

HEALTH AND SAFETY EXECUTIVE

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

**Minutes of the M2/2015 meeting
held on 14 July 2015 in Rose Court**

<i>Present</i>	<i>Representing</i>
Peter Baker (Chair)	HSE, Chief Inspector of Construction
Geoff Lloyd (Acting Secretary)	HSE, Construction Policy Unit
Richard Ash	Engineering Construction Industry Association
Terry Boniface (Observer)	Business, Innovation and Skills
Edward Fendt	Specialist Engineering Contractors Group
Lee Fisk	CITB
Paul Haxell	Home Builders Federation
Kevin Minton	Construction Plant-hire Association
Alan Muddiman	Civil Engineering Contractors Association
Susan Murray	Unite
David Parsons	National Federation of Builders
Tony Putsman	Construction Industry Council
Dylan Roberts	Construction Clients' Group
Jason Rowley	UK Contractors Group
John Scott	National Specialist Contractors Council
Dan Shears	GMB
Peter Wilson	UCATT
Officials	
Simon Longbottom	HSE, Head of Construction Sector and Policy
Ian Strudley	HSE, Head of Health Unit
Ray Cooke	HSE, Head of Safety Unit
Russell Adfield	HSE, Head of Construction Management Unit
Sue Brandrick	HSE, CDM Unit
Michael Ryan (Secretariat)	HSE, Construction Policy Unit
Apologies	
Peter Caplehorn	Construction Industry Council
The Reverend Kevin Fear	CITB
Rob Gutteridge	Federation of Master Builders
Clive Johnson	Construction Clients' Group
Steve Murphy	UCATT
Jerry Nelson	GMB
Kevin Williamson	Unite
Members of the public	4 were present

Summary of actions agreed:

ACTION: Secretariat to send Members CITB-provided information on the impact of its CDM 2015 campaign. (See paragraph 5.1)

ACTION: Secretariat to copy HSE advice to inspectors on CDM 2015 to Members for information. (See paragraph 5.7)

ACTION: CONIAC Members wishing to comment on whether there should be an ACOP for CDM 2015 to submit such comments in writing to the Secretariat by the end of September 2015. (See paragraph 6.7)

1. Welcome and Chair's introduction

1.1 Peter Baker (Head of Construction Division, Chief Inspector of Construction and Chair of CONIAC) welcomed everyone to the meeting and gave the apologies of absent Members. In particular, he welcomed Terry Boniface who had succeeded Gilbert Barron as observer for the *Department for Business, Innovation and Skills*.

1.2 Peter remarked that he had been Chief Inspector for three months and took the opportunity to make a number of observations.

- (a) He had had the opportunity to meet with a number of trade associations, Unions and other stakeholders and had found the meetings very helpful and illuminating, giving a real sense of the challenges the industry is facing as well as what has been achieved through cooperation across the sector. He has more planned for after the summer.
- (b) CDM 2015 is in force and it is time to focus on embedding it.
- (c) A new Government is in office that clearly supports construction. Additionally, it wishes to support SMEs and has strong views on regulation and the role of regulators in supporting growth.
- (d) The HSE Board is reviewing HSE's Strategy with a view to having a new version by the end of the year. The revised Strategy is expected to continue with the existing principles but some priorities may change to reflect experience and improvements over the past 5 years as well as the new Government and its growth agenda.
- (e) For its part, CONIAC may wish to look back on what has been achieved and consider its future role in helping to deliver the new Strategy, maintain the momentum and the scale of improvements in performance the sector has achieved against the backdrop of the challenges industry will face from significant growth in the construction sector.

1.3 Peter drew CONIAC's attention to HSE's release of statistics for fatal accidents in construction. 35 recorded worker deaths (provisional) in 2014/15 and an average of 45 over the previous five years, are the lowest ever. However, he noted indications that the number of deaths in the current year was higher than at the same point last year.

1.4 Peter mentioned that he would shortly be making a presentation to the HSE Board on construction and in particular on the challenge presented by the "hard to

reach” parts of the industry and HSE’s approaches to influencing h&s performance. He would feedback to CONIAC at its next meeting the Board’s views on this.

2. Agreement of Agenda and matters arising

2.1 Members agreed the agenda for the meeting.

2.2 Members formally approved the text of the minutes of the 18 March 2015 meeting of CONIAC.

2.3 Peter noted that all actions from the March meeting had been carried out except one relating to a summary of the Construction Division plan of work for 2015/16. When the summary is ready it will be copied to CONIAC Members in fulfilment of the action.

