

BHSEA March 2015 Meeting

Neil Boon, Construction Chair, then introduced Tony Mitchell, the main speaker for the day and a wholehearted supporter of BHSEA and the Working Well Together campaigns.



*Tony Mitchell,
HM Principal Inspector, HSE*

'CDM – What's the Latest?'

Tony Mitchell is HM Principal Inspector of Health and Safety for Construction for the HSE. He operates from the Birmingham office and runs a team of five inspectors covering the West Midlands, Warwickshire and Worcestershire.

Tony's presentation today would give a brief run through of CDM 2015 and focus on the key changes as well as those areas that are staying the same.

Key Changes

One of the key changes is that the domestic client will now have a part to play and this complies with the EU Directive 9257.

Securing Construction Health and Safety

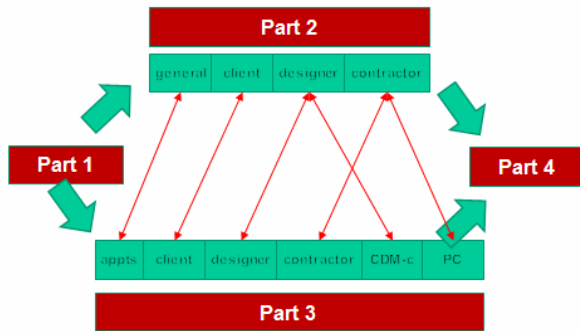
Key aims/objectives:

- Managing risks
General principles of prevention:
 - Avoiding risk;
 - Evaluating risks which cannot be avoided or eliminated; and
 - Proportionate measures to control risk at source
- Appointing the right people at the right time to enable them to contribute
- Information, instruction, training and supervision
- Co-operation, co-ordination and communication
- Consultation and engagement with workers. From research and experience it is clear that where workers are involved and consulted sites become healthier and more productive.

What is CDM 2015 about?

- CDM 2015 applies to all construction work.
- The Regulations set out the requirements for managing health and safety on construction **PROJECTS**.
- A project is more than a construction site – and can apply to anything from a kitchen cupboard to HS2.

Structure Changes



CDM 2015 is streamlined, linear and much simpler, following the basic steps involved in a project.

What stays broadly the same?

- Application to **all** projects
- Role of the Principal Contractor
- Part 4 technical standards for construction sites – only minor tweaks
- Schedule 2 – welfare requirements
- Co-ordinators for H&S in the pre- and construction phases

The provisions from 2007 that have worked well, are embedded and understood by industry, have remained in place. HSE will also maintain their proportionate enforcement on site, tracking back to clients and designers where standards on site are consistently failing. The regulations make it clearer for duty holders to understand their roles and duties, and for all duty holders to be held accountable for the conditions on site.

Currently the Directive requirements for pre-construction and construction-phase co-ordination are fulfilled by the CDM-c and PC respectively. This two part co-ordination function will be retained in CDM 2015, but will be delivered differently.

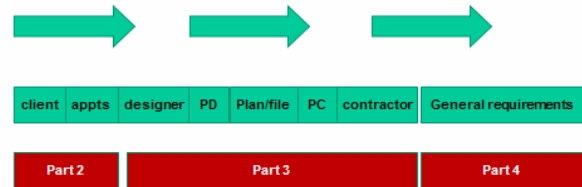
Outline of Main changes

- Simplified structure
- Client – greater responsibility
- Domestic client exemption – removed
- CDM co-ordinator role - removed
- Principal Designer role (PD) – introduced
- ‘Competence’ – removed in its current form
- Construction phase plan for all projects
- Threshold for appointments – where there is more than 1 contractor
- Notification is a stand-alone requirement – not trigger point for additional duties

Duty holders – Clients

Clients are the head of the procurement chain and the major influence on project standards and culture. As the project is for the benefit of the client, it is only right

You will see from the CDM 2007 slide that the structure was quite complex and the considerable duplication between the duties in parts 2 and 3 caused confusion.



The structure of the Regulations has been simplified

that they are involved. The client is not expected to take an active role in managing the work, but must make arrangements for managing the project such as:

- assembling the project team, ensuring those appointed have the right skills, knowledge and experience for the job depending on the complexity of the project, ensuring their roles, functions and responsibilities are clear
- ensuring sufficient resources and time are allocated
- ensuring mechanisms are in place for the project team to communicate and co-operate
- taking reasonable steps to ensure the Principal Designer (PD) and Principal Contractor (PC) comply with their duties
- providing pre-construction information

If the client fails to make the relevant appointments the duties must be undertaken by the client.

