

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

**Minutes of the M3/2009 meeting
held on 17 November 2009 in Rose Court**

Present

Philip White (Chair)
Anthony Lees (Secretary)
Richard Ash
Clare Baker (substituting for
Rob Miguel)
Bill Belshaw
Peter Caplehorn
Kevin Fear
Clive Johnson
Peter Kent
Alan Muddiman
James Preston-Hood
Bill Rabbetts
Alan Ritchie
Robert Sayers
Tony Wheel
Gavin Bye
Alan Craddock
Laurence Golob
Mike Harrison
Andrew Maxey
Michael Ryan (Secretariat)

Representing

Health and Safety Executive
Health and Safety Executive
Engineering Construction Industry Association
UNITE

Specialist Engineering Contractors Group
Construction Industry Council
ConstructionSkills
National Specialist Contractors Council
Local Authorities and Public Interest
Construction Confederation
Construction Clients' Group
Construction Confederation
UCATT
Home Builders Federation
United Kingdom Contractors Group
Health and Safety Executive
Health and Safety Executive
Health and Safety Executive
Health and Safety Executive
Health and Safety Executive
Health and Safety Executive

Members of the public

15 were present

Apologies

Bob Blackman
Rob Miguel
Phil Russell
John Tebbit
Anthony Burd

Representing

John Ioannou
Kevin Toner

UNITE
UNITE
Federation of Master Builders
Construction Products Association
Observer for Communities and Local
Government
Observer for Office of Government Commerce
Observer for Health and Safety Executive
Northern Ireland
Observer for Business, Innovation and Skills

Clive Young

Summary of Actions agreed:

1. **ACTION: Secretariat to send copies of the booklet “Health and Safety Statistics 2008/09” (MISC896) to CONIAC Members.** (See paragraph 2.6)
2. **ACTION: Secretariat to seek information on recent crane prosecutions and competence and advise CONIAC.** (See paragraph 4.5)
3. **ACTION: Secretariat to send a note to Members on the outcome in relation to the proposed Regulations to notify tower cranes of the 25 November HSE Board meeting.** (See paragraph 4.9)
4. **ACTION: Secretariat to inform Members when John Carpenter’s Report is published.** (See paragraph 5.8)
5. **ACTION: Secretariat to revise draft Terms of Reference, including in particular with regard to the process for obtaining membership nominations, and send to CONIAC before Christmas for final comments.** (See paragraph 7.10)

1. Welcome and apologies

1.1 Philip White welcomed everyone, including, in particular, Clare Baker who was standing in for Rob Miguel. He gave the apologies.

2. Chair’s introduction

2.1 Philip briefed CONIAC on a number of issues of interest.

2.2 Public launch of Safety Schemes in Procurement (SSIP) Forum – Philip attended the SSIP launch on 4 November, at which Lord McKenzie had given the keynote speech. The mood was positive, and HSE is supportive of this important initiative.

2.3 EU non-binding guide on implementation of the Temporary or Mobile Construction Sites Directive (TMCS D) – Publication is expected in February or March of 2010. The guide’s focus on the Directive will assist Accession States when they come to implement but is of less value to companies and others who have duties under specific national implementing regimes such as CDM 2007.

2.4 CDM 2007 ACOP – HSE is making all of its guidance publications available as free Internet downloads. The CDM 2007 ACOP can be found at: (www.hse.gov.uk/pubns/books/l144.htm).

2.5 Paper HSE/09/78 – Update on work of Construction Division – This paper (e-mailed to CONIAC on 23 September) was prepared for an HSE Board residential in August concentrating on construction, the Olympics and the work of CD. It summarised CD's recent work and plans and was well-received. The Board raised some questions and points including the balance of inspection activity between small and larger firms, which will be addressed in CD's future work plans. The Board was very impressed with the approach to health and safety at the Olympic Park, particularly the occupational health facilities.

2.6 Updated health and safety statistics – These were released at the end of October. The continuing downward trend in the figures for construction fatalities and injuries is welcome, although the effect of the recession is uncertain. HSE has published a booklet summarising the latest statistical information and this would be sent to CONIAC for information.

