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Target Audience:  
Construction Division Staff  
Construction Inspectors

## **WORKER ENGAGEMENT AND CONSULTATION**

This SIM gives guidance to Inspectors and other Construction Division staff on how to carry out the fieldwork identified in the Worker Engagement Project plan for the 2005/06 and 2006/07. The SIM has been agreed by the Construction Division Management Board, and should be read in conjunction with the Strategic Forum's Respect for People Code of Good Working Health and Safety Practices.

1 The Worker Engagement Initiative was launched on February 24<sup>th</sup> at the Construction Industry Health and Safety Summit in London. This 3-year initiative is a widely targeted drive by HSE to improve standards of consultation and worker engagement in the Construction Industry. Details of this are on the HSE Construction web pages.

2 Actions so far include publishing, on these web pages;

- a. The CONIAC Declaration on Engaging the Workforce;
- b. A series of "Good Practice" case studies;
- c. A software "Worker Engagement Decision Tool". This is guidance aimed at Principal Contractors and employers, to help them assess standards of consultation on their sites.

A research contract has also been let with Glasgow Caledonian University to investigate and evaluate different methods of worker engagement in the construction industry.

3 Inspectors in Construction Division should all receive a briefing from their Regional member of the Worker Engagement Project Team, early in the 2005/06 work year. Members of the Worker Engagement Project Team are; Gordon Crick, Construction Sector; David Dean, Leeds; Joy Jones,

Worcester; David Charnock, Carlisle; Simon Hester, London. At this briefing each Inspector should receive a laminated copy of the Worker Engagement Assessment Chart. This written instruction is designed to repeat and reinforce the main points of that briefing.

4 In the Worker Engagement Initiative the words consultation and engagement are used with care. All employers have a duty under existing law to consult with their employees on matters relating to their health and safety. The law prescribes a minimum standard of consultation that employers must carry out with their employees, as set out in The Safety Representatives and Safety Committee Regulations 1977 (SRSC 1877) and the Health and Safety Consultation with Employees Regulations 1996 (HSCER 96). In addition to this the Construction Design and Management Regulations 1994 (CDM) require Principal Contractors appointed under the Regulations to consult with workers on their sites. However, to achieve lasting improvements in accident prevention, and build a safety culture in the industry, all dutyholders need to move beyond the minimum standard of consultation required by law, to fully engage the workforce in identifying and controlling risks on site.

5 In the construction industry, only specialist sectors, such as trades working on petrochemical facilities, or very large sites are likely to have arrangements formally recognising Trade Unions. The vast majority of construction sites have no visible union presence and no appointed safety representatives. This SIM recognises this fact. The first approach by Inspectors should be to assess the quality of worker engagement in terms of the proactive measures in place on that site, and to encourage good practice by offering advice and support. Where Inspectors encounter Safety Representatives recognised under the SCSR Regulations 1977 or Representatives of Employee Safety under the HSCER Regulations 1996, they should work with these safety representatives, following the guidance in OC 111/2 and OC111/3.

6 In order to promote worker engagement on construction sites, Construction Division will be taking forward two work streams in 2005/08. The first involves inspectors in proactive interventions on construction sites. The second work stream involves working with intermediaries, particularly in the Regions, to promote Worker Engagement.

7 In April 2005 a number of Construction Division Inspectors spent a day visiting sites in North London to test the validity of these instructions. Inspectors found the assessment flow chart fairly easy and logical to follow. The learning points from this exercise are found at Appendix 1.