3. Recent activities of CONIAC’s Working Groups (Updates from various persons)

3.1 Peter drew Members’ attention to paper **M2/2015/1** and invited updates from Working Group representatives.

3.2 Ian Strudley gave a report on the work of the **Health Risks Working Group (HWG)**. Ian began by saying that he believed that interest in health issues was increasing and progress was being made in addressing them. On this basis, and allowing for the time delay consequent to the latency of some ill-health conditions, he was confident that in ten to twenty years’ time there would be significant reductions in death rates due to occupational disease in construction. Referring to paragraph 3 of the HWG section in the paper, which described progress by the industry’s **Health Task Group**, he expressed hope that the September summit would galvanise industry leaders. He went on to note that, after a long gestation, the HWG-produced OH guidance should be published in the near future. Finally, he indicated that HWG in its future work would include consideration of mental health issues.

3.3 Peter Wilson said management representatives during European Safety Week had identified an inability to attend to onsite work due to excessive paperwork demands as a source of stress. Richard Ash said that the summit is an opportunity for concrete progress which should not be lost. In particular, tangible commitments should be sought with feedback on them at the following meeting. Alan Muddiman raised the problem of reaching SMEs. Dylan Roberts responded that invitations will include supply chain partners. Alan replied that while many SMEs are willing to listen they are often not in major contractor supply chains. Peter Baker accepted that this was a key issue and reiterated that he would be speaking about it to the HSE Board.

3.4 Ray Cooke said that the primary focus for **Working Well Together (WWT)** activities during the first part of the year has been CDM 2015, and in this connection WWT events have reached 1500 persons. Conversations have been held with a number of industry contacts with a view to establishing new WWT regional groups in Hampshire, Cambridgeshire and parts of Kent.

3.5 Ray updated CONIAC on the work of the **Safety Working Group (SWG)**. He confirmed that the Tall Buildings subgroup has now been established. SWG is also considering fragile roofs. It is looking at the possibility of a research project and a “fragile roof week” and considering a suggestion that builders’ merchants may be able to assist with dissemination of messages. Further information on all these matters can be found in the paper. Richard Ash cautioned that the Tall Buildings group should keep its focus on safe construction and avoid getting drawn into wider issues. On fragile roofs, Jason Rowley suggested that maintenance contractors may be more relevant than construction contractors and Peter Baker acknowledged that consideration must be given to a range of stakeholders.

3.6 Susan Murray updated on the **Asbestos Liaison Group (ALG)** and took the opportunity to make the following remarks. No one seems to hold an authoritative list of approved disposal sites; ALG would be pleased to receive one if it exists. CIRIA has begun research, and is seeking input, in relation to guidance for site personnel where there is asbestos in the ground. Finally, in a personal view, Susan asserted that the Rotterdam Convention omission of chrysotile asbestos from its annex of dangerous chemicals, possibly due to lobbying by countries that produce that substance, is a disgrace. Peter Wilson said that when he visited sites he detected a perception among workers that asbestos risks were negligible when the duration of the work is low. He therefore strongly urged that messages about the danger of asbestos exposure continue to be sent.

4. **Update on competence issues (Presentation by Russell Adfield, HSE)**

4.1 Russell gave his presentation.

4.2 Terry Boniface said that the Construction Leadership Council supports the investigation into the Pye Tait recommendations. The report was a key action of the Industrial Strategy. With regards to the decision by the Construction Leadership Council to endorse the ten card schemes that currently carry the CSCS logo, he said that this was considered to be the least disruptive approach, unfortunately reported as endorsement of the CSCS scheme alone which was incorrect. This should not be viewed as an interim decision but the Council’s doors are open to specific proposals on a framework for competence.

4.3 Paul Haxell was interested in the issue of health and safety and the productivity agenda. He wondered how health and safety could be locked in as productivity appeared to be receiving much emphasis. Terry Boniface acknowledged that there is a tension between health and safety and the productivity agenda and deregulation. It is easy for messages to be misunderstood, however, there is no intention for messages on productivity to undercut safe production. Peter Baker concluded by saying that while there was risk there was also a real opportunity for the industry to get all of these things right.

