

HEALTH AND SAFETY EXECUTIVE

CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

Minutes of the M2/2012 meeting
held on 20 June 2012 in Rose Court

Present

Philip White (Chair)
Anthony Lees (Secretary)
Richard Ash
Nick Blundell
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
Engineering Construction Industry Association
UCATT
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

13 were present

Apologies

Phil Davies
Steve Murphy

Representing

GMB
UCATT

Summary of Actions agreed:

1. **ACTION: Secretariat to send links to 2011/2012 provisional fatality figures and HSE press release to Members when available.** [See paragraph 1.3(a)]
2. **ACTION: Secretariat to send links to the Löfstedt recommendations Progress Report and the associated Ministerial letter.** [See paragraph 4.1]
3. **ACTION: Secretariat to send link to Consultative Document on proposals to review Approved Codes of Practice to CONIAC when it is published.** [See paragraph 4.7]
4. **ACTION: The Secretariat to send Members a link to the cases considered by the Mythbusters Challenge Panel.** [See paragraph 4.10]
5. **ACTION: Secretariat to copy guidance for construction inspectors on FFI to Members when available.** [See paragraph 6.2]

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 including, in particular, Nick Blundell who was attending as substitute for Steve Murphy.

1.2 Philip gave the apologies of absent members and noted that Gerry Mulholland who had represented the Specialist Engineering Contractors Group had now resigned from CONIAC. It was expected that SEC Group would nominate a replacement for Gerry in due course.

1.3 Philip briefed CONIAC on two forthcoming developments:

(a) Release of annual fatality statistics – Provisional figures for fatalities at work, including construction fatalities, during 2011/2012 would be released on 5 July. HSE would issue a press release at the same time. The Secretariat would copy the statistical information and press release to Members.

ACTION: Secretariat to send links to 2011/2012 provisional fatality figures and HSE press release to Members when available. [Secretary's Note: Suitable links were included in an e-mail to Members of 5 July 2012.]

(b) Commencement of process to reconstitute CONIAC – Philip said that from July he would write to selected stakeholder organisations inviting them to nominate persons to represent them on CONIAC during its next three-year term beginning in March 2013. Following consideration of the nominations, letters of appointment would be sent out towards the end of this year.

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

2.1 Members agreed the Agenda.

2.2 Susan Murray asked for some time to be given to discussion of the campaign by the European Safety and Health Agency on working together for risk prevention and Philip indicated that this would be taken under AOB (see paragraph 7.1).

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

2.4 Members approved the minutes of the 14 March 2012 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 reported as follows:

(a) Health Risks Working Group – This group held its seventh meeting on 30 May. It is preparing occupational health guidance for employers and, following further revisions, will forward this to CONIAC (probably in November). The guidance will be produced in both a short basic version and a longer more detailed one. At its meeting, the group also took views on a Top Five set of health risks, including occupational cancer, and on issues around the ageing construction workforce. The next meeting is on 17 October.

(b) Working Well Together Steering Group – Funding for WWT events in 2012/13 has been agreed at a similar level to the previous year. There have been eleven events so far this year and 36 more are planned. However, this total should not be regarded as definitive as WWT invariably exceeds its plan. A new local group has been formed in Lancashire with a possible further one in the South. The Steering Group has issued revised guidance on setting up local groups.

(c) The Catastrophic Events Working Group – This group was formed to consider issues around the potential for multiple fatality accidents following research on this subject conducted for HSE by CIRIA and held its second meeting on 21 May. The group agreed its formal terms of reference and is considering ways to publicise its work, possibly through *New Civil Engineer* magazine. It had earlier agreed to send a letter to the top 100 construction stakeholders and this is expected to be dispatched shortly. The group is developing several workstreams around the issue of temporary works, including a pilot audit of such works. The next meeting is due in July and will focus on competence issues.

(d) The Safety Working Group – This group last met in April. It continues to focus on work at height, particularly hardware issues. It has good links with

the Strategic Forum for Construction's Plant Safety Group. The group will meet again on 25 September.

