

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

**Minutes of the M2/2009 meeting
held on 22 July 2009 in Carthusian Court**

Present

Philip White (Chair)
Anthony Lees (Secretary)
Bill Belshaw
Bob Blackman
Peter Caplehorn
Kevin Fear
Clive Johnson
Peter Kent
Rob Miguel
Alan Muddiman
James Preston-Hood
Bill Rabbetts
Phil Russell
Robert Sayers
Tony Wheel
Dörthe Weimann
(substituting for Alan Ritchie)
Clive Young

Gavin Bye
Ian Strudley
Andrew Maxey
Michael Ryan (Secretariat)

Representing

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

Observer for Department for Business,
Innovation and Skills
Health and Safety Executive
Health and Safety Executive
Health and Safety Executive
Health and Safety Executive

Members of the public

11 were present

Apologies

Richard Ash
Alan Ritchie
John Tebbit
Anthony Burd

John Ioannou
Kevin Toner

Representing

Engineering Construction Industry Association
UCATT
Construction Products Association
Observer for Communities and Local
Government
Observer for Office of Government Commerce
Observer for Health and Safety Executive
Northern Ireland

Summary of Actions agreed:

1 **ACTION: Secretariat to inform CONIAC of the persons appointed by HSE to serve on the CDM 2007 evaluation Working Group and when the first meeting will be held.** (See paragraph 2.1)

2. **ACTION: Secretariat to prepare a paper setting out arrangements for reconstitution of CONIAC, including a plan of work and terms of reference, for discussion and agreement at the M3/2009 meeting.** (See paragraph 6.11)

1. Welcome and apologies

1.1 Philip White welcomed everyone to the meeting, and expressed his gratitude to Kevin Fear and colleagues at ConstructionSkills for their help in arranging the use of the Shipping Office conference room at Carthusian Court for this meeting of CONIAC. This was of great assistance at a time when the meeting facilities at Rose Court were being remodelled. It was expected that new Rose Court conference rooms would be ready for the next meeting.

1.2 He gave the apologies of absent Members and noted that Dörthe Weimann was substituting for Alan Ritchie. Philip introduced Gavin Bye and Ian Strudley. Gavin had been appointed to head HSE's Construction Sector following Louise Brearey's move to work in connection with the Olympics. Ian had succeeded Sue Parkyn as Chair of CONIAC's Occupational Health Working Group.

1.3 Philip reminded everyone that the session of the meeting following the mid-morning coffee break would not be open to the public.

2. Chair's introduction and briefing on urgent business

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

2.2 Progress with establishing CDM 2007 evaluation Working Group - Members were thanked for nominating various persons to serve on the new Group. The Secretariat would write to Members shortly advising on who had been selected for membership and when the first meeting would be held.

ACTION: Secretariat to inform CONIAC of the persons appointed by HSE to serve on the CDM 2007 evaluation Working Group and when the first meeting will be held.

2.3 New HSE Strategy – The Pledge - Members' attention was drawn to the facility for organisations to make a public commitment to improving health and safety by signing an online Pledge at the HSE website. About 750 had signed so far and CONIAC Members were asked to encourage organisations they had links with to sign up.

2.4 Provisional construction fatal accident statistics for 2008/2009 - HSE had released provisional fatal accident statistics for 2008/2009 in June. The total of 53 construction worker deaths was markedly down on the previous year and maintained the recent downward trend. More data on major injuries and over-3-day injuries would be available later this year.

2.5 Recent report by Work and Pensions Committee - On 12 July the House of Commons Work and Pensions Committee had published a follow-up report to its April 2008 inquiry into the work of HSE. The new report (HC 635-I and HC 635-II) included a number of observations on construction and could be found on the Parliament website.

2.6 Safety Schemes in Procurement (SSIP) - SSIP was launched on 20 May, and there will be a formal event on 4 November at which Lord McKenzie is expected to speak. HSE views this progress towards mutual recognition of competence schemes as an important development which should bring significant benefits.

2.7 Blacklisting - The Department for Business, Innovation and Skills (BIS, formerly BERR) is publicly consulting on proposed Regulations to outlaw the blacklisting of trade unionists.