#### INTERVENTION BY INSPECTORS ON SITE

8 Inspectors should follow the guidance in the laminated Worker Engagement Flow Chart reproduced as Appendix 2 to this SIM to assess standards of worker consultation. The guidance in the laminated flow chart is exactly mirrored and expanded on in the software Worker Engagement Decision Tool published on the HSE Construction/Worker Engagement web pages. Both these tools help to identify which of three outcomes may be appropriate. The first outcome is to conclude that the site demonstrates good practice, and that no further action is needed. The second outcome is that significant

shortcomings are identified, in these circumstances advice should be given, the Principal Contractor or employer should create an Action Plan. Thirdly, where Inspectors find no evidence of effective worker consultation they should consider taking enforcement action, issuing an Improvement Notice under Regulation 18 of the CDM Regulations. (See Para 11)

9 It may be appropriate for inspectors, when dealing with employers who are part of the Major Contractors Group to refer to the independent guidance produced in the MCG Health and Safety Strategy on Worker Consultation. This is published on the Internet at website Health Safety Strategy. This strategy includes, for example, the requirement for each MCG site to display a poster in the canteen, stating the consultation arrangements in place on that site.

10 Experience shows that many sub contractor gangs are themselves employees of a large multi site organisation. Inspectors need to be aware of the requirement to raise this topic at a head office visit to a sub contract employer. The purpose of this is to assess standards of consultation, involvement of employees in developing and reviewing risk assessments and method statements, and in carrying out accident and incident investigations. Two key questions are “How do sub contractors communicate lessons learned from site to site?” and “How do specialist contractors ensure that their generic risk assessments are changed to account for site variations?”

11 Inspectors should use worker consultation as a performance indicator when promoting health and safety to clients.

#### PRIORITISATION OF WORKER ENGAGEMENT DURING VISITS

12 Inspectors need to be aware that Worker Engagement is a key component of the Construction Divisions Common Agenda, and as such should be raised at all appropriate visits, including;

- (1) During site inspections or head office visit relating to any ‘High Impact Intervention’ project interventions.
- (2) When drawing up a local or national lead inspector intervention plan with contractors and clients.
- (3) Interventions with clients, in particular Government Clients, putting pressure on them to make worker consultation one of the aspects of performance considered during selection and to monitor it as a performance indicator during the project phase.
- (4) Investigations of complaints, accidents or ill health where poor standards are identified – an issue to follow up both with the principal contractor and the employer.
- (5) Contacts triggered by another Construction Programme project.

#### THE IMPROVEMENT NOTICE

13 Issuing an Improvement Notice in circumstances where there are no effective arrangements for worker consultation will meet the requirements of the Enforcement Management Model because the Legal standard is defined, and compliance is absent. The indicative enforcement action is therefore "Improvement Notice".

14 For simplicity, one Improvement Notice and Schedule is recommended, issued under CDM Reg 18. Inspectors may issue improvement Notices on related matters detailed in the guidance in OC 111/3, at their own discretion. The model IN should be issued where, at the site visit, Inspectors find no evidence demonstrating that any of the indicative criteria in the flow chart are being met. In other words, where Inspectors are reasonably satisfied that either there are no arrangements for Worker Consultation in place, or that the arrangements in place are totally ineffective.

15 In the event of an appeal to an Improvement Notice, an expert witness to support the Inspector can be provided from within the Project team. Evidence that will justify the issuing of an Improvement Notice is likely to be a combination of:

- a. Written arrangements for worker consultation are absent from the site health and safety plan, or are wholly inadequate. NOTE Guidance in The CDM Acop, Para 224.
- b. Site managers are unable to provide evidence that there are methods available, or arrangements in place to enable effective consultation. Events such as induction briefings or toolbox talks may not enable consultation. Often these are purely information broadcasts.
- c. Evidence that workers carrying out operations exposing them to significant risk are unaware of method statements or risk assessments being prepared, and have not been consulted on use of essential PPE.
- d. Interviews with one or more site workers reveals that effective consultation is not taking place on a timely basis.

#### PROMOTING WORKER ENGAGEMENT THROUGH INTERMEDIARIES

16 Heads of Operations and Principal Inspectors should identify opportunities to work with local union representatives and intermediary bodies to promote events such as SHADS, which reflect a partnership approach between employers and the workforce. The Working Well Together Campaign will be developing Worker Engagement further as a key element in its campaign plans for 2005-08. Opportunities may also arise to promote methods of worker consultation, such as toolbox talks, at this type of event.