5. **CDM 2015 embedding (Oral update by Simon Longbottom, HSE)**

5.1 Simon reviewed informational issues consequential to the coming into force of the *Construction (Design and Management) Regulations 2015* (CDM 2015) in April. In particular, he noted that there were some misunderstandings, for example, around

the extension of the requirement for a construction phase plan to all projects, who can be the Principal Designer (PD), and responsibilities in relation to domestic clients and their projects. He referred to industry's role in embedding the Regulations, especially in view of the need to encourage proportionate responses to regulatory requirements. He mentioned the role of professional bodies in getting correct messages to their members and acknowledged that the change in the approach to competence is a major challenge for the industry. Many industry bodies have formed their own CDM groups and produced internal advice and/or articles for journals. Simon particularly noted CITB's outreach which included: courses, a free app, dissemination of the industry-developed CDM guidance, etc. Lee Fisk said that CITB mailshots by way of e-mail and postcards had brought a lot of attention to its web-based resources. He offered to provide summary data on CITB's campaign for the information of CONIAC.

ACTION: Secretariat to send Members CITB-provided information on the impact of its CDM 2015 campaign. [Secretary's Note: an e-mail to Members of 24 July attached a CITB briefing note.]

5.2 HSE Construction Division has made embedding CDM 2015 a key element of its plan of work for this year and is engaging in a series of interactions with stakeholders, including WWT events. Additionally, HSE's new guidance package reflects an increased focus on the very wide range of CDM stakeholders. Construction Division staff are responding to a large number of e-mailed requests for advice coming into its central advice team. A main theme in the questions has been an unfortunate focus on detail to the detriment of big picture health and safety management. There is also evidence of reluctance to take on the PD role and confusion about who can fulfil it and here we need to reassure people with appropriate skills/experience that there is no reason for them not to take on the role. HSE will build on the questions asked and answers given by developing comprehensive FAQs on CDM 2015. However, because of the need to compile the FAQs and the necessary processes that precede putting advice on the HSE website these will not appear for some time. Richard Ash highlighted the publication of internal HSE inspector training materials on *Work at Height Regulations* which had proved very useful in clarifying those requirements, and suggested a similar approach could be equally useful for CDM 2015. Simon concluded by asking Members for their views on what more the industry and HSE can do to embed CDM 2015.

5.3 Susan Murray asked if any of the enquiries received by HSE were from workers or their representatives and if any were about worker involvement? Sue Brandrick could not recall any, however, she thought that worker involvement questions might not have been flagged as CDM by the central advice team. Peter Baker added that most questions have been about specific changes introduced by the new Regulations.

5.4 Jason Rowley said that, where requirements have changed, the industry, particularly the facilities management sector, needs to have written advice it can rely on and point to. He urged that the FAQs be completed and disseminated as soon as possible. In response to a question from Peter Baker, he said that presently the industry is following a proportionate approach but there is a risk of creating bureaucracy in areas where there is doubt. John Scott supported the early publication of the FAQs. Sue Brandrick suggested October as a likely publication

date. Peter Wilson mentioned that he had a project which might be useful for the FAQs and which he would be willing to share with HSE.

5.5 Alan Muddiman suggested *Mythbusters* as a vehicle for getting messages out. Peter Baker said that strictly *Mythbusters* is a challenge system that involves formal submission of a case and its consideration by an expert panel. However, the concept of exploding erroneous myths might offer a helpful format in the context of the FAQs. Alan added that there was a real risk of bureaucracy with the extended application of the construction phase plan duty. Jason Rowley mentioned case studies that could be helpful in illustrating compliance with this duty in the context of facilities management and indicated that he was happy to discuss these with HSE. On the subject of case studies generally, Richard Ash suggested that they were more likely to be submitted if HSE made clear that there was no risk of criticism in doing so.

5.6 Susan Murray said that the FAQs should include advice in relation to worker involvement and welfare. Unite will be putting out guidance on access to toilets on site.

5.7 Edward Fendt requested that instead of waiting for October something should be put out now, especially in relation to the construction phase plan. Peter Baker responded that HSE internal advice for its inspectors (in the form of short FAQs) would be sent to CONIAC Members for them to disseminate through their networks.

ACTION: Secretariat to copy HSE advice to inspectors on CDM 2015 to Members for information. (Secretary's Note: an e-mail to Members of 24 July attached 6 short PDFs covering various issues. An e-mail of 17 September attached two further FAQs.)

