

HEALTH AND SAFETY EXECUTIVE**CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)**

**Minutes of the M3/2011 meeting
held on 16 November 2011 in Rose Court**

Present

Philip White (Chair)
Anthony Lees (Secretary)
Steve Acaster
Richard Ash
Greg Brown
Kevin Fear
Kevin Minton
Alan Muddiman
Gerry Mulholland
Susan Murray
Bill Rabbetts
Jason Rowley
Phil Russell
John Scott
Jerry Swain
Martin Winstone

Representing

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

Officials

| | |
|----------------------------|-----------------------------|
| Gordon MacDonald | Health and Safety Executive |
| Gavin Bye | Health and Safety Executive |
| Joy Jones | Health and Safety Executive |
| Ian Strudley | Health and Safety Executive |
| Neil Stephens | Health and Safety Executive |
| Michael Ryan (Secretariat) | Health and Safety Executive |

Members of the public

8 were present

Apologies

Peter Caplehorn
Phil Davies
Paul Haxell
Alan Ritchie
Andrew Butt
Tony Mulcahy

Representing

Construction Industry Council
GMB
Home Builders Federation
UCATT
Cabinet Office
Business, Innovation and Skills

Summary of Actions agreed:

1. **ACTION: Secretariat to send a link to HSE H&S statistics to Members.** (See paragraph 1.2 (a)) [**Secretary's Note:** A suitable link was included in an e-mail to Members of 14 December 2011.]
2. **ACTION: Secretariat to send a link to the Olympics Learning Legacy website to Members.** (See paragraph 1.2 (b)) [**Secretary's Note:** A suitable link was included in an e-mail to Members of 14 December 2011.]
3. **ACTION: Secretariat to send a link to the TUC dust guidance to Members.** (See paragraph 3.7) [**Secretary's Note:** A link was included in an e-mail to Members of 14 December 2011.]
4. **ACTION: Secretariat to keep CONIAC advised of developments on Fee for Intervention.** (See paragraph 6.8)

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. He gave the apologies of absent members and welcomed Steve Acaster and Jerry Swain who were attending as substitutes.

1.2 Philip briefed CONIAC on recent developments:

(a) Provisional health and safety statistics for 2010/2011 – Philip drew attention to the recent publication of these on the HSE website.

ACTION: Secretariat to send a link to HSE H&S statistics to Members. [**Secretary's Note:** A link was included in an e-mail to Members of 14 December 2011.]

(b) Olympics learning legacy – Philip noted that the Olympics Learning Legacy website had been launched in October and that it contained a large number of valuable resources relevant to health and safety. He recalled that Lawrence Waterman (ODA Head of Health and Safety) had spoken on this subject at CONIAC in July and had said that he would be happy to talk about it at events set up by trade bodies. Richard Ash, who had been involved in the legacy work, emphasised that the lessons from the Olympics project were applicable to all firms, not just large ones.

ACTION: Secretariat to send a link to the Olympics Learning Legacy website to Members. [**Secretary's Note:** A link was included in an e-mail to Members of 14 December 2011.]

(c) Paper for HSE Board updating on work of Construction Division – Philip said that the Board received this paper in August. It had indicated that it was very pleased with the work of the Construction Division (CD). Among issues

of interest to it were health and what could be learned from the Olympics project and the effectiveness of links with the Building Control fraternity following the agreement of the Memorandum of Understanding with the Building Control Alliance. The Board had indicated its approval of CD's emphasis on refurbishment and smaller projects, and its evolving approach to larger firms.

2. **Agreement of Agenda and matters arising**

2.1 Members agreed the Agenda.

2.2 John Scott requested information on proposed changes to asbestos legislation and to RIDDOR. Philip agreed to take these under AOB (see paragraph 7).

2.3 Philip reviewed the actions from the July meeting and recorded that they had all been carried out. He noted that an earlier action on HSE (March 2011 meeting) to meet bilaterally with CONIAC Members was still in progress.