The Client's Principals

The client's principals are the Principal Designer and the Principal Contractor, and co-ordination between them all is key to a successful project. The PD and PC have equivalent and related roles for liaison and exchange of information during both the design and build stages of a project. The PD is responsible for all the pre-construction phase and any design work wherever it happens throughout the life of the project, which could overlap into the construction phase as well.

Duty holders – Principal Designer (PD)

The CDM 2007 role of CDM Co-ordinator (CDM-c) has been removed and the role of Principal Designer has been created. This is not a direct replacement for the role, although the PD will carry out many of the functions previously carried out by a CDM-c.

The function of co-ordination is an integral part of the project. The key role of the PD is to act as a conduit for information flow. The PD has to:

- plan, manage, monitor and co-ordinate the pre-construction phase – gathering information such as ground surveys, structural surveys, asbestos surveys etc
- ensure designers comply with their duties
- co-operate with and support the client in providing Pre-Construction Information

Duty holders – Principal Contractor (PC)

The PC should:

- manage and co-ordinate the construction side of the project
- liaise with the PD throughout the construction phase on matters such as changes to the designs and the implications those changes may have for managing the health and safety risks
- provide information to the PD relevant to the Health and Safety file.
- effectively engage and communicate with the workforce by means of toolbox talks, meetings etc, to show leadership

- have a strong grasp of what is needed in any given situation.

Tony invited the audience to consider their company pro-activity with regard to managing CDM. In Tony's opinion the open door policy may not send out the right message. Pro-activity rather than re-activity is crucial to identifying issues early and resolving them quickly. Tony believes that leaders should go out to site, look for the issues, seek information and search for ways to improve the business.

Duty holders – Designer

Designer duties remain similar to those in CDM 2007. Additional requirements include:

- Reduce or control risks through the design process and provide risk information with design drawings
- Refer risks that cannot be reduced or controlled through design to the PD
- Clear hierarchy for design risk management

Designers will now be expected to consider health and safety at the design stage.

Duty holders – Contractor

Their responsibilities are very similar to before. The PC is a contractor first and then a principal contractor after that. The Contractor has a duty to:

- look for corporate bodies with organisational capability, relevant policies, structures and safe systems in place
- comply with the directions given by the PD and PC
- draw up the Construction Phase Plan, even if they are the only contractor on site, and should appoint individuals who have - or are in the process of obtaining - the necessary skills, knowledge, training and education.

Tony commented that this is not about card schemes but about getting the right people, with the right skills for the job. One of the biggest downfalls of CDM 2007 has been the proliferation of card schemes which consisted of short multiple choice tests rather than full instruction and training. In this regard, an NVQ is preferable to card schemes as it demonstrates workplace learning.

HSE have put in place the framework; it is now for the industry to take forward.

In brief, the revised and simplified regulations:

- apply to all construction projects
- have greater relevance to smaller projects
- embed the co-ordination function within the project team rather than within the role of an individual (CDM-c)
- remove exemption for domestic clients. This has ensured compliance with the EU directive – but the regulations take a pragmatic approach to what can be reasonably expected from a domestic client, and pass the client duties onto their builder if the client doesn't pick them up.

- remove explicit competence requirements, focusing on appropriate skills, knowledge, training and experience.

Transitional Requirements

From 6 April all aspects of CDM 2015 are to be implemented, with the exception of those projects started before 6 April 2015 and continuing beyond, in which case:

- Where there is no CDM-c or PC appointed the client must:
 - Appoint PD and PC if the construction phase not started,
 - If construction phase started, appoint PC
- Where CDM-c has been appointed:
 - the client must appoint PD within 6 months of Regs coming into force
 - CDM-c's duties (CDM2007) continue to apply until PD is appointed

By beginning of October CDM-c's will no longer exist in legislation and will have no formal status at all.

CDM Construction Phase Plan

These will now be expected for all reasonably sized projects, and will apply to smaller sites.

A draft template CPP has been produced for use by small contractors when working for domestic clients. It covers the basic requirements for a CPP, including information about who is involved in the work, and how the main risks will be managed. The aim is to get small contractors to think about the work and potential hazards before the job commences. This template is to be made available via the internet and a phone app.

Summing Up

- CDM 2015 changes focus onto management of risk by duty holders
- Technical standards unchanged
- Strengthen client role
- Domestic clients – duties taken by PD and PC
- CPP required for all projects
- Embed better standard of involvement with workforce
- Changes to notifications
- Working with industry to get the message out
- Clearer and easier to hold all duty holders to account

Members' Questions

Toby Ryder – CDM Co-ordinator, Pinnacle Professional Services

Q Toby asked whether it was the HSE's intention with the new regulations that the PD be novated and therefore under the employment of the Principal Contractor for the construction phase where there are still design elements being carried on. Under the current CDM rules the CDM-c is not novated and is able to advise the client without there being any conflict of interest.

