



Department
for Education

Policy Review: Asbestos Management in Schools

Response from The Asbestos in Schools Group

30th March 2014

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Name: Annette Brooke OBE MP	
Please tick if you are responding on behalf of your organisation.	<input checked="" type="checkbox"/>
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Please mark the boxes that best describes you as a respondent. (For example, if you are a teacher in a secondary school that is an academy, please tick all three relevant boxes).

<input type="checkbox"/>	Maintained school	<input type="checkbox"/>	Academy	<input type="checkbox"/>	Primary school
<input type="checkbox"/>	Middle school	<input type="checkbox"/>	Secondary school	<input type="checkbox"/>	All through school
<input type="checkbox"/>	HT/Principal	<input type="checkbox"/>	Teacher	<input type="checkbox"/>	Governor
<input type="checkbox"/>	School business manager/Bursar	<input type="checkbox"/>	Parent	<input type="checkbox"/>	Teaching union
<input type="checkbox"/>	Local authority	<input checked="" type="checkbox"/>	Other		

Comments:

The overall aim of the Asbestos in Schools Group (AiS) is to make schools safe from the dangers of asbestos. AiS is non-party political. The group's expertise covers all aspects of asbestos in schools. Amongst the group's members and supporters are MPs, all six of the teaching trade unions, the four school support staff unions, the asbestos consultants associations ATaC and ACAD, experts on risk, solicitors, doctors, the London Boroughs Asbestos Group, the asbestos victims support forum, the health and safety campaigning organisation Hazards, the Independent Schools Bursars Association and individuals including those who have been affected by asbestos exposure in schools.

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Policy review: asbestos management in schools

We want to understand more about:

- the effectiveness of the current DfE policy;
- how asbestos is managed in schools; and
- how DfE can support duty holders to fulfil their responsibilities effectively.

Purpose of policy and the role of DfE

Question 1a

How strongly do you agree or disagree with the following statements –

1 a) Asbestos management in schools works well.

<input type="checkbox"/>	Strongly agree	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Neither agree nor disagree
<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Strongly disagree		

1. The Asbestos in Schools Group strongly disagrees that asbestos management in schools works well. The evidence is that many schools do not have effective or safe systems of asbestos management.

Failure of schools to manage their asbestos

2. The simple criteria for judging whether asbestos management works well in schools should be that staff and pupils are safe from the dangers of asbestos. If that criteria is not met then the system of asbestos management does not work well.
3. HSE guidance states: *“If you don’t manage the asbestos-containing materials in your premises, you could be putting your employees’ and other people’s health at risk.”*¹ HSE warn that: *“It is critical that anyone who may disturb asbestos is made aware of its location and condition.... Not having a system in place, or operating a system with major gaps or flaws, is a major source of risk as potentially anyone in a school can disturb asbestos containing materials.”*² The failure to implement an effective system for managing asbestos should therefore not be considered to be a minor administrative lapse, as it can lead to asbestos being damaged, and pupils and staff being exposed to asbestos with potentially serious implications for their future health.
4. Members of the asbestos consultants association visit thousands of schools throughout the country and they concluded: *“The evidence is that the system of asbestos management in many schools is not of an adequate standard, in some it is ineffective, in others it is almost non-existent, and in some it is at times*

¹ HSE A comprehensive guide to managing asbestos in premises.

² HSE Managing asbestos in schools outside local authority control. Undated <http://www.hse.gov.uk/services/education/asbestos-summary-1011.htm>

dangerous... These are not minor problems that have crept in over recent years; rather they are fundamental problems that are endemic in schools in the UK..."³

5. In contrast HSE inspect relatively few schools, although since 2007 they have carried out two rounds of inspections to check compliance with guidance for 'System' built schools, and two rounds of inspections of schools outside local authority control. But since March 2011 they have not been allowed to undertake proactive inspections in local authority schools. Over a seven year period they have probably only inspected about 2% of the total number of schools in the country.
6. In 2011 HSE published the results of inspections they had carried out in academies and schools outside local authority control to determine their standards of asbestos management.⁴ The inspections resulted in enforcement action being taken in 17% of schools for failures in asbestos management. More than half of the eighty schools that carried out their own maintenance and building work had failed to train their staff. In addition to the enforcement action 110 schools were given 'Advice' by HSE to improve asbestos management. In total 138 of 164 schools visited were issued either Improvement Notices or were given formal Advice. (84%) (Follow the link to an analysis of the enforcement action.⁵)
7. Two previous rounds of inspections assessed the standards of asbestos management in system built schools. These were carried out mainly in local authority schools. In the first round of inspections in 2007 and 2008 120 schools were inspected and improvement notices were issued to 17% of schools.⁶
8. In the second round of inspections carried out between 2009 and 2010 enforcement action was carried out in 24% of the 42 local authorities inspected. In some cases the local authorities had failed to follow critical asbestos guidance in all their schools.⁷ 18 improvement notices and 1 prohibition notice were issued and further advice was given to the other 32 authorities on actions to improve their systems for managing asbestos.⁸
9. The schools had been selected in both rounds of inspection of system built schools on the basis of responses to a questionnaire to assess compliance with the regulations. Consequently those local authorities or dioceses who gave assurances that they were complying were not inspected. This is an unsound means of selection and the questionnaire was criticised by a local authority as its design would inevitably elicit a more positive picture than actually exists. It is known that some authorities who were not inspected had made incorrect returns or had serious failings in their standards of asbestos management. Therefore the results understate the actual number of local authorities and schools who were failing to comply with the guidance.
10. Enforcement has been carried out for failures to comply with the Health and Safety at Work Act and failures to comply with the asbestos regulations, and include: Failure to ensure the health and safety of

³ Assessment of asbestos management in schools Asbestos Testing and Consultancy Association 24 Jan 2010
[http://www.asbestosexposureschools.co.uk/pdfnewslinks/ASSESSMENT%20OF%20ASBESTOS%20MANAGEMENT%20IN%20SCHOOLS%20ATAC.%2029%20FEB%202010.pdf?zoom_highlight=atac#search="atac"](http://www.asbestosexposureschools.co.uk/pdfnewslinks/ASSESSMENT%20OF%20ASBESTOS%20MANAGEMENT%20IN%20SCHOOLS%20ATAC.%2029%20FEB%202010.pdf?zoom_highlight=atac#search=)

⁴ List of schools inspected: www.hse.gov.uk/services/education/asbestos-management-1011.htm Press release
<http://www.hse.gov.uk/press/2011/hse-asbestosinschools.htm>

⁵ Summary of enforcement action
<http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20SUMMARY%20%20NOV%20%20to%20Jul%2011.pdf>
<http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20ACTION%20%20%2011%20Oct%2011.pdf>

⁶ HSE Inspection of asbestos management in clasp and other system buildings 2007/2008. Annex 1 Inspection Findings –Consolidated Divisional feedback. undated

⁷ For example: South Gloucestershire Council. Thurrock Council, Glasgow Council,
http://www.asbestosexposureschools.co.uk/npaper%20links/update%20114.htm?zoom_highlight=enforcement
Doncaster Council <http://www.bbc.co.uk/news/uk-england-south-yorkshire-11388784>
Harrow http://www.harrowtimes.co.uk/news/8407723.Harrow_primary_schools_warned_over_asbestos/ .

⁸ HSE Inspection Findings: Asbestos management in Local Authority school system buildings 2009/10 <http://www.hse.gov.uk/services/education/fod-interventions.pdf>

employees. Failure to ensure the health and safety of non-employees. Failure to manage the risks from asbestos. Failure to identify asbestos. Failure to implement recommendations of surveys. Failure to provide a written asbestos management plan. Failure to implement a management plan. Failure to update the management plan. Failure to monitor the condition of asbestos. Failure to train those members of staff who could disturb asbestos. Failure to inform people of the location of asbestos. Failure to supply an asbestos survey to contractors. Failure to comply with guidance for asbestos remedial measures in system built schools. Failure to use control measures to prevent the release of asbestos fibres. Lack of clarity over roles and responsibilities. Premises not thoroughly cleaned of asbestos debris following disturbance during refurbishment work. Potential asbestos disturbance. Exposure of employees and non-employees to asbestos.

11. In total HSE has probably inspected in the order of 2% of the 28,950 schools⁹ in Britain. If the percentage of schools that had enforcement action taken was representative of all schools in Britain that contain asbestos then it would equate to more than a million pupils occupying more than 3,500 schools failing to effectively manage their asbestos to the extent that they required enforcement action. That is a considerable number and demonstrates that the policy of managing asbestos does not work in a significant number of schools.
12. Follow the link to details of enforcement action in schools and colleges:¹⁰

Asbestos management exceptionally difficult in a school

13. Asbestos management can work in an office but schools are a very different environment as they contain children. The fundamental differences are that:
 - One can tell office workers not to touch a wall or ceiling and they won't, but in a school it is inevitable that boisterous behaviour or sheer curiosity will mean that a child runs into a wall, kicks a ball into a ceiling or pokes a ball point into a wall to see what happens.
 - Children are more at risk than adults to asbestos exposure.
14. An effective system of asbestos management has to reflect that difference. This is a particular problem in the majority of British schools because of the widespread use of asbestos insulating board (AIB) in places vulnerable to damage from children. Even the best management system cannot be completely effective with children and asbestos in such close proximity.
15. The only way to guarantee that children will not be exposed to asbestos is to remove all asbestos from schools. However that cannot be achieved overnight and has to be a long term strategy. In the interim stringent systems of asbestos management have to be implemented. Those systems cannot be a standard template designed for offices and other workplaces, but they have to reflect the increased risks to children and the particular vulnerability of any asbestos materials accessible to them.

Workplace thresholds for asbestos management and fibre levels should not be applied to schools

16. The asbestos regulations do not necessarily provide the protection for schools that they should. A school therefore could be complying with the regulations when in fact the children and staff are at risk.
17. One example is the use of workplace control levels in schools. The threshold of airborne asbestos fibre levels that are stipulated in the regulations and guidance are 'workplace' levels designed for people

⁹ School numbers 2011 England <http://www.education.gov.uk/rsgateway/DB/SFR/s001012/sfr12-2011.pdf> Scotland

<http://www.scotland.gov.uk/Resource/Doc/310296/0097954.pdf> Wales <http://wales.gov.uk/docs/statistics/2011/111213sdr1532011ren.pdf>

¹⁰ HSE Enforcement school <http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20SCHOOLS%2027%20Mar%2014.pdf>

working on asbestos and were not designed for the occupants of buildings, and not for children with their additional risk from asbestos exposure.

18. For instance at fibre levels below the workplace 'Clearance indicator' children and staff are legally allowed to occupy rooms, and assurances are given that the asbestos is being safely 'managed.' Unless the levels are considerably less than the Clearance indicator then that advice is wrong. That is because the occupants of the rooms could be inhaling 6,000 amosite fibres an hour. That is cumulatively dangerous for an adult and considerably more dangerous for a child.
19. An example of the Clearance indicator being incorrectly used could have led to staff and pupils returning to an unsafe school. Water was leaking through the flat roof of a system built school so that AIB tiles and asbestos contaminated ceiling voids were inundated to the extent that ceiling tiles were collapsing into the classrooms and corridors. AIB walls had visible signs of impact damage caused over the years, and tests showed that heaters installed some fifty years before were emitting amosite fibres. The evidence was clear that amosite fibres had been released over the course of many years, but because the levels were beneath the workplace 'Clearance indicator' it was decided that the school was perfectly safe to reoccupy¹¹ and that staff and pupils were not at risk. The HSE also assessed the asbestos management of the school as 'good.'¹²
20. The unjustified estimate of the risks was made because the legally permitted threshold for asbestos fibre levels is the inappropriate workplace standard. In addition the assessment of standards of asbestos management did not take account of the increased risk to children and the likelihood that they could damage asbestos materials in any place accessible to them. But instead the assessment was based on the general criteria used for all workplaces. This use of inappropriate workplace fibre levels clearly needs reviewing urgently in light of the COC findings of the increased risk to children. As does the policy that permits asbestos materials to remain in places that are vulnerable to damage by children.
21. For many years other unsafe workplace fibre levels have been applied to children in schools. One was the 'Action level'. Until 2012 HSE guidance was that so long as the exposures were beneath the Action Level then *"exposures would usually have been insufficient to pose a significant long-term risk to health."* This is contrary to expert epidemiological and medical opinion as there is no known level of exposure to asbestos below which there is no risk.¹³ A person exposed to amosite or crocidolite at 48f/ml for an hour would inhale about 28,000,000 fibres. That is a dangerous level of exposure for an adult and is significantly more dangerous for a child.
22. To put it into context the Supreme Court accepted the definition of a 'significant' exposure capable of causing mesothelioma as *"A level above that commonly found in the air in buildings and the general outdoor environment."*¹⁴ The Action level is 96,000 greater than the level commonly found in schools with asbestos in good condition and the Supreme Court's judgment on what constitutes a 'significant' exposure. It was a serious error of judgement advising schools that exposures beneath the Action level are insignificant. Because of it local authorities, schools and inspectors have accepted what were unsafe standards of asbestos management.

¹¹ Education Select Committee hearing 'Asbestos in schools' HSE Director of FOD 13th March 2013

¹² HSE Assessment of potential asbestos risk at Cwmcarn High School. 21 Jun 2013 .

¹³ Final WATCH Position on asbestos risk assessment: February 2011. World Health Organisation Elimination of asbestos related diseases. Sep 2006 . WHO environmental Health criteria 203: Chrysotile Asbestos 1998 . Hodgson & Darnton The quantitative risks of mesothelioma and lung cancer in relation to asbestos exposure. Epidemiology and medical statistics unit HSE. Ann Occup Hyg vol 44 p583 Is there a threshold? 2000) High Court QBD Liverpool District. The Hon Mr Justice Nicol . Dianne Willmore and Knowsley Metropolitan Borough Council 24 July 2009 Para 4.

¹⁴ High Court QBD Liverpool District. The Hon Mr Justice Nicol . Dianne Willmore and Knowsley Metropolitan Borough Council 24 July 2009 Para 8, 57b

23. (The case for withdrawing the Action level is at¹⁵)
24. As the Action level was applied inappropriately to schools for many years failures in asbestos management were not reported under 'RIDDOR' when the level of asbestos exposure was assessed to be below the 'Action Level'. It is inevitable that most asbestos incidents in schools were not reported, therefore the statistics understate the actual number.
25. An equally serious result has been that the HSE advised that parents need not be informed of their children's exposure unless the exposure exceeded the Action level.¹⁶ This has meant that asbestos incidents have occurred in schools and parents and children have not been informed.
26. It is an indication that asbestos management in schools is not working well when HSE and DfE did not identify the dangers in use of the inappropriate workplace Action Level for schools. The guidance that referred to the Action level was only withdrawn under pressure from the AiS.
27. The same problem of the inappropriate 'Clearance Level' now exists and asbestos management in a school cannot be assessed as working well until a level of asbestos fibre exposure appropriate to children, rather than adult workers, is introduced.