3.2 Richard Ash believed that the guidance being prepared by the Health Risks Working Group would be helpful in relation to employment rights issues. Philip agreed and took the opportunity to thank CONIAC Members and other persons who serve on the working groups for their contributions.

4. Update on implementation of Löfstedt Report (Presentation by Anthony Lees, HSE) [Paper M2/2012/1]

4.1 Philip began by noting that the Government had published a Progress Report on implementation of the Löfstedt Report recommendations and that the Minister for Health and Safety (Rt Hon Chris Grayling MP) had written to Professor Löfstedt asking him to make an independent assessment of how the reforms are progressing and to report back by January 2013. He said that the Progress Report and Ministerial letter would be copied to CONIAC for information.

ACTION: Secretariat to send links to the Löfstedt recommendations Progress Report and the Ministerial letter. [Secretary's Note: Suitable links were included in an e-mail to Members of 5 July 2012.]

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

4.2 Nick Blundell said that UCATT was very concerned about the proposed revocation of the *Construction (Head Protection) Regulations 1989* (CHPR) and the *Notification of Conventional Tower Cranes Regulations 2010*. An additional concern was that an e-mail to all CONIAC Members had disclosed that HSE was proposing to hold a series of one-to-one telephone interviews with contractors in connection with the proposal to revoke CHPR. UCATT saw this extra consultation, which limited itself to seeking views from contractors, as tending to undermine the main public consultation exercise and suspected that it showed that HSE was seeking to build support for revocation; Steve Murphy, General Secretary of UCATT, had written to Judith Hackitt asking for an explanation. Nick asked for sight of the questions to be used in the telephone interviews and for transcripts of the interviews.

4.3 Anthony responded by assuring CONIAC about HSE's approach to consultation on the proposed revocations and that all views received would be considered fairly. He stressed that the purpose of the approach to small contractors is to enhance the consultation by obtaining information which may not otherwise become available, particularly given the emerging low response from contractors to the main consultation exercise. HSE had decided to supplement the consultation with telephone interviews with contractors and had written to contractor representatives on CONIAC (copying all other members) to source possible interviewees. Philip added that HSE was happy to share the question set and that Judith Hackitt would reply to Steve Murphy's letter and explained that if the trade unions wanted some of their members to be interviewed this could be arranged. Nick Blundell said that

UCATT would welcome the opportunity to see the questions and answers and after evaluating them would respond.

4.4 Susan Murray said that Unite was concerned about the two proposed revocations and the consultation process. She noted that the Consultative Document did not state that there would be supplementary consultation with contractors and thought that this was probably not consistent with the Code of Practice on Consultation. Anthony emphasised that the duties in the PPE Regulations maintain the same standard of protection as those which are to be revoked in CHPR.

4.5 John Poole acknowledged that the message to contractors was that the revocation of CHPR did not permit a reduction in protection levels but suggested that it could take some years before this was fully understood and that injuries would be the result. Richard Ash said that he could understand these concerns and that the important point is the message. Anthony accepted that messaging is key in this matter.

4.6 Peter Caplehorn enquired if the self-employed exemption would not apply to the whole of the construction industry. Philip indicated that the policy would apply in respect of non-dangerous work. Susan Murray agreed that the point is how dangerous the work is.

4.7 Susan went on to ask if each ACOP subject to review would be consulted on separately. Anthony thought that there would be a single consultative vehicle with annexes in respect of each ACOP. Jason Rowley asked if the ACOP Review was likely to result in fewer as well as shorter ACOPs? Philip responded that the forthcoming consultation exercise should clarify this, though looking ahead it was highly likely that in 2-3 years time there would be fewer ACOPs which would be shorter.

ACTION: Secretariat to send link to Consultative Document on proposals to review Approved Codes of Practice to CONIAC when it is published. [Secretary's Note: A link was included in an e-mail to CONIAC Members of 26 June 2012.]

4.8 John Scott indicated support for the review of RIDDOR but suggested that the challenge of getting greater compliance with RIDDOR may be increased by the impact of *Fee for Intervention*.

