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## HEALTH AND SAFETY EXECUTIVE

### CONSTRUCTION INDUSTRY ADVISORY COMMITTEE (CONIAC)

#### Report of the Vulnerable Workers Working Group

Cleared by Louise Brearey, Head of Construction Sector, on 17 March 2009

#### Summary

For discussion at CONIAC on 26 March 2009

This paper reports on the work of the Vulnerable Workers Working Group. The Group was established at the request of CONIAC at the meeting of 25th June 2007, to consider issues affecting vulnerable workers within the UK construction industry.

The Group held its final meeting on 12<sup>th</sup> January 2009.

Members are requested to acknowledge the conclusions and consider the recommendations made by the Group.

#### Issue

1. CONIAC's Vulnerable Workers Working Group (VW WG) report on its activities, with recommendations to address health and safety issues particular to the vulnerable groups.

#### Timing

2. The VW WG is a "task and finish" group. The group has been working to Terms of Reference which were set out in CONIAC Paper, **M2/2007/01**. These are reproduced at **Annex**. This is a concluding report that makes specific recommendations to CONIAC. The group has met five times since Autumn 2007, acting mainly in a supporting role to the cross cutting Vulnerable Workers Project taken forward by Construction Division over the same period

#### Background

3. The profile of employment conditions (including health and safety) of migrant and other vulnerable workers has risen in recent years. This has stimulated increased activity by Government and industry stakeholders, which is likely to continue in the future. The activity has included research, policy development and numerous specific interventions, varying from information dissemination and multi-agency enforcement projects to the introduction of compulsory licens-

ing of those supplying labour to the agricultural and shellfish gathering industries.

4. In particular the profile of foreign and migrant workers has risen significantly and will perhaps continue to play a part in the construction industry even within the current economic climate. Whilst there is growing public concern at the numbers of foreign workers within the UK there is also disquiet in some areas about the health and safety arrangements for these workers.
5. Changes in demographics and in education and training arrangements are resulting in greater numbers of younger and older workers entering and/or remaining in work.
6. The flexible arrangements offered by the use of temporary (or agency) workers particularly suit the structure of the construction industry. These circumstances have led to a significant presence within the industry of employment businesses which supply temporary workers.
7. The groups described above all lend themselves to being potentially vulnerable. Their vulnerability could be due to a single factor or a combination of:
  - their employment arrangements,
  - their lack of experience of construction work,
  - their lack of appreciation of UK Health and Safety culture.
8. The Working Group recognised the value of BERR's<sup>1</sup> definition of "vulnerable worker". This is "*someone working in an environment where the risk of being denied employment rights is high and who does not have the capacity or means to protect themselves from that abuse. Both factors need to be present. A worker may be susceptible to vulnerability, but that is only significant if an employer exploits that vulnerability.*"
9. This has the advantage of being the definition applicable across Government. In the interests of consistency the Working Group adopted this definition of vulnerability, and agreed to a further development of this definition into a vulnerability indicator which can be used to analyse employment situations, particularly, following an accident.

### **The worker Vulnerability Indicator**

		Capacity or means to protect themselves	
		High	Low
Risk of being denied employment rights	Low	<i>Protected by normal employment arrangements</i>	<i>Protected by others</i>
	High	<i>Protected by their own efforts</i>	<b>Vulnerable</b>

<sup>1</sup> The Department for Business, Enterprise and Regulatory Reform.