2.4 Members approved the minutes of the 13 July 2011 meeting.

3. **Update on CONIAC working groups (Oral updates by Anthony Lees, Ian Strudley and Joy Jones) [Paper M3/2011/1]**

3.1 Anthony Lees (Secretary to CONIAC and Head of Construction Policy Unit) reported as follows.

(a) The Working Well Together Steering Committee last met on 10 November. The Committee has overall management responsibility for the successful *Working Well Together* Campaign, which has been running for 12 years. The campaign delivers through regional groups and these, despite budgetary challenges, continue to perform well, delivering more than planned. A new group is starting in the Isle of Wight, which will bring the total to 16.

(b) The CDM Working Group has a meeting pencilled in for 11 January. Some adjustments to its membership may be needed.

(c) The Catastrophic Events Working Group is expected to have its first meeting in January, at which it will consider a plan of work.

John Scott expressed NSCC's very strong support for WWT. Philip was grateful for the good work done but acknowledged a financial challenge for the future, though in principle funding had been agreed for 2012/13.

3.2 Ian Strudley (HSE Construction Sector), Chair of Health Risks Working Group, reported that the group had met five times since being reconstituted and benefited from wide representation across the industry and good involvement from its members. He asked CONIAC to note three points as follows.

(a) The group considered that it was useful to have a written statement of eight key points on control of workplace health risks and had produced a short position paper to do this.

(b) The group believed it was important to dispel mythology about management of health risks and was producing guidance for employers which aimed to clarify:

- what is meant by managing health;
- what is available to help with this;
- what employers need to do.

(c) In the future, the group would promote campaigns by industry bodies on the top five health risks, develop appropriate tools and commission research. Additionally, it would consider how better to involve the design community.

3.3 Ian concluded by noting that HSE's supply chain initiative was beginning new work focused on managing health risks in paving, roads and highways and was seeking persons to join a number of working groups. Details could be found on the HSE website.

3.4 Bill Rabbetts asked about lessons from the Olympics project for health. Ian said that the guidance under preparation would address this. In particular, it would stress the importance of integration.

3.5 Jerry Swain observed that the eight-point position paper made no reference to direct involvement of workplace representatives. Ian responded that it says everyone should be involved. Philip noted that UCATT is represented on the working group and asked Ian to take this point up when the working group next meets.

3.6 Jason Rowley wondered if it was helpful to give so much attention to deaths in the context of health since many of these are due to past asbestos exposures and many important health challenges are non-fatal. Additionally, he suggested that a holistic approach is needed as managing health should not be separate from lifestyle issues. Ian agreed to take these points back to the working group.

3.7 Susan Murray said that the TUC had produced guidance for health and safety representatives entitled *Dust in the workplace*. The guidance is available for download on the TUC website.

ACTION: Secretariat to send a link to the TUC dust guidance to Members. [Secretary's Note: A link was included in an e-mail to Members of 14 December 2011.]

3.8 Richard Ash believed that there can be difficulty in reconciling the need to manage health risks to workers and to ensure their employment rights. He suggested that it would be useful to have clarification on this. Martin Winstone noted the work to produce guidance for employers and reported that

the H&S group at CCG is considering producing guidance for construction clients based around the 8 points.

3.9 Joy Jones (HSE Construction Sector), Chair of Safety Working Group, reported that her group covered all safety issues but that its main focus was on falls from height. Following an earlier request from CONIAC, it had now prepared a business plan for a long-term strategy to ensure that work at height is undertaken safely. Joy outlined the challenging nature of the task and the principal features of the plan and asked for CONIAC's agreement to take the work forward. She mentioned that it would be helpful if CONIAC Members would agree to act as ambassadors for the strategy.

3.10 Gerry Mulholland said that he would be happy to be an ambassador for the work. He recalled that the Donaghy Report had urged that construction deaths be seen as socially unacceptable and he suggested that this be built into the strategy. He observed that some parts of the industry were less successful than others in controlling work at height risks and asked that account be taken of this. Joy said that this would be picked up as the detail is worked out.

3.11 Jason Rowley noted the focus on falls (of people) from height but suggested a wider scope of work at height which would include risks from, for example, falls of material. Susan Murray added that a better title for the strategy might use "Prevention" rather than "Tackling".

3.12 Jerry Swain was concerned about the long timescales to address the problem, especially in light of many deaths in recent years. He noted that the first goals are set for October 2013 but then there appears to be a wait of nine years to "improve" systems of work. He asked if timescales could be shortened. Joy said that inspectors gave and would continue to give a great deal of attention to height risks during inspections. However, it was unfortunately true that the major change in attitudes and practice that the strategy was seeking to achieve could not be done quickly.