4.9 Peter Caplehorn raised the issue of "So far as is reasonably practicable" (SFAIRP). He said that CIC had strong feelings about this and had a working group looking to draw up some guidance and would appreciate the opportunity to work closely with HSE.

4.10 Anthony took the opportunity to draw Members' attention to the recently-established *Mythbusters Challenge Panel*. The panel is chaired by HSE but has several independent members. Its purpose is to look into complaints about health and safety advice/decisions by non-regulators and to publish its opinion on whether the advice was sensible and proportionate. A similar panel has been set up to consider advice from regulators, ie HSE and Local Authorities.

ACTION: The Secretariat to send Members a link to the cases considered by the Mythbusters Challenge Panel. [Secretary's Note: A suitable link was included in an e-mail to Members of 27 August 2012.

4.11 Philip thanked Members for their comments and closed the discussion.

5. CDM Regulations (Presentation by Philip White, HSE) [Paper M2/2012/2]

5.1 Philip gave his presentation to Members and asked for comments.

5.2 Alan Muddiman said that while the present Regulations and ACOP work, interpretation by dutyholders is often faulty and it is critical that loopholes in the ACOP are identified and dealt with. CECA is content for HSE to develop new Regulations without the assistance of a working group to represent industry views but good provision of information on the progress of the work is sought.

5.3 Richard Ash also supported the approach of not convening a working group. He thought it likely that the ACOP will change radically: if the ACOP shrinks and industry-produced guidance is expected to fill the gap it will be helpful for its credibility if it can be sponsored by HSE. Philip said that this is possible in principle but ultimately it must depend on the text.

5.4 Jason Rowley noted that the starting point for drafting of new Regulations would be copy-out and was concerned that this might lead to loose wording and consequent legal doubt and argument. To insure against this risk he urged that the Regulations and ACOP be developed closely in parallel. Greg Brown warned that a literal copy out the language of the European Directive may be difficult to reconcile with some of the characteristics of the UK industry and care must be taken.

5.5 Bill Rabbetts was supportive of simplification of the ACOP or even a move to guidance to assist with compliance on small sites. However, paperwork remained an issue and he was not clear how HSE proposed to deal with it. Philip said that this was a real challenge for a number of reasons. He noted that the issue of competence (something that might be moved on to a non-regulatory basis) was an area where paperwork could be burdensome with prequalification. There were also problems with the nature and extent of health and safety plans. There was no ready solution to the problem of paperwork but he said that it would receive careful consideration and that HSE needs to explain clearly what it is looking for in the way of documentation.

5.6 Susan Murray cautioned that there must be no weakening of the Regulations and the protection they provide to workers, and recalled that this was the stated position of the HSE Board. Philip confirmed that technical health and safety standards will be maintained, the key issue was about the appropriate management framework to deliver these standards.

5.7 Rob Gutteridge asked about the implications for smaller sites and work for small private clients. Philip said that CDM 2007 applies to contractors on domestic client sites but a decision will need be made about whether the revised Regulations will extend the client duties to the domestic sector. The recent intensive inspection initiative on refurbishment carried out in February/March focused on smaller sites including contractors working.

5.8 John Poole asked what is the acid test in deciding on whether to continue the ACOP or replace it with guidance? Anthony mentioned that a series of tests were being applied to the ACOPs under review and these would be relevant in the case of the CDM ACOP also. Susan Murray enquired about availability of these tests in a document.

[Secretary's Note: The tests are set out in paragraph 14 of the introductory section of the Consultative Document on *Proposals to Review HSE's Approved Codes of Practice (CD241)* which is available on the HSE website.]

5.9 Greg Brown said that he endorsed Susan Murray's insistence that standards must not be reduced. He noted that the Directive permitted a project supervisor to carry out the duties of the client and this may be helpful where the duties are difficult for some clients. He recalled that he and others had lobbied for designer duties and he emphasised that health and safety co-ordination was a cornerstone of the Directive. Philip said that the role of designers was key and that co-ordination and competence must be looked at carefully. While the project supervisor is an interesting concept it may be more relevant to conditions in mainland Europe than in the UK; in any case the client sets the tone for the project.