## Working Group Findings

### *Aging Workers*

10. The demographics of the construction industry continue to shift. Figures from Construction Skills, using data from the Labour Force Survey shows that between 1990 and 2007 the proportion of workers over 50 increased from 18 to 26%. There is a clear trend that the 60+ group has grown in absolute numbers and as a proportion of the whole workforce. Those aged 60+ now represent around 8% of the manual workforce
11. Analysis of fatal accident data by Construction Division reveals that over the nine year period from 1996/7 to 2004/5 the average proportion of fatal injuries suffered by 60+ workers, for those cases where age is known, is 12%. Over the same period the proportion of all workers in the over 60 age group averages at 6%. This raw data suggests that the potential for fatal injury amongst the 60+ age group is twice that for the rest of the construction workforce.
12. A presentation was made to the Working Group by Professor Alistair Gibb of Loughborough University, outlining the findings of research carried out by his department, funded by SPARC, into the experiences of older workers in construction. A summary of this research, titled Understanding the Older Worker in Construction is available on the SPARC website.
13. The main findings of this research are briefly outlined in the paragraphs below. There are benefits in employing older workers:
  - older workers bring skill and experience to the workplace and are
  - perceived to produce higher quality work and be more reliable
14. On the other hand there are perceived drawbacks to employing older workers, these are:
  - older workers may be unable to keep up with the pace of modern construction work,
  - older workers tend to have inappropriate attitudes to health and safety matters,
  - older workers appear to accept injury/ill health as part of the job,
  - older workers appear to accept that little could be done to reduce risk and that health and safety legislation can interrupt.
15. Health problems are trade specific, e.g.:
  - specific Muscular-skeletal related to joints issues in joiners,
  - muscular-skeletal issues in general – bricklayers,
  - rheumatic problems – plasterers.
16. Site managers can play a role in identifying benefits of older workers – this approach could be key to easing workload on older workers (e.g. more skilled, less physically demanding work – perhaps training younger workers).
17. Product Design Issues:
  - There is little recognition of the needs of older workers in the design of tools and equipment.

### **Young Workers**

18. Young workers are potentially vulnerable due largely to their inexperience and relative immaturity.
19. The Young Apprentice programme provides a construction qualification for 14-16 year old learners, and includes 40 days of work experience over the two year period. Construction young apprenticeships are delivered and managed by young apprentice partnerships, which typically include schools, colleges, training providers, employers and the appropriate Sector Skills Council. The Learning and Skills Council provides funding to the lead partner and seeks assurance that health and safety is being adequately managed. Members of the Working Group provided comments to the joint working group which drafted the Employers Extended Guide to Health and Safety for Young Apprentice Work Placements In Construction. This guidance booklet is available to download free from:  
[www.safelearner.info/downloads/Extended\\_guide\\_REVISED\\_WEB\\_Oct08.pdf](http://www.safelearner.info/downloads/Extended_guide_REVISED_WEB_Oct08.pdf)
20. The “Programme-led Apprenticeships” structure is such that young workers are college based for 2 years before starting a 3rd year of training in the workplace. There is concern that the young workers are treated as more “traditional” 3rd year apprentices without having acquired the practical skills and experience of construction sites. Again, without appropriate supervision and management the risks to these workers increase.

### **Agency Workers**

21. Agency workers are potentially vulnerable as a result of the potential “confusion” of duties owed by the parties (i.e. the “employment businesses” and “hirer”). An agency worker’s employment status is sometimes unclear. Employment businesses generally pay an agency worker’s tax and National Insurance contributions as an employee, but this does not necessarily mean the worker is their employee for employment law purposes. Some types of agency workers are treated as self-employed for tax purposes. Many employment businesses engage agency workers under a “Contract for Services”, rather than a contract of employment or of service. The practical effect of this is that employment businesses and hirers often treat the worker as self-employed, or the other’s employee, rather than as their employee. For health and safety purposes, an agency worker could be an employee of the employment business, or of the hirer, or genuinely self-employed – depending on the individual situation.
22. There is a significant volume of freely available information for workers regarding their pay and conditions, but there is less information on their health and safety “rights” and responsibilities. There is little freely available information available for “employment businesses” or “hirers” engaging workers advising them on the health and safety issues and responsibilities. However, there is more information on their responsibilities with regard to pay and conditions. There is no identifiable information relating to health and safety of workers for businesses setting up as “employment businesses”. The three main websites that provide information on health and safety of benefit to workers and businesses are WorkSMART (TUC website), Business Link and HSE.
23. The Working Group has considered various current initiatives by the Construction Industry to develop clearer guidance for employers to help manage the health and safety of temporary workers. These include the Sustainable Em-

ployment Legacy Forum (SELF) initiative established by the Recruitment and Employment Confederation, which was established to develop a charter for employment agencies involved in the 2012 Olympics project. The Heating and Ventilation Contractors Association have established the Employment Agency Alliance to develop a strategic partnership with agencies that work in their sector. Agencies joining the Alliance will sign up to a series of Key Commitments, including health and safety.