2.8 Philip asked if Members had any comments or questions. Dörthe Weimann acknowledged the recent downward trend in fatal accidents but suggested that deaths might rise again when the recession ends. Is HSE making any plans in anticipation of this? Philip remarked that previous recessions had shown evidence of corner-cutting countered to some extent by the reduction of the workforce to a core of experienced staff. In the context of emergence from recession he suggested that a focus on such issues as induction, training and investing in new people would be particularly important. HSE would seek to take account of changing business conditions but the onset of recovery may be difficult to detect where it is slow or variable across the industry.

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

3.1 Philip asked if Members were content with the Agenda. Dörthe Weimann thought that the discussion on Rita Donaghy's Report should be open to the public, as it was on the originally-issued version of the Agenda. Philip explained that the content of the Report had a wide scope and involved a number of Government bodies in addition to HSE. He had decided to close that part of the meeting in light of the overriding need to avoid any possibility of HSE officials embarrassing Ministers by appearing to pre-empt the Government's response to the Report.

3.2 Members agreed the Agenda and approved the Minutes of the meeting held on 26 March 2009. Philip noted that the Actions recorded at that meeting had all been carried out.

4. Statutory Register of Tower Cranes (Presentation by Anthony Lees, Head of Construction Policy Unit) [No paper]

4.1 Philip asked Anthony Lees to give the presentation. Anthony described the background to the proposals including recent accidents and the wish of the Commons Work and Pensions Committee and the Secretary of State to see a package of proposals to improve tower crane safety (including a Register). Following agreement by the HSE Board, public consultation was now underway on proposed Regulations that will create a duty to notify specified details of a tower crane to HSE within 14 days of any thorough examination. The dutyholder will be the employer of those using the crane, and HSE will hold the notifications in a publicly-accessible online database (the Register). The application of the main proposal is to conventional tower cranes on construction sites but alternatives with wider scope (of both cranes and sites) are included in the consultation. Estimated financial costs are given for the main proposal and the alternatives. The main benefit expected is increased reassurance of the public. Following close of consultation on 9 October a finalised proposal will be developed and put to the HSE Board and then to Ministers with a view to having legislation in force by April 2010. Philip thanked Anthony and asked Members for questions or comments.

4.2 Peter Kent sought clarification of the responsibility of local authorities in enforcement of the legislation, as the Consultative Document seemed inconsistent on this. Anthony said that LA inspectors were unlikely to have any role since the types of construction work they covered did not involve tower cranes.

4.3 Alan Muddiman asked if the main purpose of the measure is intelligence for HSE on where tower cranes are operating and, if so, might it not be better achieved by suitable amendment of the existing (F10) notification under CDM 2007? Anthony said that this had been considered but there were difficulties with it one of which was that F10 notification was required early in a project, often before decisions on employment of tower cranes had been taken. With regard to the purposes of the measure, Philip referred to the importance of public reassurance.

4.4 Kevin Fear observed that notification will happen only after a crane has been erected or altered, and emphasised the need to ensure in advance the competence of those who carry out these operations. Philip agreed that this was important and said that there were legal requirements for competence and a number of relevant current workstreams.

4.5 Tony Wheel was disappointed that it had not been possible to quantify expected benefits. Some clarification was needed where cranes moved or climbed. Also, the requirement to submit a date of manufacture was of little

relevance to conventional tower cranes which are assemblages of functional modules of various ages. Philip said that supporting guidance would endeavour to clarify such matters where necessary.

4.6 Dörthe Weimann said that while very pleased with the initiative some criticisms were due. UCATT believes that thorough examination occurs too late to be acceptable as a trigger for notification. Moreover, the 14 days allowed, following thorough examination, for submission of notification is too long. UCATT could accept 3 days but would prefer one. Restricting the measure to conventional tower cranes on construction sites was not appropriate when accidents are not limited to them. Also, UCATT was not persuaded by HSE's cost-based argument for the restriction as it considers that the extra cost (about £3M over 10 years) is not large, especially when compared with the cost of an accident. Additionally, public reassurance will be limited if the Register omits some publicly visible cranes.

4.7 Bob Blackman welcomed the proposals but urged that HSE not lose sight of the competence of those erecting cranes or the working conditions of those operating them. Drivers could face very long periods confined to the cab under heavy pressure of work. In some cases, their employment status made it difficult for them to complain without fear of losing their job. Two drivers for each crane would be a helpful development. Philip agreed that these were important issues, and recalled that the Strategic Forum had done much work on crane issues recently and that its Plant Safety Group was maintaining this focus.

