



## **CORPORATE HEALTH AND SAFETY COMMITTEE – 10TH FEBRUARY 2010**

**SUBJECT: HEALTH AND SAFETY EXECUTIVE ACTION**

**REPORT BY: DIRECTOR OF CORPORATE SERVICES**

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### **1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to inform Members, Management and Trade Union Safety Representatives of recent HSE involvement in CCBC activities, the advice that has been received and actions that have subsequently been taken.

### **2. SUMMARY**

- 2.1 The HSE have attended CCBC building sites within Llanbradach and Gelligaer during the past eight months looking at work that was been undertaken by our Private Sector Housing Department and Building Maintenance Services.
- 2.2 Two main issues have arisen following these visits. The first issue relates to the client responsibilities under the Construction Design and Management (CDM) Regulations 2007 in respect of our block repair schemes and the second issue relates to the provision of structural engineering advice when undertaking structural improvement and repair works on our housing stock, public and corporate buildings.

### **3. BLOCK REPAIR AND CLIENT RESPONSIBILITIES UNDER CDM**

- 3.1 The HSE sent an advisory letter to CCBC on 25/06/09 following visits to Llanbradach and Gelligaer asking the Authority to consider its client and designer duties under the Construction (Design and Management) Regulations (CDM) 2007. The letter specifically referred to Block Works and detailed perceived issues around a number of projects in Llanbradach. An initial meeting took place with Legal Services regarding CCBC's legal obligations under the CDM Regulations and further advice was been sought from a Barrister in an attempt to clarify the Authority's legal obligations (information provided in report to committee in August 2009).
- 3.2 The content of the letter was discussed at a meeting with the HSE on 22/07/09 and the Authority were able to respond to most of the issues raised in the letter and evidence good practice and compliance with the CDM Regulations. In terms of client duties a difference of opinion remains between CCBC and the HSE for certain type of grant schemes. The HSE were happy with discussions and agreed actions. No further enforcement action resulted from this letter (information provided in report to committee in August 2009).
- 3.3 During works that were undertaken in Llanbradach during November 2009 the HSE visited site and threatened to serve a prohibition notice, regarding asbestos surveys on roof repairs, however following further discussions and investigations with CCBC Officers, the HSE Inspector decided against the issuing of a notice.

- 3.4 This site was again part of a block repair scheme which is organised by CCBC's Private Sector Housing Department. As part of their work the Private Sector Housing Department (PSHD) undertake block repairs. Where a block repair is required the work is identified by the PSHD usually as part of renewal planning. The householders are then asked if they wish to participate in the scheme and, if so, are given money (via grant funding) and sign a contract with the contractor to undertake the work. Although CCBC on most occasions selects the contractor to undertake the improvement works, the actual contract for the work is between the householder and the contractor and not CCBC. In this respect CCBC act as an agent.
- 3.5 The CDM regulations and Approved Code of Practice provide definitions of who is considered the client under the CDM regulations and therefore who is responsible for compliance with the client duties. The main issue is that the HSE are of the opinion that for block repairs CCBC is the client and hence attracts the associated responsibilities. PSHD & CCBC H&S Officers share a different opinion; due to the contract being held directly between householder and the contractor and CCBC not managing the contract, we feel that we are not the client under CDM for these types of projects.
- 3.6 If a prohibition notice is issued on these types of works by the HSE they have indicated that it would be issued to CCBC. The difficulty then is that as we do not hold the contract and we have no management arrangements with the contractor (we do not specify when work can start, or pay the contractor etc.) we do not have the ability to stop work, however this is what the HSE would expect of us in this situation.
- 3.7 If an improvement notice is issued on these types of works by the HSE then again indications are that this would be issued against CCBC. Again we would have difficulty in meeting any requirements of any improvement notice, which would require improvements from the contractor, as we would not have the authority to ensure that the contractor complies with the HSE's requirements.
- 3.8 Advice has been sought from Legal Services and Counsel regarding the situation and their response is that the CDM client responsibilities in the case of block repair are not clear-cut, and that no precedent has yet been set. The only way to seek full clarification would be through challenging the HSE and a judicial decision establishing legal precedent. At the time of the advisory letter and initial meeting with the HSE it was felt that the time, cost and damage to the ongoing working relationship with the HSE, coupled with the fact that CCBC already meet most of the client duties meant that this was not a course of action we wished to pursue. A further meeting has been arranged to discuss the client responsibilities with the HSE.
- 3.9 Unfortunately the planned meeting with the HSE on 13 January was postponed due to inclement weather – the meeting will be re-arranged and an update provided to Committee Members as soon as possible.

#### **4. STRUCTURAL ENGINEERING ADVICE**

- 4.1 Following HSE visits to Gelligaer and Llanbradach discussions occurred regarding the provision of structural engineering advice on repairs and improvement works. Whilst no enforcement notice has been issued regarding this subject an HSE Inspector has indicated that in his opinion he would expect the Authority to have structural advice for any works, which affect the structural integrity of a building (information provided in report to committee in August 2009).
- 4.2 Further clarification has been sought and a meeting arranged with CCBC Officers and the HSE Inspector that specialises in structural engineering to establish what level of advice/support the HSE expect CCBC to have for differing types of projects.

- 4.3 A meeting was held between CCBC Officers and the HSE on the 12th January 2010, to discuss the broader issue of accessing competent advice with regards to structural stability during planning stages of refurbishment works. Officers explained to the Inspectors that engaging the services of a Structural Engineer on all works which may affect the structure of a building could not be deemed as reasonable or necessary.
- 4.4 Officers explained the process with regards to the use of internal competent officers such as Building Surveyors who assess requirements for standard alterations such as removal of partition walls, window replacement etc. For more complex work such as removal of an external load bearing wall, work on buildings with a structural defect etc. CCBC would engage the services of a structural engineer at planning stage. In addition Building Control Officers approve structural support plans and in this regard are an additional check on the suitability and sufficiency of structural support calculations. From the discussion held the HSE Inspectors in attendance did not feel the need to investigate this issue further.

## **5. RECOMMENDATION**

- 5.1 That the contents of the report are noted and further updates are provided.

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