Recommendation

- It is recommended that an 'Environmental' level should be adopted for schools. It should be considerably lower than the present Clearance Level.

28. The case for an 'Environmental' level is given in the answer to question 9 and at this link.¹⁷

Neither Regulations nor Guidance are tailored for classrooms

29. The asbestos regulations are in general drafted for people who work on asbestos and are primarily designed to prevent exposures when maintenance or building work is carried out. It is acknowledged that this can be a major source of asbestos fibre release, but in a school it is by no means the only means. That is because common classroom activities can also release asbestos fibres.
30. Also because the regulations have been drafted for adult workers no account has been taken of the increased risks to children. Therefore it does not necessarily follow that compliance with the regulations means that the children in a school are not at risk.
31. Tests have shown that slamming a door, kicking a wall, hitting a column or just taking a book out of a stationary cupboard can release asbestos fibres. But so long as the surface of the asbestos material appears to be in good condition then it meets the criteria in the guidance for effective management. Although the asbestos fibre releases from this sort of activity are often low level, they can be frequent and can take place over the course of many years. Because children, teachers and support staff spend long times at school, the cumulative asbestos fibre burden on an individual can be considerable.¹⁸

¹⁵ The case for the removal of the Action level is at this link 15 Jul 2011:

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/INFORMING%20following%20an%20asbestos%20incident%20in%20a%20school%2015%20Jul%202011.pdf>

¹⁶ HSE brief Chairman's office CO case CO/62/04 13 Aug 2004. HSE meeting 'The Lees family' 19 Mar 2004. . HSE Education Sector briefing HSE Head of asbestos policy. Lees contemporaneous notes 13 Dec 2006

¹⁷ Case for an environmental level

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/Environmental%20asbestos%20fibre%20level%20for%20schools%2014%20Jun%202013.pdf>

¹⁸ See: Asbestos in Schools Submission to the Committee on Carcinogenicity pages 11-29
<http://iacoc.org.uk/papers/documents/AiSreportonASBESTOSINSCHOOLS.pdf>

32. A school can therefore be complying with the guidance and regulations for managing asbestos and have systems in place to ensure that there are strict controls on any maintenance or building work, when in reality there is a very real risk that asbestos fibres are being released as the buildings are occupied by boisterous, curious children who are in daily contact with materials that contain asbestos.
33. These days most schools have a policy of removing or encapsulating asbestos materials that are identified in an asbestos survey as 'High risk,' and for many years schools have removed high risk lagging from boiler rooms, where employees work. But there are also risks, which can be considerable, to children from jostling down a corridor lined with AIB panels at the change of every lesson. That is because fibres can be released from the reverse face of the AIB and ejected into the rooms.¹⁹ But that risk is not properly taken into account in the regulations or the guidance, for, so long as the surface of the material appears to be in good condition it is invariably classed as low or medium risk. A school can therefore be deemed as managing its asbestos safely, when in fact there is a very real risk to the occupants, and to the children in particular.

Flaws in the Algorithm

34. The basis for assessing whether a material is high risk is an algorithm²⁰ which is flawed when applied to schools. It does not give sufficient weight to the greatly increased risks posed by amosite contained in AIB in places vulnerable to damage from children. The algorithm also does not take into account the higher risk to children compared with adults. Unless there are visible signs of surface damage, AIB walls, ceilings, window and door surrounds in corridors, classrooms, gyms, halls and toilets used by children can be classed, using the algorithm, as low or perhaps medium risk. That risk assessment is wrong and much of the material should be classified as high risk.

Recommendation

- It is recommended that the policy review includes a review of the algorithms for assessing the risks posed by asbestos materials accessible to children in schools.

Flaws in Guidance

35. Another example of how schools can comply with the guidance and yet put staff and pupils at risk is the issue of asbestos fibre release from system built school buildings. About half the schools in Britain are system built.²¹ The release of significant levels of amosite fibres from kicking a wall and slamming doors in a system built building first came to light in 1987,²² and yet a warning was not issued to other schools.
36. It was almost twenty years later in 2006 when the problem was 'rediscovered' and the risks to the occupants in many thousands of schools was realised that an urgent warning was finally issued to all schools. That was wrong. But this warning was also flawed. The guidance advised on temporary measures where the damaged asbestos, debris and fibres were left in place and every crack sealed to inhibit fibres being ejected into the rooms.²³ But even then the warning did not ensure the safety of the occupants. In spite of this the emergency remedial measures have been accepted as a permanent solution. These temporary measures are still in place and no proper long term solution has been found. The lack of a permanent solution means that the occupants remain at risk.
37. The temporary guidance was to seal every crack in the columns, walls and skirting boards with silicone sealant and to squirt expanding foam into the tops of columns where they vent into the ceiling void so as to prevent the release of asbestos fibres into the rooms. Tests proved that this system of sealing did not

¹⁹ ILEA report LSS/AP/52 (1987) Investigation into fibre release from low level asbestos panels - Ernest Bevin school May 1987

²⁰ HSE A comprehensive guide to managing asbestos in premises. HSE Asbestos The survey guide.

²¹ Scape School building overview www.scapebuild.co.uk

²² ILEA report LSS/AP/52 (1987) Investigation into fibre release from low level asbestos panels - Ernest Bevin school May 1987. ILEA report LSS/AP/78 (1987) Investigation into fibre release from low level asbestos panels at Roehampton Gate Primary September 1987

²³ A joint message from the HSE/LGE/DFES Asbestos— potential for exposure in "clasp" school buildings October 2006

always work, curious fingers removed the sealant and practice proved that it was impractical to seal every gap and crack. Therefore the later guidance issued in 2008 only advised sealing the gaps in columns, and no longer mentioned sealing gaps in skirting boards and walls,²⁴ despite the fact that this is a proven source for fibre release.

38. The problem was exacerbated when it was found that the widespread sealing of the column tops with large quantities of expanding foam presented health risks from isocyanates, and therefore in addition the 2008 guidance no longer included this recommendation. As the column tops were no longer being sealed there is nothing to stop asbestos fibres continuing to be ejected into the ceiling void when the walls and columns are hit.
39. Instead the revised guidance advised *“Ceiling voids have the potential to be contaminated as the tops of columns in the ceiling void are usually open and/or asbestos debris may have been left nearby in the void.... Any missing or broken ceiling tiles should be replaced to reduce the amount of air exchange between the ceiling void and room below.”*²⁵ This measure relies entirely on the integrity of the ceiling void being maintained with all tiles being in good condition, fitting precisely in the ceiling grid and never being disturbed. If that is not the case then asbestos fibres can enter the rooms beneath.
40. This is impractical as ceiling voids of system built schools contain the services such as electrical wiring, plumbing, heating and gas and therefore the ceiling void needs to be regularly accessed so that they can be serviced. One local authority summed up the inadequacy of the recommended remedial actions:

*“Managing the risk of disturbing asbestos concealed behind column casings or asbestos fibres lying on top of ceiling tiles presents both practical issues (you cannot practically seal a lay in grid ceiling) and communication issues... Any work at all in ceiling voids in these buildings may be rendered impossible unless spaces below are sealed off and work required is treated as if a full asbestos strip is in progress.”*²⁶
41. The guidance was flawed as it could not be guaranteed to prevent the release of amosite fibres. And yet thousands of schools have damaged AIB, asbestos debris and amosite fibres in columns and walls in classrooms, corridors and halls, and the release of fibres is only prevented by a strip of bathroom sealant and the integrity of the ceiling tiles being maintained.
42. However, so long as schools comply with the guidance, it is deemed that they are ‘safely’ managing their asbestos, when such a claim cannot be justified. It is wrong that compliance with flawed guidance should be used as the benchmark to determine whether a system of asbestos management is ‘safe.’

Recommendation

- It is recommended that the review re-examines the HSE guidance for system built schools.

Failure to be open to Parliament and the public about poor asbestos management in schools

43. The two rounds of inspections of system built schools identified damaged asbestos in schools and the potential for significant levels of asbestos fibres to be released into classrooms, halls and corridors. The enforcement action reflected that. (See the answer to question 8)
44. The two rounds of inspections of schools outside local authority control intentionally did not look at asbestos materials, instead they were designed to determine whether schools were complying with the

²⁴ HSE ASBESTOS IN SYSTEM BUILDINGS. Control of Asbestos Regulations 2006 Guidance for duty holders. Updated 18 September 2008

²⁵ ASBESTOS IN SYSTEM BUILDINGS Control of Asbestos Regulations 2006 Guidance for duty holders Updated 18 September 2008

²⁶ Department for Education / Health and Safety Executive Questionnaire survey on asbestos management in local authority system built schools – Alphabetical list of responses – July 2010 Cornwall

regulations. The instructions to inspectors were very specific that in the 2013 inspections: *“At each visit inspectors should: NOT seek to identify whether asbestos is present themselves but assess compliance with the duty to manage requirements (DTM)...”*²⁷ And similarly in the 2010/2011 inspections *“Inspectors are not required to identify whether asbestos is present themselves but to assess compliance with DTM, and to complete a questionnaire.”*²⁸

45. It was therefore disingenuous of the Minister to inform members of the Education Select committee that *“My understanding is that quite a lot of the problems that they found and identified were not necessarily that they were finding enormous bits of exposed, dangerous asbestos; it is just that some of the many boxes that they rightly have to tick to demonstrate they have management plans in place, regularity of inspection and so forth did not meet the full HSE requirements.”*²⁹ The reason they did not find the asbestos was because they had been specifically instructed not to look for it. Also in the first round of inspections a significant number of schools had failed to implement measures to prevent the release of asbestos fibres into the rooms from damaged, dangerous asbestos.
46. By implication the Minister’s statement makes it appear that the failure to ‘tick the boxes’ was a minor administrative lapse. HSE guidance states *“If you don’t manage the asbestos-containing materials in your premises, you could be putting your employees’ and other people’s health at risk.”*³⁰ These schools were not managing their asbestos and therefore, by failing to do so they were potentially putting staff and pupils at risk – the seriousness of that should not be played down.
47. However the Minister had been briefed by the HSE who had also made statements following the first round of inspections of schools outside local authority control that played down the seriousness of the infringements. The HSE press release stated *“Asbestos checks reveal compliance in non-LA schools”* and the HSE Director of the Disease Reduction Programme called the level of compliance *“Encouraging.”*³¹ In reality the very opposite was the case.
48. Good asbestos management entails honestly addressing flaws so that they can be corrected. This has not taken place. The opportunity to alert other schools to the need to manage their asbestos had been wasted as the HSE press releases had incorrectly heralded the failure of a significant proportion of schools to manage their asbestos as a good news story, and also incorrectly implied that the infringement were just administrative problems that had little or no effect on people’s safety.
49. At the February 2012 DfE Asbestos Steering Group meeting HSE were criticised for their misleading and counterproductive statements. They responded that *“This is a complex area and there is an environment where health and safety is under constant attack by the media. HSE had professionals working on this trying to achieve the correct balance of raising awareness without falling into the gaping hole that turns the media against this particular issue and health and safety in general. One therefore has to find a method of getting the message across to the audience. It will not work for everyone, and employers who have action taken against them can sometimes make statements in an attempt to minimise the impact on them.”*³² Despite this tacit acknowledgement that ‘spin’ had been put on the HSE statement, the same spin had clearly been put on the HSE briefing to the Minister as he repeated it to the Education Select Committee.³³ Both the Minister and the Select Committee should have been given the

²⁷ Workplan 2013/14: Asbestos management in schools outside Local Authority control SIM 07/2012/08 . 27 Mar 2013

http://www.hse.gov.uk/foi/internalops/sims/pub_serv/071208.htm

²⁸ Work year 2010/2011: Inspection programme on asbestos management in schools outside of Local Authority control SIM 07/2010/02

<http://www.hse.gov.uk/foi/internalops/sectors/public/071002.htm#annex>

²⁹ Education Select Committee hearing Asbestos in Schools Question 66 13 Mar 2013.

³⁰ HSE a comprehensive guide to managing asbestos in premises.”

³¹ Asbestos checks reveal compliance picture at non-LA schools 14 Oct 2011 <http://www.hse.gov.uk/press/2011/hse-asbestosinschools.htm>

³² DfE Asbestos Steering Group meeting. AiS note of meeting 9 Feb 2012

³³ Parliamentary Education Select Committee hearing ‘Asbestos in Schools.’ Question 70. 13 Mar 2013

unvarnished truth, but they were not. The Minister also used the same ‘spin’ at a meeting with a teacher suffering from mesothelioma.³⁴

50. The Education Select Committee examined the issues surrounding asbestos in schools including evidence of enforcement action taken by HSE in schools. A committee member put the enforcement action into perspective when he stated: *“If one in five or six schools required the equivalent of an enforcement notice because they were not complying with safeguarding of children requirements, it would be on the front page of every single newspaper.”*³⁵ – But that is not the case with asbestos, as the failure of a school to safely manage its asbestos is not treated with the same gravity by HSE, DfE and Ministers.

Recommendations and Conclusions

51. Incidents are often not reported as the guidance and regulations enable dangerous exposures to asbestos fibres to be treated as “safe.” The asbestos management regulations and guidance do not take into consideration the increased risks to children and the increased risk of damage to asbestos materials in vulnerable places in schools. Ministers and HSE also appear to exploit the flaws in the inappropriate workplace guidance and regulation to play down the known risks. The true scale of the problem and the risks are therefore concealed from the press, the public and Parliament.

- It is recommended that the conclusion of the CoC that children are more vulnerable to asbestos exposure than adults should underlie all decisions and policy for the management of asbestos in schools. This has not happened so far. Consequently the systems of management have not worked well.
- It is recommended that workplace fibre control levels are not applied to children in schools. Because workplace levels are used children have been exposed to cumulatively harmful levels of asbestos fibres.
- Also a school can be deemed to have a good system of asbestos management when in reality asbestos fibres are being released and the school is unsafe. It is recommended that is remedied urgently.
- It is recommended that an environmental level is introduced for schools. Until this is done asbestos management in schools cannot work well.
- Guidance and regulations designed for adult workplaces can place the occupants of schools at risk. It is recommended that guidance and regulations are drafted specifically for schools taking into account the increased risk to children. Asbestos management in schools cannot work well until that is corrected.
- It is recommended that asbestos insulation board in places that are vulnerable to damage from children should not be classed as low or medium risk. The end result is that schools are considered to have good asbestos management, when in reality the management is unsafe.
- The algorithm fails to take account of the increased risks to children, fails to give sufficient weight to the increased risk from amosite and crocidolite and fails to give sufficient weight to AIB in locations vulnerable to damage from children. It is recommended that the algorithm is reviewed and then revised.