4.8 Phil Russell agreed with the need for better welfare conditions for operators. Bill Rabbetts pointed out that a dockyard crane that had collapsed in Southampton recently would not be covered by the legislation if it was restricted to conventional tower cranes on construction sites. Anthony said that if the application of the measure was broadened substantial difficulties in defining cranes in scope and the trigger for notification were likely to arise, although guidance might be able to help with these.

4.9 Bill Belshaw echoed an earlier comment that notification following thorough examination was too late, and suggested that crane notification be incorporated in CDM 2007's requirement for project (F10) notification, as this would ensure it occurred before the high risk erection/alteration phase. Clive Johnson supported this idea, especially in light of the new web-based F10 which could be updated easily.

4.10 Philip thanked Members for their comments, encouraged them to submit formal responses to the consultation, and said that this issue would be considered again at the CONIAC meeting in the autumn.

5. Secretary of State's Inquiry into Underlying Causes of Construction Fatal Accidents (Presentation by Anthony Lees, Head of Construction Policy Unit) [No paper]

5.1 Following a break for coffee the meeting resumed. Philip began by recording that this part of the meeting was closed to the public and reiterated the reasons for this (see paragraph 3.1). He expected that CONIAC would have an open discussion once the Government had formally responded to the Inquiry Report. He asked Anthony to give the presentation.

5.2 Anthony outlined the background to, and purpose of, the Inquiry. He described its plan of work and the limited time allowed to those who had to carry it out. The three peer reviewers who assisted Rita Donaghy were recognised experts in their fields, and he stressed that the choice of fatal accidents for detailed review was made exclusively by them and Rita. Rita visited construction sites with HSE inspectors and consulted a large number of stakeholders, including relatives of fatal accident victims. Her Report made 28 Recommendations on a variety of issues in construction and had implications for several Government Departments and Agencies. HSE would feed into the Government's response, which would be co-ordinated by the Department for Work and Pensions and was expected later in the year. Philip thanked Anthony and asked Members for their general comments first.

5.3 Rob Miguel said it was clear that Rita had listened to stakeholders. Among other things her Report acknowledged the value of trade unions and the importance of health issues. However, in some places the Recommendations did not go far enough. As an example, legislation is needed on competence.

5.4 Peter Kent wondered how the Report would now be taken forward and if responses to it were sought. Philip indicated that DWP commissioned the Inquiry, the Inquiry has reported back, and the onus is now on DWP to respond. DWP will consult relevant stakeholders before it does so.

5.5 Bob Blackman said that the Report was excellent with unambiguous Recommendations in key areas. He particularly welcomed those on gangmaster licensing and directors' duties. He commended the willingness to speak to the bereaved, the recognition of the importance of health issues and the positive view of trade unions. Dörthe Weimann agreed and said that the Inquiry had looked deeply at root causes with a fresh eye. UCATT was, however, disappointed that there were no clear recommendations on the important issue of employment status.

5.6 Tony Wheel welcomed the Report which had many sensible suggestions and offered the possibility of synergy with the new HSE Strategy. Implementation may be difficult in some cases, for example, how to effectively involve Building Control inspectors. Bill Rabetts also expressed support but wondered if the impact might be reduced due to the rather large number of Recommendations. Phil Russell agreed that there was much to welcome. He believed that the industry accepted that something must be done about ill

health. In relation to the proposals on directors, he cautioned that very small firms sometimes do not have a well-defined management structure. Peter Caplehorn welcomed the Report and hoped it would refocus energies and create momentum.

5.7 Philip drew Members' attention to the technical reports which complemented the main report and contained much interesting material. A table had been issued setting out the Recommendations, and Philip asked for Members' views on these.

5.8 Alan Muddiman said that Recommendation 3 could have been clearer about which "directors" it was referring to since not all were equally relevant. Similarly, Recommendation 8 implied that the prequalification issue was a problem solely for "sub-contractors" when in reality it affected contractors and principal contractors too. Philip believed these points would be understood by those to whom the Recommendations were addressed. In connection with Recommendation 22, Peter Kent suggested a link with Accident and Emergency departments to improve data collection.

5.9 James Preston-Hood asked if the forthcoming Government response to the Report would include an Impact Assessment on the ramifications of the Recommendations. Clive Young thought that the initial response might not contain much detail, although any subsequent policy proposals would attract full assessments. Philip said that different Recommendations would demand different levels of detail. He thanked Members for their views and noted that the HSE Board was expected to consider the issues during August or September.