ACTION: Secretariat to send copies of the booklet “Health and Safety Statistics 2008/09” (MISC896) to CONIAC Members. (Secretary's Note: Copies of MISC896 were mailed to Members on 2 December 2009)

2.7 Forthcoming HSE activities in connection with refurbishment work – Following intensive inspection initiatives on refurbishment in the last two years, HSE will again commit resources to this sector during the early part of next year. The focus will be on domestic and small commercial roof work activities. Separately, HSE is renewing its campaign on asbestos with a new series of advertisements targeting construction trades.

2.8 CIRIA research on major catastrophes – HSE has engaged CIRIA to seek to identify gaps in knowledge on major catastrophes, eg tower crane collapses, tunnel collapses, etc, especially with a view to determining triggers and causative factors. The project is scheduled to report in July 2010. The report will be published by CIRIA and there will be events to publicise the findings.

3. Agreement of Agenda, approval of Minutes of last meeting and matters arising

3.1 Members agreed the Agenda and approved the Minutes of the meeting held on 22 July 2009. Philip noted that the two Actions agreed at that meeting had been carried out.

4. Tower crane safety (Presentation by Laurence Golob, HSE Construction Sector) [No paper]

4.1 Philip introduced Laurence Golob and asked him to give his presentation. Laurence briefly reviewed the recent history of tower crane accidents and the political and public interest they had engendered. He described current work by HSE and the industry, including: a Strategic Forum-

developed matrix of minimum competency requirements for persons involved in tower crane operations; research projects on crane design standards and the effects of high winds; and measures to improve public confidence such as the Strategic Forum's Safe Crane Campaign and HSE's proposals for a publicly accessible register of statutorily notified information on conventional tower crane installations on construction sites.

4.2 The Strategic Forum's competence guidance can be downloaded at: www.strategicforum.org.uk/towercranes.shtml and a programme for industry to implement it is being agreed. With regard to the register, Laurence mentioned that HSE had received 100 responses to public consultation and would put final proposals for Regulations to the HSE Board on 25 November, with a view to having them in force from next April. He concluded by saying that HSE's field inspectors were focusing attention on tower crane safety both on construction sites and during head office visits. Philip thanked Laurence and asked for Members' comments.

4.3 Richard Ash commended the work by the Strategic Forum working parties to clarify competence standards. He believed that the very clear steer received had contributed to this success and suggested that CONIAC bear it in mind when directing its own working groups.

4.4 Bill Belshaw asked if there was any general explanation as to why the recent tower crane failures had occurred. Philip thought there was no clear answer but suggested that competence may be the nub of the matter. In any event, the CIRIA research on major catastrophes should help to identify key issues. Tony Wheel observed that the Strategic Forum's Plant Safety Group had moved on to consideration of quick hitches and MEWPs and asked if the CIRIA research would cover these? Philip said that the research had a broad scope and would look across processes.

4.5 Kevin Fear enquired about recent crane prosecutions and their relation to competence. Philip agreed to see what further information could be provided.

ACTION: Secretariat to seek information on recent crane prosecutions and competence and advise CONIAC.

4.6 In relation to the tower crane register, Alan Ritchie raised UCATT's preference for 1 to 3 days, rather than the 14 days proposed by HSE, as the time allowed following thorough examination for notification to be made, and asked if HSE had considered this. Additionally, he emphasised the health and safety significance of crane drivers' employment rights and asked if research was looking into this.

4.7 Philip said that 14 days had been consulted on, responses received and the HSE Board would decide. From the point of view of safety the key thing is the carrying out of the thorough examination. Most notifications were likely to be done electronically and promptly. Employment status of crane drivers was not covered by the research. However, the principal contractor

must manage health and safety on site regardless of employment status of workers and where drivers were, for whatever reason, reluctant to take up an issue with management it was open to them to approach HSE in confidence.

4.8 Alan insisted that employment status is very important, especially in the industry with the lowest number of safety representatives. He was not reassured by the comment about confidentiality and believed that the position fell short of what UCATT saw as necessary.