³⁴ Meeting David Laws MP, Sarah Wollaston MP, Lees 19 Nov 2013

³⁵ Parliamentary Education Select Committee hearing ‘Asbestos in Schools.’ Question 70. 13 Mar 2013

- Guidance on the measures to be taken to inhibit the release of amosite fibres in system built schools is flawed. The present measures for managing asbestos are unsafe. It is recommended that the guidance is reviewed and revised.
- It is inevitable that many asbestos incidents in schools have not been reported because of the flawed guidance that advised the use of the Action level. This has meant that the statistics do not give an accurate measure of asbestos incidents in schools. This has prevented a proper analysis of the risks and has enabled unjustified claims to be made of good management.
- Evidence from asbestos consultants who regularly inspect schools, and from the limited number of HSE inspections, is that asbestos management fails in an unacceptably high proportion of schools.
- It is recommended that policies on asbestos management in schools are based on unvarnished facts. ‘Spin’ should not be put on advice and data given to the public, Ministers or Parliament. Because it has been a false impression has been given of the risks and the standards of asbestos management in schools.
- There is a lack of openness over asbestos in schools. Because of it there has been insufficient Parliamentary and public scrutiny of policy on asbestos in schools. If schools are to be made safe from the dangers of asbestos, it is recommended that the policy review impartially considers all the evidence and allows its conclusions be open to public and Parliamentary scrutiny.

Question 1b

1 b) The current DfE policy offers the right level of support to schools.

<input type="checkbox"/>	Strongly agree	<input type="checkbox"/>	Agree	<input type="checkbox"/>	Neither agree nor disagree
<input type="checkbox"/>	Disagree	<input checked="" type="checkbox"/>	Strongly disagree		

52. The DfE defined their policy and role in evidence submitted to the Education Select Committee hearing on asbestos in schools. They stated:

“Department for Education policy, as in other aspects of schools management, is to give schools the support they need to fulfil their responsibilities effectively....

Our policy is to provide and promote guidance material for schools, which is based on the expert advice of the HSE, to manage asbestos safely and effectively....

The Department does not manage the schools estate; our capital funding responsibilities are to provide funding for new school places (basic need) and to fund schools and local authorities to maintain their existing buildings.³⁶”

³⁶ Education Select Committee DfE written submission March 2013
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/writew/1056/contents.htm>

The policy on asbestos in schools is:

“Asbestos which is in good condition and unlikely to be disturbed or damaged is better left in place and managed until the end of the life of the building as this presents less risk of exposure to the occupants than the process of removing it.”³⁷

An assessment of these policies follows.

Policy: “As in other aspects of schools management, is to give schools the support they need to fulfill their responsibilities effectively.”

Present data on the effectiveness of the level of support gives an incorrect picture

53. In answers to Question 1a flaws in the present standards of what is accepted as a ‘safe’ system of asbestos management were identified. It was shown that asbestos materials in places with a very real potential of damage from children had been incorrectly classed as ‘low’ risk, and even when actual damage was apparent the standards of asbestos management were incorrectly classed as good. This was because workplace standards and asbestos fibre control levels have been inappropriately applied to schools without taking into consideration the increased vulnerability of children and the increased likelihood of asbestos materials being damaged.
54. This means that the statistics on asbestos incidents in schools are flawed as they do not give a true picture of the actual scale of the problem. The statistical data on schools identified as having ‘safe’ systems of asbestos management are also incorrect as the actual risks to the occupants and children in particular, are understated. The result is that a false sense of security has developed that the present level of support provided by DfE is sufficient and that their policies are working. Because of this, unjustified assurances are given that the standards of asbestos management in schools are generally good and that the risks to staff and pupils are low when in reality, they are not.
55. Only when these basic practical and statistical flaws are rectified can a proper assessment be made of how many schools are managing their asbestos effectively so that the occupants are, in reality, safe. Once that is complete then a proper assessment can be made of the level of support required by DfE.
56. The policy review is taking place because of an assurance given by the Schools Minister at a Parliamentary debate in February 2012 on asbestos in schools that *“We will review our policy on asbestos management and our advice to schools when we receive the (COC) committee’s report later this year.”*³⁸ The COC concluded that children are more at risk than adults. To date the increased risk to children has not been taken into account and as a consequence schools have been treated as any other workplace.

Recommendation

- The increased risk to children risk must now underlie all future policies and must form the basis of the review of the effectiveness of schools management and the support they need from DfE.

Policy: DfE guidance and policy is “based on the expert advice of the HSE.”

57. As has been seen in the answer to question 1a, much of the data and assumptions about the standards and risks from asbestos are unsound, and yet they form the basis for present policies for asbestos in schools. If, on the basis of those flawed statistics and assumptions, it is concluded that the risks are low,

³⁷ Parliamentary Written Answer Minister of State for Schools 8th February 2011

³⁸ [Debate House of Commons Asbestos in Schools - Tuesday 7 February 2012 -\(Hansard text\)](#) penultimate paragraph.

Also House of Lords Written answer Lord Hill HL15579 16 Feb 2012 : Column WA184

<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120216w0001.htm#12021640000237>

then it can equally be concluded that present policies and measures are working and that nothing needs to change. Those conclusions, however, would be wrong.

58. In November 2013 the Minister of State for Schools stated that *“If the evidence was that asbestos posed a risk to school staff and pupils then, regardless of cost, measures would be taken to ensure that schools were made safe.”* However he stressed his policy is based on HSE advice that the risks are low, and in general schools are effectively managing their asbestos. Therefore on the evidence available to him he could not justify to the Treasury the need to spend large amounts of money on mitigating the effects of asbestos in schools.³⁹
59. The classification of schools as ‘low’ risk was proposed in a study by HSL that compared all workplaces and categorised them as ‘high’ and ‘low’ risk.⁴⁰ This risk classification for workplaces was then imbedded in reforms to health and safety policy outlined in HSE’s sponsor Department the DWP’s publication ‘Good health and safety. Good for everyone.’⁴¹ As HSE’s comparison was being made with high risk industries such as oil extraction and building construction, then schools are relatively low risk. However the absolute risks from asbestos in schools are not low.
60. More than three quarters of schools contain asbestos,⁴² all the asbestos is old and much of it is deteriorating. Amosite was extensively used in schools⁴³, often in places vulnerable to damage from children, and amosite is up to 100 times more likely to cause the disease than chrysotile.⁴⁴ Britain has the highest mesothelioma incidence in the world at more than twice that of France, Germany or the USA. An HSE report concluded that is because we imported more amosite than any other country.⁴⁵
61. A report commissioned by the Medical Research Council examined the extent of asbestos in school buildings and concluded *“It is not unreasonable to assume, therefore, that the entire school population has been exposed to asbestos in school buildings... Exposure to asbestos at school may therefore constitute a significant part of total exposure.”*⁴⁶ Teachers and children spend many years in a school and so the cumulative exposures can be considerable, and there is no known level of exposure to asbestos below which there is no risk.⁴⁷
62. As a consequence staff and former pupils are subsequently dying from mesothelioma. More than 267 school teachers have died of mesothelioma since 1980 with more than 140 dying in the last ten years. In 1980 3 teachers a year died of mesothelioma and now 15 a year are dying.⁴⁸ School caretakers, cleaners,

³⁹ Meeting Minister of State for Schools David Laws MP 19th November 2013. Lees contemporaneous notes.

⁴⁰ Health and Safety Executive/Local Authorities Enforcement Liaison Committee (HELA) LAC 67/2 10 Mar 2010 para 2.3 background

⁴¹ Good Health and Safety Good for Everyone. DWP 21 Mar 2011 p9. <https://www.gov.uk/government/publications/good-health-and-safety-good-for-everyone>

⁴² DfE Asbestos management in schools: What asbestos is and when it becomes a risk 22 Oct 2012

<http://www.education.gov.uk/schools/adminandfinance/schoolscapital/buildingsanddesign/managementofpremises/b00215518/asbestosmanagement/schools/whatasbestosis>

⁴³ Fibrous Materials in the Environment. Medical Research Council Institute for Environment and Health. P72 . 1997

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/MRC%20Fibrous%20Materials%20in%20the%20environment%20IEH%201997%20complete%20document.pdf>

⁴⁴ The Quantitative Risks of Mesothelioma and Lung Cancer in Relation to Asbestos Exposure *Ann. Occup. Hyg.*, Vol. 44, No. 8, pp. 565–601, 2000 Hodgson and Darnton Is there a threshold?

⁴⁵ HSE Occupational, domestic and environmental mesothelioma risks in Britain. 2009 . IMIG Congress Abstract 25-27 Sep 2008

⁴⁶ Fibrous Materials in the Environment .Medical Research Council Institute for Environment and Health. P72 and 73. 1997

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/MRC%20Fibrous%20Materials%20in%20the%20environment%20IEH%201997%20complete%20document.pdf>

⁴⁷ Supreme Court Judgment Knowsley Metropolitan Borough Council v Willmore 9 March 2011. .High Court QBD Liverpool District. The Hon Mr Justice Nicol . Dianne Willmore and Knowsley Metropolitan Borough Council 24 July 2009 Para 4 .

⁴⁸ HSE Mesothelioma occupational statistics: Male and female deaths aged 16-74 1980-2000 Table 3,4 Southampton Occupation Group. 5 year time period 1980-2000 excluding 1981. E-mail HSE Statistics Unit/Lees 15 Jul 2008. Mesothelioma deaths in the education sector for males and females 2001-2005. HSE Mesothelioma mortality in Great Britain: Analyses by Geographical area and occupation 2005 Tables 11, 13 (2002-2005). HSE Epidemiology Unit CSAG, table 0977/Lees 2 Mar 2011 HSE Epidemiology Unit, table 0925./Lees 25 Feb 2011. E-mail HSE Statistics Unit/Lees 21 Nov 2012 . Mesothelioma deaths in the education sector for males and females 2001-2010. Freedom of Information Request Reference No: 2013110056

cooks, secretaries, teaching assistants, nursery nurses and former pupils have also died of the cancer.⁴⁹ However there are no statistics that show how many children were exposed to asbestos at school and have subsequently died as a result, that is because the latency is so long their deaths are recorded in whatever occupation they had at the time. However it is known that children are more at risk than adults and estimates have been made of how many will die.

63. The Committee on Carcinogenicity (COC) concluded that children are more vulnerable to exposure to asbestos than adults, the younger the child the greater the risk. The lifetime risk of developing mesothelioma for a five year old child is about five times greater than an adult aged thirty.⁵⁰ A leading epidemiologist, and member of the COC, estimated that between 200 and 300 people could die each year of mesothelioma because of their asbestos exposure as children at school.⁵¹ That would equate to up to 6,000 mesothelioma deaths over a twenty year period because of asbestos exposure as a child at school.
64. Although the estimates were based on the levels of exposure during the 1960s and 1970s, most of the asbestos remains in place and so does the risk. All of it is now old and much is deteriorating as the school stock has been poorly maintained. The evidence is that asbestos incidents continue, consequently staff and pupils are still being exposed to asbestos, in some cases over a prolonged period of time. Therefore the deaths will continue for many years to come.
65. HSE's criteria for an 'acceptable' risk is an annual death rate of 1 in a million.⁵² The mesothelioma deaths of teachers' far exceeds that, as do the deaths of former pupils. Therefore the absolute risk to school staff and pupils far exceeds the criteria for an acceptable risk. It is wrong to describe the risk from asbestos in schools as 'low'.
66. HSE is responsible for all workplaces and with limited resources they have to prioritise the high risk industries, therefore they cannot provide the right level of support to comparatively low risk industries. In contrast DfE's priorities are for educating children and for the safety and well being of staff and children in schools. So long as they incorrectly class the risks from asbestos as low, they will never provide the right level of support to schools.
67. The Minister of State for Schools gave an assurance that: "*If the evidence was that asbestos posed a risk to school staff and pupils then, regardless of cost, measures would be taken to ensure that schools were made safe.*"⁵³ There is clearly a risk and the review should recommend action in line with the Minister's statement – which is clearly the right approach and reflects DfE's priority, which is for safety of staff and pupils in schools.
68. The blanket categorisation of schools as 'low' risk clearly cannot be justified in light of the CoC conclusions and the many deaths of school staff and former pupils. Using it as a basis for deciding on the right level of support for schools is both unsafe and contravenes the Minister's assurance.

Recommendation

- It is recommended that the categorisation of schools as 'low' risk should be reviewed.

Lees/Corporate Science, Engineering & Analysis Directorate (CSEAD) Health & Safety Executive 21 Nov 2013 Male and female mesothelioma deaths aged 16-74 for occupations in the education sector in Great Britain, 2011.

⁴⁹ See: Asbestos in Schools. The scale of the problem and the implications. P34-42

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/AiSreportonASBESTOSINSCHOOLS.pdf>

⁵⁰ Committee on Carcinogenicity Statement on the relative vulnerability of children to asbestos compared with adults. 7 June 2013

⁵¹ Education Select Committee hearing asbestos in schools 13 Mar 2013 Q 13 . Personal correspondence Professor Peto/Lees 3 May 2013

⁵² HSE Reducing Risk Protecting People HSE's decision making process 2001. P45, 48

⁵³ Meeting Minister of State for Schools David Laws/ AiS 19 Nov 2013. Lees contemporaneous notes

Safety inspections stopped because of 'low risk' classification

69. An example of support that was removed as a direct result of DWP's classification of schools as 'low risk' was that HSE ceased proactive inspections in local authority schools. HSE stated: *"Local authority administered education provision is identified as a lower risk area, and falls into the category of 'sector where proactive inspection will no longer take place' ie not justified in terms of outcomes... This approach also applies in general to schools outside local authority administration and higher and further education...."*⁵⁴
70. The proactive inspections had identified flaws in asbestos management and offered advice to improve standards. Their removal means that an important aspect of support for schools and local authorities is no longer available and their asbestos management will be less effective. As DfE policy is to manage asbestos then there should be a workable system in place to ensure that schools meet acceptable and safe standards. DfE should therefore ensure that they provide the right level of support so that there is a system that can identify which schools are failing to achieve those standards.
71. HSE recently completed a round of inspections of 150 schools outside local authority control, but it needs to be established whether they will conduct any more proactive inspections in this type of school. They were asked what system is in place to detect local authority schools that are not achieving satisfactory standards. HSE responded that they will only carry out an inspection after an asbestos incident has occurred or when a member of staff alerts them to a problem.⁵⁵
72. This is not a satisfactory long term strategy for ensuring safe standards are achieved. There are a number of cases where school staff have expressed their concerns that asbestos in their school was not being managed safely. In some cases their lives have been made difficult, in one case a senior teacher, and in another a school governor, felt compelled to resign.⁵⁶ If HSE wait to carry out an inspection after an incident has occurred then the damage has already been done, and although as a result of the inspection standards may improve, if a policy of proactive inspections had been in place then the incident could have been prevented in the first place.
73. The lack of proactive inspections was highlighted by a senior teacher commissioned by HSE to review senior health and safety management in schools. He found that there was no system in place to ensure that standards were achieved, other than following an incident: *"Quality assurance of health and safety standards by external agencies is not currently part of the approach taken to health and safety in schools. HSE's input to schools mainly resulted from incidents that were selected for investigation."*⁵⁷
74. Although it is HSE's legal remit to ensure that schools achieve safe standards of asbestos management,⁵⁸ they are not allowed to fulfil that remit in local authority schools. In addition local authority inspectors are not permitted to inspect schools even when they are outside local authority control.⁵⁹
75. OFSTED have a legal duty in their inspections of schools to assess *"the quality of leadership in and management of the school and the safety of pupils."*⁶⁰ In 2011 DfE asked the Chief Inspector of Schools if he would include an assessment of the standards of asbestos management and the safety of the pupils from the dangers of asbestos. OFSTED responded that asbestos will not be part of their inspections.⁶¹

⁵⁴ HSE Intervention plan: Education draft 29 April 2012

⁵⁵ HSE Head of Government, Defence and Education Unit Public Services Sector Operational Strategy Division. DfE Asbestos Steering Group 14 Jun 2012 Lees contemporaneous notes.