5.10 Philip concluded the discussion by committing to maintaining dialogue with CONIAC and with individual stakeholders bilaterally. He hoped that the panel Anthony had mentioned would be able to meet in September at which time the way forward with the Regulations and ACOP should be clearer.

6. Update on Fee for Intervention (Presentation by Gavin Bye, HSE) [No paper]

6.1 Philip asked Gavin Bye (Head of Construction Sector and Construction Policy) to give his presentation. Following the presentation he asked Members for comments.

6.2 Rob Gutteridge requested clarification on assessment of charges, Nick Blundell mentioned that difficulties may arise where dutyholders become insolvent and Jason Rowley asked how the commencement date of the charging period would be defined. Philip replied that the date would be the date the material breach was discovered. Information on other points of detail would be given in guidance for construction inspectors on operation of the scheme which was in draft and would be shared with CONIAC towards the end of July.

ACTION: Secretariat to copy guidance for construction inspectors on FFI to Members when available. [Secretary's Note: A suitable link was included in an e-mail to Members of 6 September 2012.

6.3 In response to a suggestion from Susan Murray that FFI might be seen by some as red tape, Philip clarified that no new duties were involved. Jason Rowley recalled that the scheme had been intended to come into effect in April and wondered if it would be applied retrospectively when it did eventually begin to operate. Philip clarified that FFI would not be applied retrospectively. Nick Blundell recorded that UCATT would wish to be considered for membership of any appeals panel that is established. Philip thanked Members for their comments and closed the discussion.

[Secretary's Note: HSE announced on 29 June that, subject to Parliamentary approval of the associated Regulations, *Fee for Intervention* would start on 1 October 2012.]

7. AOB

7.1 Susan Murray drew CONIAC's attention to the European Health and Safety Agency's 2012/2013 campaign *Working Together for Risk Prevention*. She said that Unite will develop materials to support this campaign and believed that some events are expected in October. She urged CONIAC Members to consider what support they may be able to give to the campaign. Anthony Lees added that HSE is supporting this campaign, which in the UK is known as *Working together on risk management*. The Secretariat is trying to source hard copies of the Campaign Guide (<http://www.healthy-workplaces.eu/en/resources/campaign-essentials>) and the Campaign Leaflet (<http://www.healthy-workplaces.eu/en/resources/promotion-materials>) for distribution.

[Secretary's Note: Copies of the campaign guide and leaflet have now been forwarded to all Trade Unions represented at CONIAC]

7.2 Peter Caplehorn reported that a steering group has begun work on revising PAS91 and aims to complete it by the end of the year. He noted that the health and safety element in PAS91 is based on the CDM 2007 ACOP and observed that uncertainty about the ACOP will cause difficulties for the steering group. He suggested that contact between the group and HSE would be helpful.

7.3 Peter enquired about assessment of the effectiveness of the Occupational Safety and Health Consultants Register (OSHCR). Additionally, he asked about follow-up action now that the University of Sheffield research report *Health Design, Creative Safety – Approaches to health and safety teaching and learning in undergraduate schools of architecture* (RR925) had been published. Philip said that HSE would respond to Peter on both of these points.

[Secretary's Note: HSE is not responsible for the OSHCR and consequently has no plans to review it. The OSHCR has successfully attracted over 2000

consultants and it is for its Board to decide whether and when to formally evaluate it.]

7.4 Finally, Peter mentioned that *Building Information Modelling* (BIM) was increasing its penetration in the industry. He had spoken to the Government lead official on this subject who intends to set up a group and will include consideration of health and safety. Philip expressed the hope that the advent of BIM may provide an opportunity to address paper work issues around health and safety management.

Conclusion

Philip noted that this was Martin Winstone's last attendance at CONIAC. He thanked Martin for his contributions over the years and wished him well for his retirement. He took the opportunity to record his thanks to Gerry Mulholland also.

Philip said that the next meeting would be on Wednesday 14 November 2012 in Rose Court. He thanked Members for their contributions and closed the meeting.