17 The Worker Safety Adviser Challenge Fund is supporting two projects in 2004-05 in Midlands and the South West. These projects are a partnership between the FMB and TGWU in the South West, and NFB (National Federation of Builders) and UCATT in the Midlands area. A total of six full

time worker safety advisers will be active, visiting sites in these areas. Local inspectors are encouraged to support these initiatives.

18 Health and Safety Awareness Officers should be used to identify sites where a lack of worker consultation arrangements may merit “intervention by an inspector.”

#### EVALUATION OF THESE WORK ACTIVITIES

19 Evaluation will be carried out towards the end of the 2005/06 work year and will include information from a range of sources.

- a. Follow up of a selected number of IN's issued during the year, to evaluate whether the initial intervention is sustained and likely to lead to culture change. It is proposed that operational members of the project team will carry out these evaluation visits.
- b. The current work recording system will be trawled to provide feedback from Inspectors.
- c. Reports from WWT initiatives and contacts with intermediaries will be taken into account.
- d. A basic level of research will be commissioned by the overarching Worker Involvement Programme to identify baseline levels of activity in the construction industry.

20 Members of the Worker Engagement Project Team are; Gordon Crick, Construction Sector; David Dean, Leeds; Joy Jones, Worcester; David Charnock, Carlisle; Simon Hester, London.

## APPENDIX 1

### LEARNING POINTS FROM TRIALLING THE WORKER ENGAGEMENT INTERVENTION

#### Comments from Inspectors

- (1) Inspectors should have no hesitation postponing or curtailing the discussion of the Worker Engagement Agenda where matters of evident concern are present on site, on small sites or where management arrangements or abilities are so poor as to make the exercise unproductive.
- (2) The CDM ACOP is quite clear that worker consultation arrangements should be in the h&s plan. Some contractors are not doing this, or not following their own instructions. This gives Inspectors leverage in encouraging change.
- (3) Some sites claim they are meeting requirements by having regular meetings on site that include just the sub contractor foreman or supervisor. Inspectors should probe to find out whether these meetings provide any opportunities for workers themselves to be adequately represented. Is there any evidence of workers being able to offer advice to the principal Contractor, through the foreman or supervisor?
- (4) Good Principal Contractors record engagement, e.g. workers involved in management or progress meetings, discussions of health and safety, matters of concern raised by individuals with note of action taken, records of briefings on risk assessments and method statements, monitoring of issues with PPE etc. Good contractors will also make a point of responding to all individual suggestions for improvement.
- (5) Inspectors should always interview one or more workers when doing this assessment. Questions could include, what opportunities are there for discussion, are views of workers taken into account, has the site management ever done anything in direct response to a workers request, when was the last toolbox talk, did it include opportunity for discussion, have they been briefed on their method statement, types of PPE available etc.
- (6) Review of a risk assessment following an incident or change of personnel or equipment, provides an ideal opportunity for consultation to take place, and be recorded.
- (7) An interesting question for a site manager is to ask what arrangements are in place for the instance where an individual stops work on site because of serious imminent and unavoidable danger. (MHSW Reg 8 2 b).
- (8) The MCG requirements are a useful benchmark to use in terms of the type and level of representation and consultation required.

- (9) Inspectors will need to be clear about the criteria for issuing a Notice. These are set out briefly in paragraph 15.
- (10) The use of an IVR to require an Action Plan is a good way of achieving change.
- (11) For feedback to the Project Team, ideally the following details should be recorded for each site:
  - a. how many workers?
  - b. member of MCG?
  - c. what form of consultation/engagement in use, if any?
  - d. management attitude
  - e. did you check H&S plan and/or policy?
  - f. did you find a TU rep?
  - g. did you meet with workers - if so, how many?
  - h. what did you do? - verbal advice; IVR; letter; action plan required; notice; any other?
- (12) Finally this type of inspection is not difficult and can be quite productive.

## APPENDIX 2