⁵⁶ Personal correspondence Lees Nov 13-Dec 13. And Jan 2011

⁵⁷ HSE Leadership of Health and Safety in Schools A summary of the findings and recommendations made following the secondment of a headteacher into HSE's Public Services Sector Mar 2012

⁵⁸ Is HSE the correct enforcing authority for you? <http://www.hse.gov.uk/contact/authority.htm>

⁵⁹ HSE Head of Government, Defence and Education Unit Public Services Sector Operational Strategy Division. DfE Asbestos Steering Group 14 Jun 2012 Lees contemporaneous notes.

⁶⁰ OFSTED school inspections Section 5(5a) Education Act 2005

⁶¹ Chairman DfE Asbestos Steering Group. Meeting 14 Jun 2012 Lees contemporaneous notes.

76. DfE do not, therefore, provide the right level of support to schools as there is no workable system in place to determine whether they are safely managing their asbestos and whether staff and pupils are at risk. Proactive inspections have proved their worth, and if schools are expected to manage their asbestos then there has to be a workable system in place to ensure that they do.

Recommendation

- It is recommended that pro-active inspections should be reinstated in all schools to determine the standards of asbestos management.

Policy: To provide and promote guidance material for schools

77. There always has been a need for specific asbestos guidance for schools, as the general guidance is for all workplaces and does not necessarily cater for the specific needs of schools. Because of this need, in 2012 DfE issued asbestos awareness guidance for schools. The guidance is basic awareness guidance and although it is a positive step forward, its scope is limited.

78. It is not mandatory and there is no means of knowing who has read it, and no means of assessing whether its contents have been absorbed. Also there is no system for people's questions to be answered. An indication that school staff are not aware of the guidance was given in a recent survey of the members of the Joint Union Asbestos Committee (JUAC). There were 1353 responses, of which 97% had not heard of the guidance.⁶²

79. The need was accepted by DfE in 2010 for asbestos awareness training for initially school governors and headteachers and it would be later expanded to incorporate teachers and support staff.⁶³ £20,000 was allocated for establishing an e-training package. The provision of training was withdrawn in the final few months of planning and instead it was replaced by the present basic web-based guidance.

80. DfE's stated policy is to provide and promote guidance materials for schools. Although they have partially fulfilled that remit, they are not providing the level of support for schools that they should be. The present guidance should be promoted so that schools are aware of its presence and read it.

81. The need had also been identified by DfE for asbestos awareness training material for schools and that need has not been met.

If asbestos is to be effectively managed then people have to be trained

82. DfE does not offer the right level of support to schools in providing asbestos training to school governors, headteachers, teachers and support staff. Although the guidance is a step forward it does not provide the level of support to properly meet the need that training would. Also if the guidance is not being accessed then it is failing to fulfil its purpose.

83. If headteachers, school business managers and other school staff are expected to be responsible for asbestos and to manage it, then they have to be trained. In addition all members of teaching and support staff need to be trained in asbestos awareness so that they can avoid disturbing asbestos in their schools and can also prevent pupils doing so.

84. The requirement is a legal one. A summary of the asbestos regulations state: *"This regulation requires employers to make sure that anyone liable to disturb asbestos during their work, or who supervises such employees, receives the correct level of information, instruction and training to enable them to carry out*

⁶² JUAC asbestos survey of members. January 2014

⁶³ Minutes DfE Asbestos Steering Group 29 Nov 2010. 28 Feb 2011

their work safely and competently and without risk to themselves or others."⁶⁴ Therefore there is a legal obligation for those who manage asbestos in schools, and school staff who could disturb asbestos, to be trained.

85. Support staff, such as caretakers and cleaners, are liable to disturb asbestos by drilling into AIB, lifting ceiling tiles, maintaining heaters or sweeping up asbestos debris and fibres once it has been disturbed. Teachers and teaching assistants are liable to disturb asbestos by pinning the children's work to AIB panels or hanging Christmas decorations from a ceiling grid. They also supervise children who could disturb asbestos. For both practical and legal purposes they should all be trained
86. It is equally important that those officials who supervise and allocate resources are trained so that they are aware of their responsibilities under the law and aware of the level of resources that are needed to manage the asbestos safely. This includes the relevant officials in local authorities and school governors, particularly those in academies and free schools. Training should be in either asbestos management or asbestos awareness, dependent on the individual's role.
87. A relatively new problem is that increasing numbers of schools are leaving local authority control to become academies. By doing so they will normally lose the expertise of the local authorities, and in many cases the governors and school authorities do not have the training or expertise to effectively manage their asbestos. This is an increasing problem in academies and free schools where responsibilities particularly rest on the school governors. As at 1st March 2014 there are 3,689 academies open in England⁶⁵ and 175 free schools.⁶⁶
88. In July 2013 HSE released a report that summarised the findings of a seconded senior teacher who had carried out an investigation on behalf of HSE into 'The leadership of health and safety in schools.' He concluded that school leaders including headteachers, and in particular governors, were often not aware of their duties concerned with health and safety and he proposed mandatory training:

*"That the ideal way to ensure that all school leaders are made aware of their leadership responsibilities for health and safety would be to implement a mandatory programme of health and safety awareness. Given the constantly changing educational environment of new initiatives and national strategies, it was not believed that anything other than a mandatory programme will ever sufficiently raise awareness of health and safety in schools for it to become a priority... This option would set a levelled programme with content aimed at strategic leadership of safety and health targeted at Governor/Duty Holders and Headteacher/Responsible Persons."*⁶⁷
89. In 2013 the Education Select Committee took evidence on the role of school governing bodies. Their findings reflect those of the seconded senior teacher. Although they didn't specifically look at health and safety training they did examine the general issue of training of governors and concluded that *"Too many governors have not received suitable training and we recommend that the Government require all schools to offer training to new governors."*⁶⁸ As at March 2014 the seconded headteacher's and the Select Committee's recommendations have not been followed.
90. It is rare that school governors are trained, many headteachers are not and very few teachers or support staff are trained. A recent JUAC survey had 1353 responses from their members 88% had not receive

⁶⁴ CAR 2012 Regulation 10 Training Summary p53 6 Apr 2012

⁶⁵ DfE Open academies in England 11 Feb 2014 <http://www.education.gov.uk/schools/leadership/typesofschools/academies/b00208569/open-academies>

⁶⁶ DfE Open free schools in England 27 Jan 2014 [List of all free schools: open or in pre-opening stage](#)

⁶⁷ HSE Leadership of Health and Safety in Schools A summary of the findings and recommendations made following the secondment of a headteacher into HSE's Public Services Sector Mar 2012

⁶⁸ Parliamentary Education Select Committee. The Role of School Governing bodies 4 Jul 2013 <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmeduc/365/36506.htm#a8>

training.⁶⁹ An earlier survey showed that 58% had not received training, and 20% didn't know whether they had.⁷⁰ A lack of training is a frequent reason for enforcement action when schools are inspected. For example in the 2011 HSE inspections of academies and schools outside local authority control more than half of the eighty schools that carried out their own maintenance and building work had failed to train their staff, of which sixteen had improvement notices issued and the remainder received advice.⁷¹

91. However enforcement action is only carried out on caretakers or maintenance staff when they are not trained, and not on other support staff, school governors, headteachers and teachers. This is because HSE are under the erroneous impression that teachers and other staff do not disturb asbestos. HSE guidance states *"The Control of Asbestos Regulations 2006, (CAR) Approved Code of Practice and guidance L143 contains specific obligations for the provision of asbestos awareness training to all employees who could foreseeably disturb and be exposed to asbestos. This includes caretakers and other maintenance staff. Teachers and other building users are not required to have specific training as they are not liable to disturb asbestos."*⁷² HSE are fundamentally wrong.
92. Teachers, support staff and children can, and do, disturb asbestos materials. DfE are responsible for the safety of staff and pupils in schools and should therefore insist that school staff are trained, for their own safety and that of the children, and also so that they can comply with the law. Training should therefore be mandatory. Also HSE should enforce the regulations.
93. Without training asbestos management cannot work, and inevitably asbestos will be disturbed and people exposed - as has happened on numerous occasions. Because DfE have not insisted that asbestos training is mandatory they have not provided the right level of support to schools.

Recommendation

- It is recommended that the review examines HSE's assumption that teachers and support staff do not disturb asbestos.
- It is also recommended that, for practical and legal reasons, mandatory asbestos training is introduced for governors, headteachers, teachers and support staff with the training tailored to the role of the individual.

Policy: Our capital funding responsibilities are to fund schools and local authorities to maintain their existing buildings.

Assessing the scale of the problem

94. A basic principle of risk management is to assess the scale of the problem so that proportionate resources can be provided. However DfE have never assessed the scale of the asbestos problem in schools so the level of support and resources they provide are not based on sound data.
95. In 2001 DCSF estimate that 70% of schools contained asbestos. But this estimate was purely based on the age of the buildings and the floor area, and so it is in effect little more than a guess, despite that it was still quoted by Ministers of both Governments in 2009 and 2010.⁷³ The percentage is higher than that in most local authorities with some being as high as 90% in for example Wales, Greater

⁶⁹ JUAC survey of members 13 Dec 2013

⁷⁰ JUAC survey of members 2010

⁷¹ List of schools inspected: www.hse.gov.uk/services/education/asbestos-management-1011.htm Press release <http://www.hse.gov.uk/press/2011/hse-asbestosinschools.htm>

⁷² ASBESTOS IN SYSTEM BUILDINGS Guidance for duty holders Updated 18 September 2008 para 16-17

⁷³ Commons Written Answers. Minister of State for Schools Jim Knight MP/Nick Gibb MP/ Column 657W 4 JUNE 2009

<http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmhansrd/chan85.pdf> and Commons written answers Minister of State for Schools Nick Gibb MP/ John Cryer MP 27284 8 Dec 2010 <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101208/text/101208w0004.htm#10120883001750>

Manchester, Kent and the North East.⁷⁴ In 2011 the Department for Education therefore amended the estimate and now quote that over 75% of schools contain asbestos.⁷⁵ However, other than this basic estimate, DfE have no other data on the extent type or condition of asbestos in the nation's schools.

96. The maintenance or refurbishment of buildings containing asbestos is a potentially dangerous and costly process. The cost is an order of magnitude higher than maintaining a building without asbestos.
97. Effective asbestos management is a continuous drain on resources and the presence of asbestos in a school means that extra costs are incurred for even the smallest maintenance task. The services in thousands of buildings have passed their design life but, if asbestos is present they can only be maintained or replaced if the asbestos is removed first. If a school is refurbished or demolished then the cost of asbestos remediation can be one of the major costs, in addition considerable cost overruns have occurred through unexpected asbestos remedial and removal work.⁷⁶ However the scale of the asbestos problem in the nation's schools is not known so realistic financial forecasts for maintaining, refurbishing or replacing schools cannot be made.
98. The Schools Capital Review was critical that the government does not know the condition of its £110billion school estate. They recommended that "*The Department urgently needs to build up a better picture of the condition of the educational estate that it funds.... The first step should be to collate all existing information sources and to establish a simple, well-designed database to manage this information.*"⁷⁷ Despite the recommendation DfE has specifically excluded asbestos from the Property Data Survey Programme (PDSP) and will collate no information on asbestos into its database.⁷⁸ This will mean that any future financial forecasts based on the audit will be meaningless.⁷⁹
99. DfE have stated that the decision to exclude asbestos could not be reversed until after the present five year contracts have expired, and at a meeting with the Minister in January 2013, DfE claimed that the condition surveys of schools were too far advanced to include asbestos.⁸⁰ In March 2013 the Minister gave evidence to the Select Committee and implied that to gather the data asbestos surveys would have to be carried out.⁸¹ That is not the case and is not what has been proposed.

⁷⁴ Asbestos time bomb in Wales classrooms Jul 27 2009 Western Mail <http://www.walesonline.co.uk/news/wales-news/2009/07/27/asbestos-time-bomb-in-wales-classrooms-91466-24245398/> . Manchester Evening News Asbestos shock in schools 14 Jan 2009. Asbestos found in most of our schools The Shields Gazette 11 September.

BBC Inside Out Asbestos in majority of schools. 27 Jan 2009

⁷⁵ E-mail DfE 20 Jun 2011

⁷⁶ For example: Cwmcaron High School £1.048million for emergency asbestos remediation. October 2012- January 2014

<http://www.caerphilly.gov.uk/application.aspx?s=dCjCudHODKXIKyGC3iMwJXcj+yQOq83GniVspV1B0ofyIDM7QzD5FR4WGCzF8HnANiNEVa8eZCMc0AtH3HR5M/Bh5pJD6+QRg3TsX+L479+s0WOF2iQkwg2VZWQXSEor>

Select Committee on Education and Skills Jarvis plc memorandum >£1.4m Jun 2003. Para 5.5.

<http://www.publications.parliament.uk/pa/cm200304/cmselect/cmeduski/112/112we07.htm> .

Capital Programme Urgent works Nightingale Junior School £700,000 Derby CC Corporate Policy Cabinet meeting 24 May 2007.