A Although not an easy question to answer Tony confirmed that it was necessary to comply with the legislation which requires both a Principal Designer and a Principal Contractor, whether they be part of the same organisation or not, and that they be appointed by the Client. If the PD is novated into a PC's company and therefore cannot be appointed by the Client then the Client takes on the PD duty.

Dominic from the University of Warwick

Q Dominic's concern relates to the new requirement for the appointment of a PD and PC for small, maintenance jobs which require more than one contractor. Under the existing rules the maintenance officer at the University is able to instruct and manage the contractors. Dominic is concerned that there is very little guidance in this regard, that the new rules will lead to a bureaucratic burden and that failing to comply could lead to civil or insurance claims.

A Tony's response was that the maintenance officer should continue to operate in the same way if only one contractor. But, as long as Risk Assessments and Method Statements are in place, no change will be required. The HSE will expect the job to be done right, but if not then enforcement will be proportionate.

Gerry Mulholland – British Gas

Gerry reinforced Tony's comments that if you are doing what you should and could be doing then you will be meeting the regulations. His advice was to use the existing processes and procedures and not turn this into a burden.

Phil Berrisford – Stannah Lifts Group

Q Phil's question related to the maintenance of fixed plant. The 2007 ACOP had a useful description of what was not construction work, such as planting of trees, erection of marquees and maintenance of fixed plant. His customers are now saying that after 6 April they will be asking for Construction Phase Plans for systems built into buildings such as lifts and escalators.

A Tony advised that if the Risk Assessments and Method Statements are in place then it should not be any more onerous to create a Construction Phase Plan.

John Towndrow – Atkins Global

Q John sought Tony's view with regard to their thoughts that a structural engineer could be the PD or even a QS on a given scheme, theoretically.

A Tony advised that anyone and everyone could be a "designer" – defined as someone who designs or modifies plans. However, they cannot be a Principal Designer because this is the person appointed by the Client.

John Jacobs – Jacobs Feasey Associates

Q John sought clarification that under the new CDM 2015 duty holders were no longer required to advise the Client that he has duties.

A Tony advised that the duties lie with the PD to consult with the Client to ensure the pre-construction phase information is provided.

Q John then asked what the reasonable steps were that a Client should take to ensure the PD and PC comply with their duties.

A Tony advised this would depend on the project. For a small project, the Client should put together a brief as to what he would require them to do. For example, he should expect to have the health and safety file; he should be looking for good references and asking questions like whether there is a safety policy, who the supervisors would be and whether they have had experience on site; also, can they deliver on budget and on time, etc. In essence, evidence of good management.

Q Another member of the audience – currently a CDM-c, commented that during a recent meeting with a client, which happened to be a committee, no-one seemed keen to take on the new responsibilities. In her view the impact on the domestic market would likely be significant as the smaller builders will struggle to understand what is expected of them.

A Tony's answer was that they have a duty to comply with the law. But he also stated that the technical standards have not changed, only the management structure, so if they are complying with the standards now there should be no cause for concern.

Andy Ellis - Oakwrights

Q Andy works with self builders – such as those on the programme 'Grand Designs'. In his experience, clients seek his help to obtain planning permission and then want to take over themselves. His question was how do those people appoint a PD and PC when they are essentially in charge.

A Tony's response was that a domestic client who becomes involved in organising or directing the build then becomes liable under the legislation. Guidance is already out there and will probably remain the same, although the name of it may change.

Mike Pearson – Site Assessment and Training Services Limited

Q Mike's comment concerned Construction Phase Plans for small projects. His company felt that a simple Method Statement would suffice as a CPP. However, on closer observation it appeared that although the CPP creates an action plan it does not provide solutions eg what to address and how to do it. Also, in Mike's experience designers are reluctant to be involved once they have drawn up their plans for the client nor does he feel they will be competent in this new role.

A Tony stated that the new legislation requires designers to be more pro-active than before and consider their designs in order to reduce risks at source. The HSE will take appropriate action where designers fail to comply with their duties.

Neil Boon summed up by stating that CDM has evolved over the last 20 years and he welcomed the changes and simplification. Working for a Principal Contractor, Neil has experience of sorting out the problems of other parties. He acknowledged that the involvement of the Client and the Principal Designer should be a step in the right direction and the key elements to success are planning, organising and making sure the right people are in the right jobs

Neil thanked Tony for his most informative and stimulating talk.