6. Role of CONIAC and plans for its Reconstitution (Oral introduction by Anthony Lees, HSE) [Paper M2/2009/1]

6.1 Philip introduced this item. He noted that the HSE Board has indicated that advisory groups such as CONIAC must be delivery focused and aligned with the new HSE Strategy. He asked Anthony to speak to the paper.

6.2 Anthony said that the HSE Chair has indicated broad agreement to the reconstitution of CONIAC. However, it is requisite that a new constitution and Strategy-aligned workplan be submitted to the HSE Board. It is hoped to do this later this year and the purpose of the present paper is to stimulate discussion of constitutional issues. These are set out paragraph 9 of the paper and include: the structure and membership of CONIAC; its relationship to its Working Groups; and its relationship to other industry fora.

6.3 Kevin Fear urged preservation of a broad membership. Additionally, he supported the idea that CONIAC should more closely supervise the activities of the working groups. However, where appropriate, it should be able to "sub-contract" work to other industry bodies such as the health and safety committees of ConstructionSkills, the Construction Industry Council, etc. James Preston-Hood suggested that CONIAC's membership be fluid,

permitting it to continually adapt to the needs of the workplan. However, Bill Rabbetts thought that fluid membership might be more appropriate at the level of the working groups.

6.4 Bill Belshaw said that the frankness of discussion may be enhanced if the public is excluded. Anthony and Philip acknowledged that other advisory committees and the HSE Board itself did occasionally exclude the public from their deliberations. James Preston-Hood pointed out that CONIAC is London-centric and suggested that its meetings rotate around the country to enhance openness. Peter Kent cautioned that many places would necessarily involve travel difficulties for the Members, and Kevin Fear thought that provincial meetings risked lower public attendance.

6.5 Rob Miguel said that there were too few meetings, a frequency of at least one per quarter was desirable. Moreover, the dates should be settled a year in advance and not subject to alteration. He said that the tripartite structure of CONIAC works well and was supported in this by Bob Blackman who observed that the Strategic Forum had only one place for the trades unions. Robert Sayers observed that IOSH is not represented on CONIAC and many of its members are safety professionals with relevant experience. Bob Blackman suggested calling in individual experts to be members on an ad hoc basis if necessary.

6.6 Kevin Fear wondered if CONIAC membership should be structured to reflect CDM duty holders. Representation of CDM co-ordinators on CONIAC was poor.

6.7 Rob Miguel asked about the link between CONIAC and the HSE Board. In his view it had always been too weak for CONIAC to influence the Board. Philip explained that after each meeting he sent a short note to Judith Hackitt and senior HSE officials. He said that CONIAC accountability was an important issue that should be clarified in the reconstitution.

6.8 Anthony asked for Members' views on the issues around the working groups. Bill Rabbetts suggested that there should be no standing working groups, only task-based time-limited ones. Phil Russell said that members of working groups should have the appropriate expertise but that there were problems of having the time and/or resources to attend. Alan Muddiman thought that working group secretariats should be provided by HSE, although the Chair could be the member best suited for the job. Kevin Fear suggested that chairmanship be topic driven and the Chairs be directly accountable to CONIAC. Anthony observed that reporting back of working groups would be facilitated if their meetings were co-ordinated with and held somewhat in advance of CONIAC.

6.9 Bob Blackman suggested sharing of the Minutes of ConstructionSkills, Strategic Forum Health and Safety Task Group, etc. Philip agreed that this should be explored. Alan Muddiman said that every region has health and safety committees very many of which feed into CONIAC. Rob Miguel said

that all organisations can help to advance the HSE Strategy and agreed that CONIAC's networks are important and not sufficiently recognised.

6.10 Clive Young wondered if BIS observership was still appropriate? He was conscious of taking away more from the meetings than he contributed. However, Bob Blackman thought that it was important to have BIS present, for example, with regard to the issue of a construction minister.

6.11 Philip said that the Secretariat would take away the various points that had been made and produce a paper with a plan of work and terms of reference for discussion and agreement at the next CONIAC meeting.

ACTION: Secretariat to prepare a paper setting out arrangements for reconstitution of CONIAC, including a plan of work and terms of reference, for discussion and agreement at the M3/2009 meeting.

7. AOB

7.1 There was nothing to discuss under this heading.

8. Conclusion

8.1 Philip thanked Members for their attendance. He reminded them that the next meeting was scheduled for 17 November.