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/Nightingale%20mothballing%20700000%2024%20May%2007.pdf>

William Parker School: Approximate increase in cost of project due to discovery of asbestos in ceilings: £495,800 IEA Refurbishment and re-cladding of 1970s classroom and laboratory block p149 <http://www.annex36.com/pdf/uk1.pdf>

South Ayrshire Council Proposed closure of Mainholm Academy Report by the Director of Education, Culture and Lifelong Learning January 2007. £13.9m. "...maintaining the school buildings has proved far more costly and troublesome than anticipated with asbestos making access a problem." Evening Times 19 Apr 2006. Also see: Issues of Using CLASP to transform learning – Nottinghamshire County Council 24 Nov 2008. Refurbishment 94% cost of new build. P3 and 6

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/ISSUES%20OF%20USING%20CLASP%20TO%20TRANSFORM%20LEARNING%20NOTTINGHAMSHIRE%20CCclassreportupdateappendix126012009.pdf>

⁷⁷ Review of Education Capital April 2011 Para 2.25

⁷⁸ Property data survey programme memorandum of supplementary information 17 Oct 2011 p8

⁷⁹ See an analysis of the exclusion of asbestos from the audit of school buildings:

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/AUDIT%20EXCLUSION%20OF%20ASBESTOS.pdf>

⁸⁰ DfE Asbestos Steering Group meeting. Lees contemporaneous notes. 12 Sep 2012. Meeting Minister of State for Schools/AiS. Lees contemporaneous notes. 10 Jan 2013

⁸¹ Education Select Committee hearing Asbestos in schools . David Laws MP 13th Q 26 March 2013

100. The proposal is that data on asbestos that is already available in schools and local authorities is entered on the DfE Asset Management Software system (AMS). Expert advice has been sought and there is no valid technical⁸² or logistic reason that cannot be achieved, even at this stage of the process. In November 2013 the Secretary of State announced that the PDSP would be extended for a further eight months,⁸³ but once again asbestos has been excluded.
101. When the present round of inspections and collation of data has been completed then there will be an ongoing process of keeping data in the AMS up to date. A recommendation in the December 2013 progress report is that *“We also suggest that the PDSP could be used as a means to gather data on the cost to run buildings...”*⁸⁴ Extra costs incurred because of the presence of asbestos is a significant part of this and therefore data should be included, and there is no valid reason why it cannot be.
102. The available software allows data to be kept up to date, the level of risk to be displayed and all work involving asbestos to be costed. It incorporates a system where an overall picture can be given or, when needs be, fine detail can be displayed. The national picture can therefore be displayed or that of a local authority, a school or a classroom depending on the requirement.
103. DfE cannot claim that they are providing the right level of support, as they are unaware of the scale of the problem and presently have no plans to rectify the situation.

Recommendation

- It is recommended that data is collated on DfE’s Asset Management Software on asbestos in schools, so that the overall scale of the problem is known and those schools and local authorities with the worst asbestos problems can be identified. This would allow the government to make sound, long term financial forecasts. It would enable them to allocate proportionate resources so that the limited funds are targeted for maintenance, refurbishment or replacement at those schools in the greatest need and those that present the greatest risk.

Policy: Our capital funding responsibilities are to fund schools and local authorities to maintain their existing buildings.

Dilapidated Schools

104. The nation’s school stock has not been well maintained so that over the years school buildings have become dilapidated. The asbestos materials used in their construction are an integral part of the fabric of the buildings, the significance of this was emphasised by the Asbestos Consultants’ Association who stated *“Over the years the school stock has not been well maintained so that as the fabric of the buildings has deteriorated then so has the asbestos.”*⁸⁵
105. The fact that much of the school stock is in a poor condition, was recognised in 1999 by the Schools Minister who summed up the seriousness of the situation by stating *“Our current buildings are below the standard we have a right to expect. Many are at or near the end of their expected life. Many others are in poor condition; others still are not suitable for the needs of the modern curriculum. Simply to tackle the most urgent priorities requires “a huge increase in the resources devoted to school capital.”*⁸⁶ In 2003 an Audit Commission document highlighted a number of reports carried out by themselves and others *“warning about the maintenance time-bomb and the serious deterioration in the school building stock.”*⁸⁷

⁸² Letter Annette Brooke MP/ Lord Hill Property Data Survey Programme asbestos data from an IT perspective. 16 May 2012

⁸³ Secretary of State for Education Written Ministerial Statement ‘Property Data’ 8 November 2013

⁸⁴ Review of education capital: progress update Sebastian James December 2013

⁸⁵ Assessment of asbestos management in schools Asbestos Testing and Consultancy Association 24 Jan 2010

⁸⁶ Charles Clarke, Parliamentary under Secretary of State for School Standards, foreword to Schools Capital Strategy, January 1999.

⁸⁷ Improving school buildings Audit commission 2003 Para 12.

106. As a consequence the Building Schools for the Future (BSF) initiative was launched in 2004 to refurbish or rebuild every secondary school in England, and a project for primary schools (PCP) was launched in 2005. However PCP was considerably less well funded. BSF did not fulfil its potential and therefore only 186 schools had been replaced or refurbished at its close in 2010.⁸⁸ BSF had to rectify decades of under investment in the school estate, consequently radical measures had to be taken to bring it up to an acceptable standard.
107. As the Coalition Government took over in 2010 the situation had barely improved, very few schools had been rebuilt or refurbished and the remainder continued to deteriorate. The Chief Executive of Partnership for Schools, the organisation that was in charge of refurbishing schools in England, stated: *“80% of schools were beyond their shelf life.”*⁸⁹
108. When the Coalition Government came into power they cancelled BSF and PCP. They also commissioned a review of how the school estate in England could be brought up to an acceptable standard. In 2011 the Schools Capital Review concluded that *“Significant parts of the school estate were and are in an unacceptable state.”*⁹⁰ It also concluded that the BSF project had not been well managed so that large amounts of money had been wasted. Clearly a more efficient way had to be found for the limited funds.
109. The Government therefore introduced the Priority Schools Building Programme (PSBP). The project is on a far smaller scale, and is designed to target those schools in the greatest need. Applications for funding were called for and out of 587 schools that applied just 261 were granted funding.⁹¹
110. The situation with academies is similar and, although the funding arrangements are different, there are also insufficient funds to properly maintain the buildings. A large number of schools have converted to academies, and although their status has changed the buildings have not, and many are dilapidated 1960s and 1970s system built schools containing considerable amounts of asbestos. A typical case concerns a large secondary school that converted in 2011 as *“The financial attractions of Academy Status were considerable.”*⁹² However having converted the expected extra funds have not materialised, and they are typical of many other academy converters.⁹³
111. The inability to obtain funds to adequately, or safely, maintain the buildings was described by the headteacher: *“We have the leaking flat roofs, rotting window frames, out of date fixed wiring, asbestos issues and decaying pipework that go with accommodation built 40 to 50 years ago. Certain issues have to be dealt with when they arise – if we have leaking underground gas pipes (for example), we cannot wait for the next ACMF (Academies Capital Maintenance Fund) bidding round, submit a bid and then wait to see if it has been successful (unlikely in the light of experience so far).”*

⁸⁸ National Federation for Education Research NFER BSF school report B+ for attendance but C- for attainment Sep 2010. BBC News School building scheme scrapped 5 Jul 2010

⁸⁹ BBC Radio 4 Today Programme 1 Apr 2010 http://news.bbc.co.uk/today/hi/today/newsid_8598000/8598276.stm

⁹⁰ Review of Education Capital Sebastian James 8 Apr 11 http://www.publicservice.co.uk/news_story.asp?id=16031

⁹¹ Ministerial statement Priority School Building Programme 24 May 2012 <http://www.education.gov.uk/inthenews/inthenews/a00209480/written-ministerial-statement-on-the-priority-school-building-programme>

⁹² School funding – a summary of change from April 2010 to August 2014. *A perspective from one school.* Katharine Lady Berkeley's School mixed comprehensive school with 1500 pupils. Headteacher Andrew Harris 16 Feb 2013

http://webcache.googleusercontent.com/search?q=cache:vDhnc3JHG2MJ:www.f40.org.uk/useruploads/files/downloads/klb_school_gloucs_school_funding_2010_to_2014.docx+&cd=1&hl=en&ct=clnk&gl=uk

⁹³ Academy funding 'shambles' at Gloucestershire schools *The Citizen* July 10, 2012 <http://www.legacythisisgloucestershire.co.uk/Academy-funding-shambles-Gloucestershire-schools/story-16509544-detail/story.html#ixzz2xM9y8IEe>

I would suggest that the lack of capital maintenance funding and/or the failure to distribute the available funds to those schools with the greatest need is a major threat to maintaining the quality of provision in my school.”⁹⁴

112. Over many decades DfE has failed to provide the right level of support to maintain the fabric of schools buildings which allowed the whole school estate to deteriorate to the extent that radical measures are needed to bring it up to a safe and reasonable state. The problem remains as only a small proportion of schools are part of the PSBP and there are similar problems with academies. Consequently, although a few will be brought up to a satisfactory standard, most will remain in a dilapidated state, with old and deteriorating asbestos and insufficient funds to maintain them. DfE is therefore still not providing the right level of support to schools.

Policy: “Asbestos which is in good condition.... is better left in place...”

113. The Government’s policy on asbestos in schools is: *“Asbestos which is in good condition and unlikely to be disturbed or damaged is better left in place and managed until the end of the life of the building as this presents less risk of exposure to the occupants than the process of removing it.”⁹⁵*

114. The policy does not take into account the significantly greater risk to children identified in the CoC’s conclusions. Therefore the balance of risk between removal and the danger to occupants of asbestos remaining in place has to be reassessed.

115. The techniques of asbestos removal have also advanced in recent years so that if carried out correctly it does not present a risk to the occupants. Some schools have already had asbestos removed safely as have many other buildings including universities, the Houses of Parliament, Department of Education offices, royal palaces, the Department of the Environment HQ and the European Union headquarters in Brussels.

116. Because successive governments have had the same policy most of the asbestos remains in situ in schools. All the asbestos is now old and, as the buildings have deteriorated, so has the asbestos they contain. There is an ongoing risk to occupants as numerous asbestos incidents have occurred, and are still occurring in schools.⁹⁶ If asbestos is present then there will always be the possibility that it will be disturbed and asbestos fibres released.

117. The balance of risk in the policy relies on schools being completely effective in safely managing their asbestos, but the evidence is that a significant proportion of schools are not and, by the very nature of schools asbestos management, cannot be guaranteed to work. The balance of risk needs urgent reassessment as it appears that children and staff are more at risk than the policy assumes. Also these days asbestos can be removed safely so that there is no risk to the occupants.

118. The fact that asbestos can be safely removed has been privately acknowledged by the DfE and HSE for some years. Documents were obtained under the Freedom of Information Act that show that both DfE and the HSE privately acknowledge that removal of asbestos is safer for the occupants, although it is equally clear that they have no wish to admit this publicly. The document gives a briefing on the position the Department of Education officials should take in a meeting with the General Secretary of the NUT. It states:

⁹⁴ School funding – a summary of change from April 2010 to August 2014. *A perspective from one school.* Katharine Lady Berkeley’s School mixed comprehensive school with 1500 pupils. Headteacher Andrew Harris 16 Feb 2013

http://webcache.googleusercontent.com/search?q=cache:vDhnc3JHG2MJ:www.f40.org.uk/useruploads/files/downloads/klb_school_gloucs_-_school_funding_2010_to_2014.docx+&cd=1&hl=en&ct=clnk&gl=uk

⁹⁵ Parliamentary Written Answer Minister of State for Schools 8th February 2011

⁹⁶ See examples of asbestos incidents in schools :

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/Asbestos%20Incidents%20&%20Management%20Failings%20in%20Schools.pdf>

“HSE consider it safe to reoccupy buildings after asbestos has been properly removed (although monitoring is needed). I suggest therefore, we do not raise this issue tomorrow”⁹⁷

119. Total removal of asbestos would resolve the problem completely. Clearly that cannot be achieved overnight but the review should examine the practicalities of adopting a long term strategy with that as the ultimate goal.
120. In the 1980s the Association of Metropolitan Authorities had a policy of phased removal by prioritising the most dangerous materials. They reasoned that it is safer and, in the long run, it is also cheaper.⁹⁸ The practice stopped when the organisation ceased to exist, however phased removal remains the policy of Nottinghamshire. It also has been adopted as Government policy in Australia.
121. On 3rd June 2013 the Australian Federal Parliament passed legislation for the Asbestos Safety and Eradication Bill.⁹⁹ It underlines the Australian Government’s commitment to solve their asbestos problem once and for all. The current DfE review of asbestos policy in schools should examine that legislation and the concerns that led to it. It is clearly a benchmark way forward and sets an example of fundamental strategic thinking that should be examined by the review.
122. The Bill establishes a national agency that will investigate the problem of asbestos in Australia. The Agency is tasked with implementing a strategic plan to eradicate asbestos and eliminate asbestos disease. A number of key objectives are laid out in a National Strategic Plan, amongst which it will establish *“Systems, timelines and processes for the prioritised safe removal of material containing asbestos from public and commercial buildings and the safe disposal of such material.”*¹⁰⁰
123. In introducing the Bill the Minister, Bill Shorten, said the government would work to *“ultimately remove asbestos from the Australian built environment.....”*. and he agreed in principle that removal of asbestos from schools will be prioritised, adding *“Obviously, exposure to children is particularly repugnant...”*¹⁰¹
124. Australia has adopted a strategic policy to eradicate asbestos and asbestos disease. The review of policy in Britain should follow their example. We must adopt similar far reaching policies and take fundamental steps to eradicate the legacy of asbestos from schools.
125. If phased removal is adopted as a national policy the problem will eventually be resolved, but if it is not then asbestos will remain a problem in schools indefinitely. It will be a continual and expensive drain on resources and there will always be the potential that asbestos will be disturbed and children and staff exposed.
126. The claim that it is safer for children and school staff to occupy buildings that contain large amounts of asbestos rather than remove it can no longer be justified. The policy appears to be politically driven rather than being based on current evidence and basic principles of risk management.

Recommendations

- It is recommended that the policy review examines the evidence whether it is safer for children leaving asbestos in place in schools than removing it, and then reconsiders DfE policy.

⁹⁷ Department of Education Architect and Building Branch Briefing Asbestos 18 Oct 1993

⁹⁸ Association of Metropolitan Authorities. Asbestos Policy and Practice in Local Authorities. Sep 1985 para 2,2.8 p 2

⁹⁹ Commonwealth of Australia Bills Asbestos Safety and Eradication Bill 2013 <http://www.austlii.edu.au/au/legis/cth/bill/asaeab2013346/>

¹⁰⁰ Australian Government. National Strategic Plan for Asbestos Awareness and Management 2013-2018 July 2013 http://asbestosafety.gov.au/files/National_Strategic_Plan_0.pdf

¹⁰¹ The Australian. Schools first in asbestos removal plan. 4 Sep 2012

- It is recommended that the policy review examines the Australian National Strategic Plan for asbestos.
- It is recommended that DfE adopts long term strategic policies for asbestos in schools.
- It is recommended that schools are given priority.
- It is recommended that a long term policy is adopted for the progressive removal of asbestos from schools, identifying and then prioritising those schools with the most dangerous asbestos.