4.9 Clive Johnson asked if the idea of notification by way of the F10 had been dismissed. Philip said that while it had not been part of the consultation respondents had been able to raise it. Philip said that he would ensure that CONIAC was informed of the outcome of the Board meeting.

ACTION: Secretariat to send a note to Members on the outcome in relation to the proposed Regulations to notify tower cranes of the 25 November HSE Board meeting. (Secretary's Note: This action was fulfilled by way of a note e-mailed to CONIAC on 30 November 2009)

5. HSE's Local Authority Construction Engagement (LACE) project – A progress report (Oral report by Mike Harrison, HSE Construction Sector) [Paper M3/2009/1]

5.1 Philip introduced Mike Harrison and asked him to update CONIAC on progress with LACE.

5.2 Mike said he would focus on the highlights but not attempt to describe everything that had happened in the last year. CLG's Planning Portal is being upgraded and we will seek improved links between the Portal and HSE's web pages.

5.3 There has been considerable work involving Environmental Health (EH) departments. This includes a project to encourage Environmental Health Officers (EHOs) to inform businesses with pending construction work of their CDM client duties and another where EHOs "track back" to clients and designers where things have not gone right. There is increasing take up by LAs of flexible warranting permitting their inspectors to take action where there are matters of evident concern. Two pilot projects are underway with flexibly warranted EHOs inspecting some construction work for small clients. In both cases HSE has provided initial training and ongoing practical support.

5.4 A number of teams within Construction Division (CD) are attempting to establish closer working relations with Building Control (BC) departments. The LACE team has established links with various bodies in this sector including the Building Control Alliance which represents the profession as a whole. Other work is going ahead with Planning, Highways and Trading Standards as described in the paper. HSE's aim is to recruit pathfinder Local Authorities (LAs) who will contribute to health and safety standards in construction. The challenge is to convert signs of interest into more active

participation. However, current conditions may make this difficult. Philip thanked Mike and asked for Members' comments.

5.5 Peter Kent paid tribute to the work of the LACE team. He noted the paper's indication that some EH departments felt unable to participate and he wondered why this was. Mike thought that structural differences between and within LAs may contribute to the difficulties faced in obtaining co-operation. Peter suggested that the question of structures is interesting and may be worth bringing to the attention of the Audit Commission. Additionally, while it was right to point out current difficulties contact has been limited to professionals, what about politicians? Mike agreed that work has been at grass roots level and the time is coming to consider other options. Peter noted the 2009/2010 target of 30% of BC websites having links to health and safety information and asked what the current figure was. Mike said that it was about 60 out of 400 at the half year stage.

5.6 Bill Rabbetts said that integration, if done right, could provide many advantages and asked if Mike was confident of achieving it. Mike said that integration remained a long-term objective, with "alignment" probably more realistic in the near term. Anthony Lees said that integration was a commitment. He noted that while work under LACE has largely been with BC HSE is also working with CLG in relation to planning and integration.

5.7 Kevin Fear asked how successful the work had been in reaching SME builders on site. Mike said that the work with BC should help but it is early to draw any conclusions about success. Alan Muddiman thought that many fatalities occur in parts of the industry which were effectively unregulated and wondered if there was a resource issue. Philip said that the issue was not lack of regulation but the difficulty in reaching SMEs, especially those on non-notifiable and smaller sites. The resource committed to this issue is much greater than that on tower cranes.

5.8 James Preston-Hood asked when John Carpenter's report on the scope for better integration would be published. Gavin Bye thought this would happen shortly after Christmas and a note would be sent to Members informing them of the publication.

ACTION: Secretariat to inform Members when John Carpenter's Report is published.

5.9 Peter Caplehorn expressed support for further integration, which held out the possibility of many synergies, eg the linking of planning and BC documents to CDM information. He cautioned that certain types of small projects did not require planning permission and might miss LA attention. Philip closed by saying that the HSE Board was taking a close interest in LACE and would be receiving a presentation at a Workshop on 16 December. He thanked Members for their very helpful comments.