3.13 Kevin Fear said that he was a member of the Safety Working Group and he supported the idea of a 25-year strategy since he didn't believe it was realistic to deal with this problem in less than a generation. However, he expected to see significant progress well before the end.

3.14 Bill Rabbetts also accepted that this would be a long journey but too much emphasis on 25 years may be discouraging. He suggested setting key milestones at shorter intervals to maintain interest and enthusiasm.

3.15 Philip concluded the discussion by recording that CONIAC had approved the Safety Working Group's falls from height business plan and also the Health Risks Working Group's 8-point position paper subject to Joy and Ian taking CONIAC's comments back to the working groups for attention.

4. Small Sites Strategy (Oral update by Neil Stephens, HSE Construction Sector) [Paper M3/2011/2]

4.1 Philip introduced Neil Stephens (HSE Construction Sector, Head of Programme and Communications Unit). Following Neil's presentation, Philip invited comments from Members.

4.2 Jason Rowley supported the thrust of the strategy. However, he noted that 30% of Construction Division's planned proactive inspection is devoted to small sites and suggested that 70% would be better. Alan Muddiman supported this view. Neil said that the figure of 30% understates the attention given to small sites and that when account is taken of action in relation to asbestos, refurbishment, etc the true figure is much higher.

4.3 Phil Russell expressed strong support for the strategy. He approved of a move away from asking small firms to assess risks to telling them how to do things. He acknowledged the difficulties of reaching small firms with the necessary information. Bill Rabbetts suggested that supply of plant may provide a route for transmission of information.

4.4 Philip concluded the discussion by recording that CONIAC had endorsed the revision of the Small Sites Strategy and was content with key aspects, as set out in paragraph 15 of the paper. He reiterated that the proportion of Construction Division time and effort devoted to small sites is considerably above 30% and acknowledged that presentation of where HSE's proactive effort is placed needed to be carefully explained.

5. CDM 2007 evaluation next steps [No paper]

5.1 Philip reviewed the process for evaluating CDM 2007. He said that there had been three strands to the evaluation, namely: formal research carried out by an outside contractor; work by the CDM evaluation Working Group; and ad hoc comments from organisations and inspectors. He recalled that CONIAC had received detailed feedback on the evaluation from Andrew Maxey in March and from Anthony Lees in July. Key findings were that the five criteria set by HSE for the evaluation had largely been met but concerns remain around: bureaucracy; competence and co-ordination. Additionally, the ACOP was perceived as too long and not sufficiently helpful in the context of smaller projects.

5.2 With regard to any work following on from the evaluation, Philip noted that the environment now is very different from two years ago. In particular, the Coalition Government's approach to health and safety legislation, the forthcoming findings of the Löftstedt Review and the European dimension will all have to be borne in mind. The Government has made it plain that its preferred approach to transposition of European directives into UK law is by direct copy-out of the text. Additionally, the Government's Red Tape Challenge (RTC) focused on health and safety legislation for a 3-week period and CDM 2007 has been a major source of the comments received. Attention must be paid to these comments and others coming in subsequently from the

RTC process. As regards the EU aspect, that is the question of the sufficiency of UK implementation of the Directive, the European Commission has shown interest in the evaluation of CDM 2007 and a dialogue will need to be maintained with it. [**Secretary's Note:** Professor Löfstedt's report was published on 28 November and is available on the DWP website.]

5.3 There is a meeting of the HSE Board in December at which it will have a closed discussion on CDM 2007 and give a steer on how to move forward.

5.4 John Scott asked which things had caused the European Commission to question our implementation of the Directive. Philip said that they were CDM 2007's exemption of domestic clients from client duties and its use of a higher threshold to trigger the requirements for appointment of co-ordinators. Philip concluded by saying that the subject of CDM will return to CONIAC at its March 2012 meeting.

6. Proposed extension of cost recovery by HSE (Presentation by Gordon MacDonald, HSE) [No paper]

6.1 Philip introduced Gordon MacDonald and asked him to give his presentation. Following the presentation he asked for comments from Members.