### ***Foreign/Migrant Workers***

24. The Working Group considered at length the way in which foreign and migrant workers may be considered to be vulnerable workers. The Vulnerability indicator (featured above) was endorsed as a practical way of deciding whether or not a foreign /migrant worker involved in a fatal accident might be considered to be vulnerable. The working group provided valuable comment and insight from an industry perspective into the study carried out as part of the Vulnerable Workers Project of the 25 fatal accidents to foreign and migrant workers which occurred between March 2005 and April 2008. Findings from this study form part of the evidence which has already been presented to Rita Donaghy as part of the Secretary of State Inquiry into the underlying causes of fatal accidents in construction.
25. The findings of this study can be briefly summarised. There does appear to be some evidence that foreign/migrant workers suffering fatal accidents have demonstrated a higher level of vulnerability than a control group of indigenous workers. Contributory factors to the fatal accidents to migrant workers appear to be:
  - a lack of experience of construction work,
  - communication problems linked to lack of common language,
  - poor standards of management and planning for work,
  - majority of accidents involving vulnerable foreign workers on small sites.
26. Research carried out for Construction Division by Synovate in 2008 indicates that foreign/migrant workers are more likely to respond to and take advice from their peers and people within their community. They are less likely to seek advice from central/local government or official agencies. In response to this Construction Division has funded a six month Outreach Worker project in London, which is trialling the concept of independent multilingual outreach workers talking to foreign migrant construction workers in their mother tongue. Findings from this project will become available from late April 2009.

## **Recommendations**

### ***Aging Workers***

27. CONIAC should disseminate through its member organisations the discussion document which outlines the key data collated by the Working Group on this topic.

### ***Agency workers***

28. CONIAC should welcome and support the work of the cross Government Fair Employment Enforcement Board (FEEB) and further cross governmental initiatives which clarify the responsibilities of employment businesses

### ***Foreign/Migrant Workers***

29. CONIAC should welcome and support the proposal by Construction Division to further invest in multilingual outreach workers. From April 2009 Construction Division will employ 3 multi lingual outreach workers, based in London, for a 12 month project from April 2009. The languages targeted are Polish, Romanian and Gujarati. CONIAC should also support the development of links, which this will facilitate, between agencies, authorities and communities as routes to inform Foreign and Migrant workers of their Health and Safety rights and responsibilities.
30. CONIAC should support and encourage projects involving multi-media (particularly internet based media) as a means to better inform foreign/migrant workers on UK health and safety culture. The Institute of Civil Engineers (ICE's) Migrant Worker Task Force is an example of an internet based project targeted at foreign workers. ConstructionSkills web-site is an example of an internet based project aimed at the employers of migrant workers.
31. CONIAC should consider how to work with Construction Skills to make the most of the products of their "Safety Critical Communications" research projects which have developed new tools for communicating with foreign and migrant workers.

### ***Cross group recommendations***

32. The group recognised that the potential vulnerability of workers from any of the "groups" could be reduced by improvements in two areas:
  - improvements in site inductions - CONIAC should note and support the work being taken forward by the Strategic Forum For Construction on this topic,
  - improvements in site management – CONIAC should note the improvements already made to the Site Managers Safety Training Scheme to provide specific training on this topic.

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**Vulnerable Workers Working Group**

**DRAFT TERMS OF REFERENCE**

1. To help HSE's Construction Division develop and deliver a strategy for improving health and safety protection of vulnerable workers.
2. To take ownership of identified problems and lead in delivering them in partnership with HSE's Construction Division. The Group will aim to:
  - increase the extent to which vulnerable workers are aware of the protection offered by health and safety law, and
  - identify messages and specific interventions to improve vulnerable worker health and safety outcomes, and
  - support and work in a co-ordinated way with other stakeholders to improve the impact of their work.