6. Update on work following publication of the Donaghy Report (Oral report by Gavin Bye, HSE, Head of Construction Sector) [No paper]

6.1 Philip asked Gavin to update CONIAC. Gavin said that the Government hopes to publish its considered response to the Report and its 28 Recommendations later this year. To this end, DWP is currently meeting separately with five groups of stakeholders, including trades unions, professionals and the supply chain. For its part, HSE's work is well developed in relation to the Recommendations applicable to it. We would be interested to hear Members' views and what they could do to help.

6.2 Philip thanked Gavin and amplified that the onus is on DWP Ministers, supported by their departmental officials, to make the response - to do so by Christmas may be challenging.

6.3 Richard Ash enquired if there was any way for persons not involved in the meetings to find out what is happening. Philip said that members should in the first instance approach the Secretariat for information.

6.4 Alan Ritchie said that UCATT welcomed the Report and will seek to ensure that the Government takes up all of the Recommendations. He was disappointed that HSE was meeting with the Institute of Directors on proposed further guidance on directors' duties, as this appeared to conflict with the Report's Recommendation for positive duties on directors. Alan also referred back to the case of employment status of a crane driver, where Philip White earlier in the meeting said that crane drivers can contact a confidential HSE phone number and report a concern. Alan pointed out that if HSE then goes back to the company inquiring into the reported concern, the company will know straight away who reported the issue. The crane driver could then be victimised or lose his work, and as he lacks employment rights he will not be able to redress the matter at an employment tribunal.

6.5 Tony Wheel clarified that the proposal is construction-specific and builds on the 2007 HSE/loD guidance. It is a joint effort by loD, the Strategic Forum and HSE. UCATT was invited to the meeting and the aim is to have the guidance by March, although nothing is set in stone. Alan Ritchie said that UCATT declined the meeting on the grounds that production of yet more guidance undermines Donaghy's Recommendation. The original guidance was criticised by the TUs who perceive that purely voluntary approaches do not work. He criticised the expenditure of HSE resource on production of new guidance.

6.6 Philip pointed out that Donaghy's Recommendation on Directors had to be considered in light of not just construction but all industrial sectors and explained that the Government has already made its position clear in its response, published on 26 October, to the Work and Pensions Select Committee Report 'Workplace health and safety: follow up report'. Philip then read the relevant recommendation and response is as follows:

“The findings of recent research suggest that director level awareness of guidance on health and safety legislation is unacceptably low. Furthermore, Rita Donaghy’s recent inquiry into fatal accidents in the construction industry recommended that positive duties should be introduced for directors. We await the findings of HSE’s evaluation of its voluntary guidance for directors with interest and maintain that if this approach is proving unsuccessful, statutory duties should be introduced.

The Government agrees that effective leadership for health and safety by directors and other senior managers is a key factor to drive improved health and safety standards. We recognise there is more to be done; HSE and many others, including Ministers, have been promoting the guidance *Leading Health and Safety at Work* which was published in 2007, jointly by HSC and the Institute of Directors. In addition, leaders within industry sectors, for example, Construction and Process Safety, are themselves taking up the challenge and developing best practice.

An independent steering group is evaluating the evidence of the effect of this guidance, alongside other recent measures, in changing directors’ (and their equivalent senior organisation leaders’) behaviour. HSE welcomes the analysis within Rita Donaghy’s report to the Secretary of State of the issues which have led to calls for there to be positive directors’ duties. As the report acknowledges, the arguments on both sides are well rehearsed.

The HSE Board will be revisiting the issue of directors duties in relation to health and safety in early 2010 and will subsequently offer further advice to Ministers.”

6.7 Philip went on to explain that the proposal for additional guidance is seen as a means of responding to recommendation 27 of Rita Donaghy’s report where she said “that HSE should encourage its inspectors to promote the principles of the joint Institute of Directors/Health and Safety Commission guidance for directors and leaders of companies by the use of more easily absorbable presentational material”. In her report Rita indicated that work was being done to adapt the existing guidance for small companies and that development was to be welcomed. She went on to say that inspectors should be supported with easily absorbable material to distribute. The proposed guidance was separate from the general issue of whether there should be duties, and the cost of it to HSE should be low as it would probably not exceed one or two pages.