DfE support for schools in effectively managing their responsibilities. The Asbestos Steering Group

127. In 2009 AiS met the Prime Minister and put forward a number of key points. Amongst which was that DCSF had to accept that they have overall responsibility for asbestos in schools, and another that the campaign to improve asbestos management in schools should be reinstated. The Prime Minister acknowledged that asbestos in schools is a serious problem and one that his Government would address.¹⁰²
128. In April 2010 the DCSF Asbestos Steering Group was established to improve the asbestos management in schools. A senior DCSF official chairs the Group and, although it does not have executive power, it reports to the Minister. This was a tacit acknowledgement that DCSF accepted that they hold the overall responsibility for asbestos in schools and they should take the lead.
129. The members of the Group provide the widespread expertise that is needed to make schools safe from asbestos and it has made constructive progress: Specific asbestos guidance has been published for schools. The Committee on Carcinogenicity was commissioned to assess the relative vulnerability of children to asbestos. The Action level was removed as a threshold for a significant asbestos exposure. Guidance has been issued on gas masks. The general inability of schools to obtain public liability asbestos risk insurance has been discussed. The profile of asbestos in schools has been raised so that schools are more aware of the necessity to take positive action. The Education Select Committee undertook a hearing on asbestos in schools. The Government are undertaking a review of asbestos policy in schools, and the Group will play an integral part. The Group provide a level of support to schools that is much needed, but much more needs to be done.
130. Despite the valuable contribution the Steering Group has given towards improving asbestos management in schools, a leaked DfE document from February 2013 showed that the Secretary of State for Education and the Minister of State for Schools agreed to a proposal to close it down. A Guardian article stated: *"A steering group of union reps, local authorities, governors and asbestos experts has been meeting DfE officials regularly about effective management of the substance in schools. The civil servant-drafted document warns: "This is an emotive policy area and closing down the current stakeholder group would be controversial ... Furthermore, any isolated incident of a school closing due to asbestos will mean we need to be able to respond..."*

*We are hence proposing to put this on a care and maintenance basis [rather than having permanent officials working on it]. We will need effective stakeholder management in closing down the steering group."*¹⁰³

131. The present DfE Asbestos Steering Group has taken positive steps forward and has provided a much needed level of support for schools to ensure the safety of children and staff. That support was not present until the Group was established in 2010. The Group costs a minimal amount to run as members

¹⁰² Meeting Gordon Brown MP/ AiS 13th May 2009

¹⁰³ The Guardian 'Plans to cut asbestos group.' 28 Oct 2013 <http://www.theguardian.com/education/2013/oct/28/dfc-plans-to-cut-asbestos-group>

give their time for free. Therefore the decision to remove that support by scrapping the Steering Group would have been harmful to schools. Although the Minister has now given guarantees that it will continue for the remainder of this Parliament,¹⁰⁴ their decision indicates how insecure that support is.

132. If improvements are to be made in the management of asbestos in schools it is essential that the Group continues its work and is not scrapped or sidelined.
133. As well as this insight into the reasoning of Ministers there are other grounds to be concerned about the commitment of DfE in providing support to schools so that they can safely manage their asbestos.

The impact today of long term flaws in DfE support for schools

134. There are good reasons to be concerned about DfE's commitment towards the Steering Group. For many years DfE has not accepted that they have overall responsibility for the safety and well being of staff and pupils in schools, and have instead abdicated that responsibility to HSE. HSE have responsibility for all workplaces and their priorities are for the high risk industries. However in 2004 HSE did recognise that there is a serious problem of asbestos in schools and that staff and pupils were being exposed. In comparison DfE considered the risks were minor and would not accept that the responsibility was theirs.
135. In 2004 DfES compiled a briefing on toxic risks in schools they stated *"There is concern over asbestos in schools. However the precautionary measures in place for this particular substance make this a minor risk particularly as the most toxic forms of asbestos are rarely used in building products."*¹⁰⁵ DfES were wrong. The most toxic forms of asbestos were used in building products which were extensively used in the construction of schools. They were also incorrect that their 'precautionary' measures were working.
136. At the time DfES were giving their assurances there were a series of serious asbestos incidents in schools, staff and pupils were exposed and there was widespread contamination. Asbestos had not been identified, people had not been trained and there were ineffective, unsafe and at times non-existent systems of asbestos management. It was clear that the problems were far greater than just the schools involved, so that in 2004 HSE instigated a campaign to improve the asbestos management in schools. The aim was to *"dramatically reducing asbestos exposures"* in schools with an initial goal of reducing current asbestos exposures by 20%. HSE stressed the importance of the campaign.¹⁰⁶
137. A year later HSE dropped the campaign before the first meeting had taken place.¹⁰⁷ They informed DfES that their Public Service Agreement (PSA) priorities had changed so that *"HSE's promotional and enforcement activities have been refocused on achieving PSA targets. This has meant that the Education initiative no longer forms part of our present programme of work."*¹⁰⁸
138. HSE has other, greater priorities than schools. They therefore took the resources from the campaign to reduce the exposures of schools staff and pupils and reallocated them to a campaign to reduce the exposures of building maintenance workers.¹⁰⁹ HSE Head of Asbestos Policy stressed that teachers and children were no more at risk from asbestos in schools than anyone else in the workplace, and therefore they would not be given preferential treatment.¹¹⁰ The CoC has confirmed that children are more at risk and therefore the statement by the Head of Asbestos Policy was wrong, but because of it a further six years passed before the 'campaign' was reinstated to improve the asbestos management in schools. Meanwhile the asbestos incidents continued unabated in schools.

¹⁰⁴ Letter Minister of State for Schools David Laws MP letter to Annette Brooke MP. DfE Asbestos Steering Group 2013/0002009PODL 14 Jan 2014

¹⁰⁵ DfES 'Notes on Toxicity in schools.' 18 Mar 2004

¹⁰⁶ HSE Asbestos- Duty to Manage Campaign Minutes of meeting held in Bristol 18 November 2004. HSE Head of Asbestos Policy, Bill MacDonald, HSE Education Sector, Lorraine Shepherd. HSE Asbestos Policy Pauline Nash. Michael Lees.

¹⁰⁷ Letter HSE Acting Chief Executive J. McCracken/Lees Asbestos Campaign. 22 Nov 2005.

¹⁰⁸ E-mail HSE Asbestos Campaign Manager Trevette/DfES 23 Aug 2005 . attachment HSE's Asbestos Campaign - Education Sector. An Exit Strategy

¹⁰⁹ E-mail HSE Asbestos Campaign Manager Trevette/DfES 23 Aug 2005 . attachment HSE's Asbestos Campaign - Education Sector. An Exit Strategy

¹¹⁰ HSE Health and Safety in the Education Sector . 13th December 2006 Lees contemporaneous notes.

139. HSE wrote to DfES that *“We are still keen to explore the possibility of other picking up the lead responsibility,”* and they proposed that DfE take the lead and continue the campaign.¹¹¹ However DfES declined the proposal because of limited staffing.¹¹² It is a reasonable assumption that this was because, despite evidence to the contrary, the Department still considered that asbestos was a minor risk. A proposal to appoint an official to oversee asbestos issues in schools was turned down, and it is only relatively recently that DfE have appointed such an official. (Although in 2013 the Secretary of State and the Schools Minister took the decision to save money by scrapping the DfE Steering Group and removing the official.) The level of support provided by DfES was therefore minimal, and their refusal to take the lead in a campaign to make schools safe continued.
140. In November 2008 the Schools Minister once again turned down a request to reinstate the campaign, and even went further in claiming the campaign was not necessary. In addition he would not accept that his primary responsibility was for the safety and well being of children and staff in schools. He wrote: *“DCSF is committed to do what is necessary to keep staff and pupils safe, by promoting and taking appropriate actions to prevent asbestos exposure in schools. However, neither DCSF nor HSE feel that a campaign on asbestos in schools is appropriate.”*¹¹³ *...It is also important that we do not divert attention away from HSE's current efforts to target trades people who are at much greater risk from asbestos than those working in schools.*¹¹⁴
141. His answer was reiterated by the Junior Schools Minister and shows that DCSF was satisfied with their policies: *“Neither DCSF nor HSE feel that a campaign on asbestos in schools is appropriate, indeed we feel that it may alarm people unnecessarily. We believe that the majority of school employers and particularly local authorities are managing their asbestos responsibly.”*¹¹⁵
142. A central theme underlies the Government’s refusal to assess the scale of the problem, to assess the risks, to update guidance, to inform parents and in this case to improve asbestos management. That theme is that they are concerned that people will be alarmed, will panic, and will over react if they are made aware that there is a problem, and then demand the removal of all asbestos. The preferred Government policy is therefore to make assurances that there is no problem - despite evidence to the contrary.
143. The Ministers’ statements highlight that DCSF would not accept that the safety of the occupants of schools from the dangers of asbestos is their responsibility, and because HSE did not have the resources to run the two campaigns the end result was that nobody provided the support that schools desperately needed.
144. In 2009 AiS met the Prime Minister and put forward a number of key points. Amongst which was that DCSF had to accept that they have overall responsibility for asbestos in schools, and another that the campaign to improve asbestos management in schools should be reinstated. The Prime Minister acknowledged that asbestos in schools is a serious problem and one that his Government would address.¹¹⁶
145. In April 2010 the DCSF Asbestos Steering Group was established to improve the asbestos management in schools. A senior DCSF official chairs the Group and, although it does not have executive

¹¹¹ E-mail HSE Asbestos Campaign Manager Trevette/DfES 23 Aug 2005 . attachment HSE’s Asbestos Campaign - Education Sector. An Exit Strategy

¹¹² HSE Health and Safety in the Education Sector . 13th December 2006 Lees contemporaneous notes.

¹¹³ Letter Minister of State for Schools and Learners , Rt Hon Jim Knight MP/ Michael Clapham MP 27th November 2008

¹¹⁴ Letter Minister of State for Schools Rt Hon Jim Knight MP 27 Nov 2008

¹¹⁵ Letter Under Secretary of State for Schools and Learners Sarah McCarthy-Fry 9 Nov 2008.

¹¹⁶ Meeting Gordon Brown MP/ AiS 13th May 2009

power, it reports to the Minister. This was a tacit acknowledgement that DCSF finally accepted that they hold the overall responsibility for asbestos in schools and they should take the lead.

146. There is therefore justification to be concerned at DfE's commitment towards providing the right level of support in solving the many problems associated with asbestos in schools.

Recommendations and Conclusions

147. The evidence is that in the past DfE have not provided the right level of support for schools. They have taken positive steps forward on a number of accounts which is welcomed. However there remain certain critical areas where they still do not provide the right level of support.

148. This policy review is taking place because of an assurance given by the Schools Minister at a Parliamentary debate in February 2012 on asbestos in schools that DfE would review its policy on receipt of the CoC's report.¹¹⁷ The CoC concluded that children are more at risk than adults. Clearly past standards of safety, past policies and advice must be fundamentally overhauled in light of the conclusion. Because schools have been treated as any other workplace neither DfE nor HSE have provided the right level of support commensurate with the risks.

- It is recommended that the increased vulnerability of children underlies all future asbestos policies for schools.
- It is recommended that in light of the CoC's conclusion and evidence of ongoing asbestos exposures of children and staff in schools DfE reviews HSE's advice that schools are 'low' risk. As the evidence shows that a significant proportion of schools are not low risk from asbestos, and this 'blanket' ruling cannot be justified.
- It is recommended that the review emphasise there can be a very real risk to staff and pupils from asbestos in schools. DfE will not be able to offer the right level of support until they acknowledge that.

149. DfE's policy that it is safer for children and staff to spend many years in schools surrounded in asbestos is no longer sustainable. Asbestos removal has improved dramatically over the years since the policy was adopted and, so long as asbestos is removed correctly, it is far safer for the occupants to study in a school without the ever present potential of being exposed to asbestos.

- It is recommended that an open, evidence based review is undertaken of the policy of managing asbestos in schools rather than removing.
- In order to provide the right level of support for schools it is recommended that DfE follow the Australian Government's example and give priority to schools and establish systems, timelines and processes for the safe removal of asbestos materials.

150. Present policies and funding are short term, and therefore Governments put off taking the fundamental measures that are necessary to address the problems of asbestos in the school estate.

- It is recommended that the British Government should follow the Australian Government's lead and adopt long term strategic policies to eradicate asbestos disease and asbestos materials from buildings, with priority given to schools.

¹¹⁷ [Debate House of Commons Asbestos in Schools - Tuesday 7 February 2012 -\(Hansard text\)](#) penultimate paragraph.
Also House of Lords Written answer Lord Hill HL15579 16 Feb 2012 : Column WA184
<http://www.publications.parliament.uk/pa/ld201212/ldhansrd/text/120216w0001.htm#12021640000237>

151. Financial forecasts to bring the school estate up to a reasonable and safe standard without data on asbestos are meaningless.
- It is recommended that DfE include asbestos in the central data bank of the PDSP. Without that knowledge the right level of support cannot be provided
152. There is a legal requirement for training that is not being met.
- It is recommended that the review examines the legal position and that procedures are adopted to meet the legal requirement.
 - It is recommended that DfE provide support for training.
 - It is recommended that in order for schools to safely manage their asbestos governors, headteachers, support staff and teachers are trained in asbestos management or awareness depending on their role. The training should be mandatory.
153. The DfE Asbestos Steering Group has made a valuable contribution towards improving asbestos management in schools. The Minister has given assurances that it will continue for the remainder of this Parliament.
- It is recommended that, if DfE are to provide the right level of support, the Steering Group is not sidelined and that it continues so long as asbestos remains in schools.
154. In November 2013 AiS accompanied a nursery school teacher, who is dying from mesothelioma to a meeting with the Minister of State for Schools. The teacher explained to the Minister how Government policies have failed to ensure that children and staff in schools are safe. She gave evidence that present Government policies are not working and fundamental policy changes have to be made to make schools safe.
155. The Minister assured the teacher that if the evidence was that asbestos posed a risk to school staff and pupils then, regardless of cost, measures would be taken to ensure that schools were made safe.¹¹⁸
- It is recommended that the review examines the evidence of risk from asbestos and advises the Minister that funding is needed so that DfE are able to provide the right level of support to ensure that schools are made safe.

