended to go beyond the requirements of the relevant European directive. (He remarked that the European Commission is expected to review health and safety directives in 2013/14.)

7.3 Greg Brown asked what part of the evaluation would be published in April? Philip said that this would be all of it. [Secretary's Note: As a clarification, what is meant here is that the whole of the Research Report produced by Frontline for HSE will be published in April.]

7.4 Alan Muddiman said that bureaucracy is wasting resource in industry and that this argues for moving forward promptly. Peter Caplehorn said that the work on CDM should take account of developments in relation to competence and procurement; he noted that PAS 91 is being reviewed. Kevin Fear mentioned that, following the publication of the Pye-Tait research on competence, ConstructionSkills had carried out a full consultation with industry on a skills strategy which will set out how the action points raised by Pye Tait will be progressed. Philip said this is helpful and that HSE looked to the industry to drive the findings of the Pye-Tait research forward. He closed by stating that CONIAC would be kept updated on the CDM work.

8. **CONIAC Reconstitution [Paper M1/2012/4]**

8.1 Anthony Lees (Secretary to CONIAC) drew Members' attention to the supporting paper and confirmed that Philip had agreed to reconstitute CONIAC for a further 3-year term beginning in March 2013. Some minor amendments to CONIAC's terms of reference are proposed. These are purely to streamline some administrative aspects and will not affect the scope or nature of the work carried out by CONIAC or its working groups.

8.2 Anthony said that reconstitution of CONIAC provides an opportunity for consideration of whether the balance of membership (ie the organisations that are represented) is right and he indicated that he or the Secretariat would welcome any comments that Members might wish to submit on this subject.

9. **AOB**

9.1 Philip invited Paul Haxell to speak. Paul drew CONIAC's attention to the HBF/CECA (NE)/Utilities Code of Conduct. The code defines standards for some basic health and safety issues and is proving quite effective in the North-East. He hoped that other regions would now take an interest in this positive development.

ACTION: Secretariat to send a copy of the HBF/CECA (NE) Utilities Code of Conduct to Members for information. [Secretary's Note: A copy was attached to an e-mail to Members of 18 April 2012.]

9.2 Peter Caplehorn said that Building Information Modelling (BIM) was becoming increasingly important in the industry. He suggested that CONIAC should consider the implications of this development at some point.

Conclusion

Philip thanked Members for their attendance. He said that the next meeting would be on Wednesday 20 June 2012 in Rose Court.