6.8 Tony Wheel referred to Donaghy Recommendation 20 and asked about HSE work on occupational health. Philip said that OH would be a large element of Construction Division’s plan of work for 2010/2011. CONIAC would be given information about the plan at the meeting in March. Philip thanked Members for their comments and concluded the discussion.

7. CONIAC Reconstitution (Oral report by Anthony Lees, HSE, Secretary to CONIAC) [Paper M3/2009/2]

7.1 Philip invited Anthony to report. Anthony summarised his paper, highlighting in particular: accountability to the HSE Board; alignment of work with the new HSE Strategy; co-ordination with other industry representative bodies; commitment to tripartism; balance of membership between TUs, trade associations, umbrella organisations and relevant specialists; importance of

refreshing membership; possible approaches to recruitment of members; and draft Terms of Reference (ToR). He concluded by saying that the aim was to complete reconstitution in time to have a first meeting on 3 March 2010. Philip asked Members for comments.

7.2 Kevin Fear suggested that the aims and objectives given in the draft ToR do not sufficiently reflect the need to align CONIAC's work with the new HSE Strategy. Also they did not adequately define success. Bill Belshaw agreed that CONIAC's aims should be measurable. Clare Baker said that UNITE would prefer stronger linkage to the HSE Board, not limited to the CONIAC Chair.

7.3 Richard Ash noted that working groups were required to develop their own terms of reference and expressed concern that this might limit CONIAC's ability to guide their work. Robert Sayers said that the draft ToR indicated that chairs of standing committees would be HSE officials and wondered if this restriction was necessary.

7.4 Philip mentioned that he had already received letters from various organisations requesting places on CONIAC. He considered it was very important to refresh CONIAC's membership, especially in light of changes that had taken place in the industry over the last 3-4 years. He asked specifically for comments on paragraph 10 of the paper.

7.5 Alan Ritchie considered that CONIAC membership should emphasise employer and the trade union representative bodies and not individuals, and he was therefore opposed to public advertisement of places. He thought TU representation should be larger and suggested a proportion of fifty percent.

7.6 Bill Rabbetts said that CONIAC should have reasonable representation of both the larger and smaller ends of the industry, and of practitioners, contractors and designers. Non-construction-specific skills, eg marketing and communications, are important but should be reserved to working group level. Kevin Fear suggested consideration be given to CDM duty holder representation.

7.7 Peter Kent said that while local authorities had a significant role in construction which even extended to enforcement their representation on CONIAC was limited to observer rather than member. Additionally, he noted that the ABI representative had resigned and not been replaced. Philip indicated that HSE would give careful consideration to the balance of future membership and the utility of the member/observer distinction.

7.8 Philip referred to paragraphs 11 to 14 of the paper and asked for comments on the mechanics of recruiting members. Richard Ash said that any advertisement would need to make clear the breadth of CONIAC's role in case applicants assume they can use it as platform for single issue concerns.

7.9 Bill Belshaw wondered how any process would be able to demonstrate transparency, and asked would the Chair invite specific persons to be

members or write to organisations and ask them to nominate a person of their choice. Philip said that while organisations approached for nominations would be free to nominate who they chose it was important that the membership of CONIAC be refreshed. Alan Muddiman asked if the process could be expedited. Philip said that he hoped that the new membership would be completed by the end of January.

7.10 James Preston-Hood asked what the deadline for comments on this issue was. Philip said that a revised draft of the ToR would be sent out before Christmas for further comment.

ACTION: Secretariat to revise draft Terms of Reference, including in particular with regard to process for obtaining membership nominations, and send to CONIAC before Christmas for final comments.
(Secretary's Note: Revised draft Terms of Reference sent to CONIAC for comment on 21 December 2009)

8. **AOB**

8.1 There was nothing to discuss under this heading.

9. **Conclusion**

8.1 Philip confirmed that the next meeting (ie the first meeting of the reconstituted CONIAC) would be on 3 March 2010 in Rose Court. He thanked CONIAC Members for their contributions.