Question 2

2. Are there other things that DfE could do to support duty holders to fulfil their responsibilities? If so, please give details.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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¹¹⁸ Meeting Minister of State for Schools David Laws MP 19th November 2013. Lees contemporaneous notes.

156. Yes there are other things that DfE could do to support duty holders to fulfil their responsibilities. This has been answered in question 1a and 1b, however to summarise:
157. DfE have now accepted that they have overall responsibility for asbestos in schools which is a fundamental step in the right direction if they are to provide the correct level of support to duty holders so that they can fulfil their responsibilities. Another constructive step forward was the establishment of the DfE Asbestos Steering Group whose remit is to discuss and recommend measures to improve the asbestos management in schools. A further step forward was commissioning an assessment by the CoC of the relative vulnerability of children to asbestos.
158. These are all constructive steps in allowing DfE to provide the correct level of support to duty holders, however there is much more to be done. The review of policies should allow DfE to examine whether they are providing the correct level of support for dutyholders. If it is found that they are not then the necessary improvements have to be implemented for the safety of the occupants. The flaws in the present level of DfE support for dutyholders are outlined in the answer to question 1a and 1b and recommendations are made how to improve that support.

Recommendations

159. The following summarises the other things that DfE could do to support duty holders to fulfil their responsibilities, and makes recommendations:
- **DfE has to take a strong lead on setting policy for asbestos in schools, for only then will it provide the support needed by dutyholders and schools.** Until relatively recently it has had a hands-off approach that allowed HSE to take the lead and set policy. HSE have greater priorities so that the whole issue of asbestos in schools has drifted with no one in command.
 - **Policy must be based on all the evidence and expert advice.**
 - **HSE role is to advise and regulate, it is not to set policy.** (See response to triennial review of HSE¹¹⁹) HSE priorities are for high risk industries. DfE's priorities are solely for the education of children and for ensuring that schools are fit for purpose and safe.
 - If the correct level of support, and proportional resources, are to be provided to schools then **the overall scale of the problem and the risks have to be assessed.**
 - Also **priorities have to be set so that the limited funds are allocated to those schools most in need.**
 - **The CoC has concluded that children are more at risk than adults, the younger the child the greater the risk. Therefore all future policies for schools must be based on this if the correct level of support is to be provided by DfE.**
 - In turn **DfE has to support schools by providing accurate advice on the level of risk posed by asbestos in schools.** They have to clearly spell out in their advice and guidance to schools that children are more at risk than adults. The risks must not be played down. Only then will schools be able to give asbestos the priority it warrants and allocate the correct level of resources to manage their asbestos.
 - The asbestos regulations are drafted for all workplaces and it can be confusing what applies the schools, and what does not. Therefore **DfE should support schools by removing the ambiguities**

¹¹⁹ AiS response to HSE triennial review

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20triennial%20review%20%20AiS%20response%2025%20Jul%2013.pdf>

and ideally asbestos regulations should be promulgated specifically for schools, as happened in the USA.

- An audit has not been carried out to determine the extent, type and condition of asbestos in schools. Therefore sound financial forecasts cannot be made and priorities cannot be set. **It is essential that if DfE is to provide the correct level of support and provide proportionate resources then an audit is undertaken.**
- The present system for allocating the limited funds for school replacement, refurbishing or in some cases maintenance, is based on bids from schools, local authorities and academies. The better written the bid then the more likely it is that funds will be allocated. **If those schools with the worst asbestos problem are identified in a national audit then the priorities could be set on basis of need** rather than on skills at drafting bids.
- In the interim schools must be given the correct level of support to manage their asbestos effectively. A system should be put in place to determine the present level of compliance with the regulations and guidance. Those schools that are failing to achieve acceptable standards could then be identified and given the necessary support to bring them up to the standards of the best. **Proactive HSE inspections of the standards of asbestos management in schools should be reintroduced. Consideration should be given to allowing local authorities to inspect schools outside local authority control.**
- **DfE should provide more support to schools so that all staff are trained in asbestos awareness, and where necessary in asbestos management. That support should be to make training mandatory and provide the funds so that it can be achieved.**
- The present guidance for inhibiting the release of asbestos fibres in system built schools cannot be guaranteed to prevent the release of asbestos fibres into classrooms. In order to support duty holders **DfE should review the guidance and implement workable systems of asbestos remediation and management that remove the risk.**
- The present algorithms for assessing the risks from asbestos materials in places that are vulnerable to damage from children are flawed. AIB in particular should never be classed as low risk if it is in a place vulnerable to damage from children. In order to provide the correct level of support for dutyholders **DfE should review the algorithms and amend them so that in general AIB in places vulnerable to damage from children would be classed as high risk.**
- Because of underfunding over many years the school estate is generally in a dilapidated condition, and many school buildings are at the end of their design life so that roofs and windows need repairing or replacing. In addition the services such as heating, plumbing and electrical wiring are old and need replacing. The present funds for maintaining schools are still inadequate to bring the fabric of the buildings and the services up to an acceptable and safe standard.

When asbestos is present the cost is greatly increased as it has to be removed first. There is often insufficient funding to achieve this. Servicing and maintenance checks have been known to be delayed, and some schools have been demolished because maintenance could not be carried out because of the presence of asbestos. In other schools unexpected asbestos has been discovered when repairs are taking place and considerable extra costs incurred. Local authorities often do not have the extra funds to remove asbestos. **DFE needs to build up a data bank of typical costs incurred because of the presence of asbestos, so that the correct level of central funds can be allocated.**

- If DfE is to provide the correct level of support to schools and dutyholders then they must adopt long term strategic policies. This was done in the USA in 1986 and in 2013 Australia where a National Strategic Plan for asbestos has been introduced which will establish long-term strategic policies for the eradication of asbestos disease. It will set systems, timelines and processes for the safe removal of asbestos materials from public and commercial buildings, with priority being given to schools. It is recommended that similar long term strategic policies are adopted by the British Government.

Question 3

3. Can any issues only be fixed or resolved through government intervention? Is there something that needs to be done that only DfE can deliver? Please provide details.

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
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160. There are issues that can only be fixed or resolved through government intervention and there is something that needs to be done that only DfE can deliver.

Only DfE, and their Ministers, can set the lead

161. DfE and their Ministers have overall responsibility for the safety and welfare of staff and pupils in schools. They make the policy and implement measures to ensure that the policy is carried out. They provide funding for school buildings and set priorities. They issue guidance. Schools have to comply with the law and are obliged to follow DfE and HSE guidance. Therefore DfE set the lead and schools are meant to follow.

162. The lead set by DfE and DWP, HSE's sponsor, is that schools are low risk, consequently school authorities are under the misapprehension that asbestos is a 'minor' problem and they can give it a low priority. Such an example has an overriding influence on their attitude towards asbestos. It is a reasonable assumption that is one of the reasons that very few people are reading the DfE asbestos guidance. School staff are busy people with volumes of instructions and papers being given to them, and so they are not going to read asbestos guidance when the impression they have been given is that there is little risk and that it is a minor problem.

163. The same applies to complying with the asbestos regulations. Schools will not be overly concerned if they don't, for instance, update their asbestos management plan or train their staff when they have a poor example from the Minister. He left the impression that he was not concerned by the failures of these schools to manage their asbestos when he gave evidence to the Select Committee. He informed them that the enforcement action was because the schools hadn't ticked some of the many boxes that are required to meet the full requirements of the HSE. His clear message to Parliament and to schools was that the failures to comply with the regulations, and have rigorous systems of asbestos management, were just minor misdemeanors rather than matters that directly affect the safety of children and staff.

164. Whenever an asbestos incident occurs in a school then assurances are invariably given that people are not at risk, when that is often not the case. The asbestos incident at Cwmcarn High School is a classic example of this where there was evidence that asbestos had been damaged over a number of years

because of unsafe asbestos management, and yet HSE assured the school that their asbestos management was good and that the school was perfectly safe to reopen, when two firms of asbestos consultants, the council and an independent assessor concluded that the school was unsafe.

165. There is no 'safe' level of exposure to asbestos for adults, and children are more at risk. Therefore reassurances from DfE and HSE that the school is 'safe' and that staff and pupils have not been at risk are unjustified. The statements are not honest and they prevent lessons being learned from such incidents.

Recommendations

166. The following are recommendations:

- There are many other professions where there is a potential risk to life. Their procedures are founded on openness, based on clear scientific standards of safety. It is recommended that lessons are drawn from their best practice.
- It is strongly recommended that DfE insists the public is given the full, unvarnished, scientific facts after an asbestos incident. It is strongly recommended that DfE lead local authorities and schools in insisting that reassurances to parents of safety are based on firm foundations of agreed safety standards and levels of risk for children.
- DfE, HSE local authorities and schools appear at present more concerned about instant reassurance rather than the structured approach that takes place in other professions where there has been a potential risk to life. It is recommended that DfE takes the lead and adopts a structured, open approach based on scientific fact.

Question 4

4. The role of duty holders is clearly outlined in legislation. Is there a role for others in supporting schools to manage asbestos effectively? If so, what is the role and who should carry it out?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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167. Yes there is a role for others in supporting schools to manage asbestos effectively. However first of all those roles and areas of responsibility have to be clearly defined. As presently there is confusion that requires urgent resolution.

Roles and responsibilities have to be clearly defined

168. As the question states the role of the duty holder is clearly defined in the asbestos regulations and the DfE asbestos guidance.¹²⁰ Despite that there remains confusion amongst a significant proportion of schools who the dutyholder is. For example the 2011 survey of schools outside local authority control found that 45% of all schools inspected did not have a full understanding of who the dutyholder was, and in London that rose to 81% of schools.¹²¹

¹²⁰ DfE Asbestos management in schools Who is the dutyholder? Nov 2013 P12

¹²¹ HSE Managing asbestos in schools outside local authority control summary of inspections. Dec 2011

169. It is reasonable to assume that this lack of understanding arises because of the increased complexity over areas of responsibility in the number of schools that are not directly financed and owned by local authorities. But the problem also was identified in inspections of local authority schools as there was a lack of clarity over the delineation of responsibilities between the local authority and the schools. There was also confusion over who finances asbestos management and remediation.¹²²
170. DfE therefore have a role in ensuring that schools and local authorities are clear about who the dutyholder is and who holds the responsibility for financing and managing asbestos in schools. But DfE guidance on areas of responsibility is clearly either not being read or not being understood. If asbestos awareness training was made mandatory for governors, headteachers, support staff and teachers then any such misunderstandings about areas of responsibility could be dispelled.
171. The lack of understanding over areas of responsibility is not confined to schools. There is also a lack of clarity at the level of Governments and Government Departments over areas of responsibility. They have a role in supporting schools to manage asbestos correctly, but because it has been unclear which Government or which Department holds the responsibility they have failed to give schools the support they need.
172. The answer to Question 1b highlighted the failure of DfE until relatively recently to accept that they have overall responsibility for the safety and well being of staff and pupils. Instead they abdicated the responsibility to HSE despite the fact that HSE do not have the remit or resources to make policy or hold the overall responsibility for schools. The result was that for many years the whole issue of asbestos in schools drifted with no one in command.
173. Precisely the same is happening now in Wales. The Welsh Government states unambiguously that HSE have overall responsibility for asbestos in Welsh schools, whilst the Westminster Government states with similar certainty that the responsibility for asbestos in Welsh Schools is that of the Welsh Government. Effectively there is no responsible body.
174. A series of Parliamentary and Lords' written answers in the Westminster Government state:
*"Responsibility for asbestos policy for schools in Wales is a devolved matter for the Welsh Government.... Responsibility for the management of asbestos in schools in Wales is a devolved matter for the Welsh."*¹²³
175. The First Minister in the National Assembly of Wales disagreed. He was asked in Questions to the First Minister: *"I have seen a great deal of correspondence that demonstrates a lack of clarity in terms of who is responsible for the management of asbestos in Welsh schools. David Laws, at a Westminster level, says that the Welsh Government is responsible, and the Welsh Government states that the Westminster Government is responsible. Can you give us more information today as to who exactly is responsible so that we can tackle this very serious situation in Welsh schools?"*
- The First Minister replied: *"The responsibility lies with the Health and Safety Executive...."*¹²⁴
176. This was confirmed in writing by both the Department for Education in Wales and the Head of Public Health Branch who stated *"...As you are aware asbestos is a non-devolved matter and responsibility for the subject lies with the Health and Safety Executive and not with Welsh Government."*¹²⁵

¹²² HSE Managing asbestos in system built schools Sep 2010

¹²³ Commons written answer Schools: Asbestos Minister of State for Schools/Hywel Williams 24 Feb 2014 : Column

223W <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140224/text/140224w0008.htm#14022583001562>

¹²⁴ National Assembly of Wales Record of proceedings Questions to the First Minister Asbestos in Schools 1355 28 Jan 2014

¹²⁵ 17 May 13 CAPITAL FUNDING OFFICER DfES Wales and 23 Jul 13 Head of Environment and Public Health Branch. Health Protection Division Wales

177. This highlights a major problem. HSE's remit is not to set policy but to advise, however the Welsh Government have relied on HSE to set policy, a role that is not theirs. Consequently the Government is not giving schools the support they would if they accepted that the responsibility for asbestos policy and for asbestos management in schools is theirs.

178. The Wales situation is complicated through devolution. But there is a similar lack of clarity in Westminster:

179. Part of the problem is that a number of Westminster government departments are responsible for different aspects of asbestos in schools, but their responsibilities and their boundaries are not clearly defined. As there has been a lack of strong leadership, the responsibilities for the various aspects of asbestos in schools has drifted, rudderless between Departments and is causing confusion:

- The Department for Education has overall responsibility for the safety and welfare of staff and pupils in schools, for making policy, issuing guidance, ensuring the school estate is well maintained and safe. They are responsible for the safety and well being of staff and pupils. They have not given a strong lead. They heavily base their policy on advice from HSE, and rely on them to maintain standards.
- The Department for Work and Pensions is the sponsor department for the HSE who in turn have responsibility for regulation, guidance and advising Ministers. Question 1 examined how HSE have far greater priorities than schools, which are a low priority to them and to DWP. DWP sets HSE policy and priorities and provides their funding, which can have a direct effect on schools when Departmental policy and priorities change. Again in the answer to question 1 an example was given where DWP priorities changed. That led to proactive inspections of the standards of asbestos management in LA schools being scrapped, and it is yet to be confirmed whether any more inspections will be carried out in schools outside local authority now that the present round of inspections are complete. A change in DWP priorities also led to the scrapping of the campaign to improve asbestos management in schools.
- Ofsted is the Office for Standards in Education, Children's Services and Skills. It also has a responsibility for inspecting school to ensure that the pupils are safe. It is a non-ministerial government department that reports directly to Parliament. It inspects and regulates care for children and young people. It also inspects education and training for learners of all ages. Ofsted stress in their instructions to inspectors the requirement to judge the safety of pupils in schools:

*"In order to make a judgement about the quality of education provided in the school, inspectors **must** first make four key judgements. These are:*

- *....the behaviour and safety of pupils at the school.*
- *the quality of leadership in, and management of, the school."*¹²⁶

In 2011 DfE asked the Chief Inspector of Schools if he would include an assessment of the safety of the pupils from the dangers of asbestos. OFSTED responded that asbestos will not be part of their inspections.¹²⁷ There is a system to ensure that pupils are safe in schools, and the responsibility is in part Ofsted's. However, as far as their safety from asbestos is concerned, Ofsted do not consider it is part of their remit.