6.2 Gerry Mulholland asked: what is the attitude of inspectors to Fee for Intervention (Ffi); will there be an increase in administrative activity that will reduce time spent on frontline inspection; will HSE receive the revenue generated or will the Government keep it; and what is being done to alert small firms to this development?

6.3 Gordon responded to Gerry's questions in the order they were put. He said HSE recognises that change is difficult to manage and new approaches can be challenging before people become accustomed to them. For that reason HSE has put in place a dry run from October to December and a shadow run from January to March before Ffi goes live in April. These rehearsals will accustom inspectors to the new procedures and identify problems in advance so that they can be solved. With regard to administration this would be dealt with by back office staff and would have no impact on frontline resources. However, any challenge by a duty holder to a decision to charge a fee would necessarily involve inspector time. It was not yet known what would become of the moneys generated by Ffi, though consideration is being given to how it could be used to improve health and safety outcomes.

6.4 Steve Acaster said that on construction sites there are frequently many duty holders - the principal contractor and various sub-contractors - working together. If a fee is imposed in such cases who will be asked to pay and how will HSE cope with the inevitable disagreements? Gordon said that an initial increase in challenges to enforcement notices is foreseen but HSE's expectations will become clearer over time. He suggested that about 90% of material breaches are in any case clear cut. Philip added that a case-by-case

approach would be used and noted that two construction teams have been involved in the dry run.

6.5 Richard Ash was concerned that Ffl would be divisive, for example, by undermining efforts to encourage integrated team-working. He believed that the imposition of a fee where there is material breach is a sanction for non-compliance, and said that there needs to be transparency on what constitutes a material breach. In particular, HSE could liaise with industry in developing its criteria for charging and its instruction to inspectors on this should be published. Gordon replied that the fee is to recover costs of intervention and is not a sanction for breach as these are a matter for the courts. With regard to transparency, the Regulations introducing Ffl will reference HSE guidance. Gordon said he would discuss with Philip how to engage with the industry in regard to this guidance. Additionally, HSE may seek to translate its Enforcement Management Model for a lay audience together with providing illustrative guidance.

6.6 Jerry Swain said that while he was glad that the fee was not a sanction he was clear that it should not reduce the number of prosecutions. He hoped that the money raised would increase HSE's ability to function effectively in construction. Susan Murray asked what the expected effect on compliance was and would there be monitoring of the impact? Gordon said that only a partial picture would be obtainable due to the presence of confounding factors. HSE may issue a report on the impact of Ffl. Philip added that Construction Division's plan of work would not alter as a result of Ffl. Priorities would not change and there would be no chasing after money.

6.7 Bill Rabbetts said that he was pessimistic. He thought the effect would be to encourage risk dumping and risk transfer and to distort collaborative working. Greg Brown suggested that contractors may be more affected by Ffl than designers and co-ordinators. Alan Muddiman urged that there should be a very simple first-tier appeal mechanism so that simple issues could be dealt with quickly. Philip said that where there was concern about a notice a direct approach to the relevant Principal Inspector can often deliver a quick resolution.

6.8 Phil Russell expressed concern that Ffl will harm relationships. Also the professional level hourly fee rate will be difficult for firms that charge £40 to £20 per hour. Gordon acknowledged this but said that the dry run results were hopeful. Philip concluded the discussion by thanking Gordon and saying that the Secretariat would keep CONIAC informed.

ACTION: Secretariat to keep CONIAC advised of developments on Fee for Intervention.

7. AOB

7.1 In relation to the proposed changes to the Control of Asbestos Regulations, John Scott asked if was necessary to notify HSE a set number of days before the commencement of notifiable non-licensed work and if it was

necessary to await a response from HSE before beginning the work. Anthony Lees said that it was sufficient to notify HSE anytime before the work began. It was not necessary to await a response from HSE.

7.2 In relation to the proposed changes to RIDDOR, John Scott said that it seemed there would now be both greater than 3 day and greater than 7 day periods for action under the Regulations and asked if this could be clarified. Anthony Lees said that the criterion of greater than 7 days of incapacitation applied to reporting whereas the greater than 3 days one applied to recording. Susan Murray and Bill Rabbetts suggested that some confusion may result from this change and urged a need for clear communications.

8. Conclusion

8.1 Philip thanked Members for their contributions. He said that the next meeting would be on Wednesday 14 March 2012.