5.8 Peter concluded by saying that HSE is working hard to find priority areas for support. A key message for duty holders to bear in mind is "Step back from detail. Focus on outcomes rather than processes."

6. Update on seeking stakeholders' views on a possible ACOP to support CDM 2015 (Oral update by Simon Longbottom, HSE)

6.1 Simon Longbottom referred Members to paper **M3/2015/2**. He recalled that public consultation on the (then) proposed CDM 2015 Regulations had disclosed strong support for retaining an ACOP contrary to HSE's proposal for targeted guidance. HSE is currently about 25% of the way through a programme of consulting key industry stakeholders on this issue and it appears that support for an ACOP has diminished.

6.2 The government's preference is not to tell industry what to do; instead, it wishes industry to determine solutions itself. Any proposal to have an ACOP for CDM 2015 will need strong evidence-based arguments to persuade the HSE Board and Ministers. Can industry provide this evidence bearing in mind that the formal evaluation of CDM 2007 was critical of the value of the ACOP? What are the gaps in the existing CDM 2015 guidance suite and what is the best way of filling them? Would it be sensible to wait a while longer to see how CDM 2015 beds in?

6.3 David Parsons considered that, in light of all the considerations, an ACOP was probably not necessary. Peter Wilson thought that an ACOP could usefully coexist with the legal series (L-series) guidance and other guidance and asserted that safety representatives would use it. Peter Baker clarified that prosecution outcomes would not necessarily be affected by lack of an ACOP. He emphasised that any case for an ACOP must show real benefit.

6.4 Tony Putsman considered that the L-series guidance is not helpful to educate people and contrasted it unfavourably with the CDM 2007 ACOP. However, Alan Muddiman thought that with minor amendments to the L-series guidance it would be possible to do without an ACOP. John Scott agreed and suggested that there was not now much for support for an ACOP.

6.5 Dan Shears said that GMB wishes to see an ACOP for CDM 2015. He said that while the move from ACOP to guidance has reduced bureaucracy it has increased uncertainty as the ACOP defines standards in a way that guidance does not. For example, he considered that the L-series guidance does not bottom out the competence issue. Peter asked for evidence that lack of an ACOP had increased uncertainty. Dan responded that this was anecdotal and it is in any case difficult to prove a negative. However, HSE ACOPs are regarded as “gospel” and he believed that the lack of one in construction may harm health and safety. Peter observed that a merit of the L-series guidance vehicle is that it can be revised very quickly. Revision of an ACOP, on the other hand, is a complex and lengthy process and this makes it much harder to keep an ACOP up to date. He accepted that an ACOP could be needed in a limited area. Susan Murray expressed support for Dan’s views and referred to the Docks ACOP as an example that ACOPs are still needed. She said that as each ACOP must be reviewed from time to time this will provide the opportunity to keep a CDM ACOP up to date.

6.6 Paul Haxell suggested that the need was for something that contextualises duties, and case studies might be more appropriate for this than an ACOP. Richard Ash thought that an ACOP could act as a central hub for other guidance, noting that HSE had clearly invited industry to ‘step up to the plate’ in producing guidance and that some form of linkage with, but not endorsement by, an ACOP document would greatly encourage a positive response. Jason Rowley said that while an ACOP has a particular status in law, ultimately the authoritativeness of guidance derives from its HSE provenance, not a particular legal status.

6.7 Peter said that consultations with stakeholders were ongoing and he invited written representations from CONIAC Members. Any argument for, in particular, retention of the ACOP must be based on evidence or give a rationale for how it supports embedding and compliance. Written submissions should be made by the end of September as the matter will be taken to the HSE Board around the end of the year.

ACTION: CONIAC Members wishing to comment on whether there should be an ACOP for CDM 2015 to submit such comments in writing to the Secretariat by the end of September 2015. [Secretary’s Note: Several submissions were received.]

7. **Conclusion**

7.1 Peter said that the annual refurbishment intensive inspection initiative was planned for September/October. It will be preceded by a publicity exercise. He suggested that there might be value in a joint statement by HSE and some key stakeholders for release before the campaign starts. The statement would be included in a press release. HSE will be in touch.

7.2 The next meeting of CONIAC would be on Wednesday 18 November 2015. Peter concluded by thanking everyone for coming to the meeting.