- The Department for Communities and Local Government is responsible for local authorities, who in turn are responsible for schools under their control. However they share some duties with HSE and

¹²⁶ Ofsted School inspectors handbook Ref: 120101 updated December 2013. <http://www.ofsted.gov.uk/resources/school-inspection-handbook>

¹²⁷ Chairman DfE Asbestos Steering Group 14 Jun 2012 Lees contemporaneous notes.

inspect those workplaces that HSE does not to determine standards of health and safety are achieved. However local authority inspectors are not allowed to inspect standards in schools, whether or not they are under their control. In March 2011 DWP ruled that HSE would no longer carry out proactive inspections of local authority schools, and it is yet to be confirmed the future policy towards other schools. Therefore there is no workable system to ensure that safe standards are achieved in asbestos management across the vast bulk of schools.

- The Department of Health (DoH) is responsible for government policy for health, including policy to prevent people being exposed to harmful substances such as asbestos. It was this Department who, on the request from DfE, commissioned the CoC to assess the relative vulnerability of children to asbestos.

In 2009 DoH published 'A Children's Environment and Health Strategy for the UK' which committed the UK to a plan to reduce disease in children caused by environmental factors. It stated: *"The Children's Environment and Health Action Plan for Europe (CEHAPE). This plan commits member countries to develop national Children's Environment and Health Action Plans to reduce the burden of disease in children caused by major environmental risk factors...."*

The strategy highlighted the need for a coordinated strategy between Government Departments. The head of the Health Protection Agency stated: *"I support the proposed approach of building on current initiatives, ensuring there is better coordination across government and tackling locations such as schools and homes."*¹²⁸

Recommendations

180. The following are recommendations:

- There is a role for a number of government departments in helping support schools in managing asbestos effectively. However it needs strong leadership from the DfE to coordinate the other departments. It is recommended that the review considers how it can fulfil the commitment under CEHAPE to produce a plan to reduce the burden of disease caused by asbestos exposure of children in schools.
- It is also recommended that each of the government departments that have a part to play puts in writing a clear statement that shows which department is responsible for each of the many facets in ensuring that children and staff are safe from the dangers of asbestos in schools. It should show who has the lead, who makes policy, who advises, who regulates, who carries out inspections and who is responsible for funding.
- It is recommended that the disagreement over responsibility for asbestos policy and management in Welsh Schools is urgently resolved.

Role of local authorities in academies and free schools

181. Increasing numbers of schools are becoming academies and free schools. In the answer to question 1 is evidence that school authorities often do not have the training to manage asbestos effectively or safely. It is therefore recommended that academies and free schools are encouraged to buy back expertise from local authorities.

Evidence for change

¹²⁸ A Children's Environment and Health Strategy for the UK HPA March 2009 http://www.hpa.org.uk/webc/HPAwebFile/HPAweb_C/1237889522947

We want to gather evidence – including real life examples - of how the current asbestos policy works in practice along with any evidence to support proposals for changes.

Question 5

5. What examples of good practice are there and what works well?

182. There are examples of good practice, both on this country and overseas.

Nottinghamshire's asbestos policy

183. Nottinghamshire has more than 700 CLASP buildings, most of which are schools.¹²⁹ The majority contain large amounts of asbestos materials.¹³⁰ Nottinghamshire was the lead local authority in the CLASP Consortium when the schools were designed and built and remain the lead in 'Scape', the corporate body that has replaced CLASP.¹³¹ They therefore have many years of experience in maintaining buildings that contain asbestos.

184. Their policy is to remove asbestos when major maintenance or refurbishment takes place. This policy of progressive removal gradually reduces the amount of asbestos materials in their schools. An example of this is the removal of AIB panels from warm air cabinet heaters in schools. This form of heating was developed in the 1950s and became one of the most popular means of heating schools.⁵ When the problem of asbestos fibre release was realised Nottinghamshire CC carried out a major encapsulation programme to identify and seal the AIB panels within the heater cabinets and over the following years they had a programme to remove the panels entirely.¹³²

185. When maintenance tasks are carried out that involves the removal or remediation of asbestos a record is kept of the task and the cost, so that a data bank has been built up that is accessed when similar work is scheduled. This also allows long term financial forecasts to be made on the continued maintenance of the school stock.

Recommendation

- It is recommended that DfE establish a data bank that records the costs of removal and remediation of asbestos when maintenance tasks are performed.

186. So long as asbestos remains it not only poses a potential risk to the occupants, but there is continual increased costs of maintaining the building. Nottinghamshire County Council state: *"Any asbestos that remains will have to be treated/encapsulated to a rigorous standard and will continue to be a risk and future maintenance item. With regards to Hard FM costs in future, retained asbestos creates a high risk."*¹³³ (Hard FM is the maintenance of a buildings mechanical, electrical, fabric and landscape assets)

187. As well as asbestos there are other problems with CLASP, and other system built buildings, as many are beyond their design life. Therefore, even when they are refurbished, they do not meet present standards of building design. Because of this Nottinghamshire County Council concluded that a long term strategic solution is to demolish the buildings rather than refurbish them. *"The CLASP buildings are widely considered to be beyond their useful life regardless of their respective 'mark' or era. The paper*

¹²⁹ CLASP buildings by owners 12 Sep 2007

¹³⁰ Asbestos in CLASP buildings <http://www.scapebuild.co.uk/getattachment/Consult/Services/CLASP-Buildings/Building-Systems/ASBinCLASP2010.pdf.aspx>

¹³¹ Scape CLASP building system <http://www.scapebuild.co.uk/Consult/Services/CLASP-Buildings/Building-Systems.aspx>

¹³² E-mail Nottingham County Council Team Manager Statutory Compliance & Planned Maintenance Property/Chair DfE Asbestos Steering Group. Asbestos lined heater cabinets in schools.19 Feb 2013

¹³³ Issues of Using CLASP to transform learning – Nottinghamshire County Council 21 Nov 2008

*provides compelling evidence that to bring the existing CLASP stock up to required standards e.g. in relation to meeting current building regulations and acoustic standards etc., the cost of doing so is approximately 94% of new build costs.*¹³⁴

Recommendation

- It is recommended that the review examines the long term strategic proposal of Nottinghamshire County Council that in the long run it is more cost effective, and safer, to demolish CLASP buildings than refurbish them. The review should also consider the proposal with other types of system built buildings.

Association of Metropolitan Authorities

188. In the 1980's the Association of Metropolitan Authorities and the Inner London Education Authority policy was the identification and progressive removal of asbestos starting with the most dangerous materials.

*“Progressive removal is thought to be the safest and most cost effective solution, given that any asbestos is a hazard, however slight, and that buildings will be occupied and have to be maintained, and inadvertent disturbance is a continued risk.”*¹³⁵

189. This was long term strategic thinking and if the policy had been fully carried through then by now there would be considerably fewer schools that contain asbestos, the continual drain on resources in managing the asbestos would have been eliminated as would the ever present risk of the occupants. Both organisations were wound up. The organisations that replaced them dropped the policy.

Recommendation

- It is recommended that DfE adopts a long term policy of progressively removing asbestos from schools, priority being given to the most dangerous materials.

Example of other countries

190. There are lessons to be learnt from other countries about how to address the problem of asbestos. Some examples are the USA, Australia, Northern Ireland, Southern Ireland, the Netherlands ,Poland and Japan. There are no practical reasons why the measures taken in these countries cannot be adopted in Britain.

- The Australian Government carried out a review of asbestos policies which made far reaching recommendations, and in 2013 the Government formed an agency to implement the measures.
- In the 1980s the EPA, HSE's equivalent, advised the US Government that children are at a significantly greater risk from asbestos than adults. The US Government therefore carried out a risk assessment, audited the extent of friable asbestos in schools and implemented stringent asbestos regulations specifically for schools.
- In 2000 Eire recognised the particular vulnerability of children to asbestos and introduced a policy of removing asbestos from schools when it would otherwise not be considered necessary.¹³⁶
- Northern Ireland has carried out an audit of the extent of asbestos in their schools and has a policy of removing the 'High risk' materials.
- In 2014 the Netherlands will introduce an “environmental” asbestos fibre control level of 0.000003f/ml, some 3,000 times less than their present occupational level.¹³⁷
- In Poland they have adopted a policy of removing all asbestos from buildings by 2032.¹³⁸

¹³⁴ Issues of Using CLASP to transform learning – Nottinghamshire County Council 21 Nov 2008

¹³⁵ Association of Metropolitan Authorities Asbestos Policy and Practice in Local Authorities para 2,2,8 Sep 1985

¹³⁶ Houses of the Oireachtas. Seanad debate Asbestos in Education Buildings Minister of State at the Department of Education and Science Mr Treacy 24 Feb 2000. Office of Public Works Eire European agency for safety and health at work . Asbestos Ireland 11 Apr 2005

¹³⁷ Asbestos Risks of environmental and occupational exposure Health Council of the Netherlands 3 June 2010 para 8.2 P83. Letter The Minister of Social Affairs and Employment L.F. Asscher Ref 2013Z05228 10 Apr 2013 . Professor Burdorf/Lees personal correspondence 10 Jun 2013

191. Britain has the worst mesothelioma incidence in the world at 38.4 per million per annum, and it is rising.¹³⁹ The USA incidence is 14 per million per annum and it has stabilised since 1999.¹⁴⁰ Australia has an incidence of 29 per million per annum¹⁴¹, The Netherlands 30,¹⁴² Japan 9¹⁴³ and Poland 4¹⁴⁴. Other countries are addressing the problem. It would seem sensible that Britain learns from their example, heeds the lessons and adopts similar policies.

192. The examples of Australia, USA and Japan are analysed in the following sections. Then an EU policy comparison is made.

Recommendation

- It is recommended that the review compares Britain's policies in schools against worldwide best practice.

In 2013 Australia introduced an agency to eliminate asbestos disease.

193. On 3rd June 2013 the Australian Federal Parliament passed legislation for the Asbestos Safety and Eradication Bill. The Australian Government has committed itself to solve their national asbestos problem so it is a benchmark approach that the review should consider.

194. The Asbestos Safety and Eradication Agency began operations on 1st July 2013 and will implement the National Strategic Plan for Asbestos Awareness and Management. The national agency is dedicated to working with jurisdictions and stakeholders to create a nationally consistent approach to the eradication, handling and awareness of asbestos. Australia is the first nation to progress towards the ultimate elimination of asbestos-related diseases.¹⁴⁵

195. The national plan aims to prevent exposure to asbestos fibres in order to eliminate asbestos related disease in Australia. It will achieve this by:

- a. increasing public awareness of the dangers posed by working with or being exposed to asbestos;
- b. developing the implementation of a prioritised removal program across Australia;
- c. develop nationally consistent better practice in asbestos handling and management;
- d. coordinate national research to minimise the risk of exposure to asbestos for the Australian community; and
- e. play a leadership role in a global campaign for a worldwide asbestos ban.

196. In introducing the Bill the Minister, Bill Shorten, said the government would work to “*ultimately remove asbestos from the Australian built environment.....*” and he agreed in principle that removal of asbestos from schools will be prioritised, adding “*Obviously, exposure to children is particularly repugnant...*”¹⁴⁶

¹³⁸ [Conference: Europe's Asbestos Catastrophe](#) IBAS 8 Nov2012

¹³⁹ HSE table MESO04 Number of mesothelioma deaths and average annual rates per million by age and sex in three year periods 1969-2010

¹⁴⁰ Malignant Mesothelioma Mortality --- United States, 1999—2005. **Reported by:** KM Bang, PhD, JM Mazurek, MD, E Storey, MD, MD Attfield, PhD, PL Schleiff, MS, JM Wood, MS, Div of Respiratory Disease Studies, JT Wassell, PhD, Div of Safety Research, National Institute for Occupational Safety and Health, CDC.

¹⁴¹ Safe Work Australia. Mesothelioma in Australia. Incidence 1982 to 2008. Deaths 1997 to 2007 Aug 2012

¹⁴² An International Comparative Approach to the Global Asbestos Epidemic Takahashi 23 Nov 2007

¹⁴³ Japan mesothelioma deaths 2009 1,156, population 127 million. Rate per million 9. T. Povtak comment on Study: Japan Mesothelioma Deaths Will Rise until 2027 Hamamatsu University School of Medicine.

¹⁴⁴ Malignant Mesothelioma: Global Incidence and Relationship with Asbestos Claudio BIANCHI* and Tommaso BIANCHI Industrial Health 2007, 45, 379–387

¹⁴⁵ Asbestos Safety and Eradication Bill 2013 1 Jul 2013 http://www.austlii.edu.au/au/legis/cth/bill_em/asaeb2013346/memo_0.html

¹⁴⁶ The Australian. Schools first in asbestos removal plan. 4 Sep 2012

197. The Australian Agency's remit is purely for asbestos. The agency is also tasked to recommend a finite date for the prioritised removal of asbestos from public and commercial buildings. Schools are considered a priority. Therefore over time the problem of asbestos in schools will be removed completely.
198. In contrast to Australia HSE remit is widespread as it is responsible for workplace health and safety for every occupation and from whatever cause. Although it acknowledges that "*Asbestos is the single greatest cause of work-related deaths in the UK*,"¹⁴⁷ HSE has classed schools as 'low' risk and dismissed the risks from asbestos to staff and pupils, therefore schools are treated with a low priority. The effect is that too few resources are allocated to schools to adequately address the problem.
199. Also in contrast to the Australian national policy HSE has also advised that when schools are refurbished it is better to leave asbestos in place and manage it for the remaining life of the building, than it is removing it. It is recommended that the Australian rationale and policy is openly compared to the HSE advice. If Britain is to eradicate the legacy of asbestos from schools then similar strategic thinking and radical action is needed.
200. Australia has adopted a strategic policy to eradicate asbestos and asbestos disease. A key difference is they have acknowledged that there is a major problem, will prioritise schools and have a body that can concentrate entirely on asbestos. As HSE is unable to prioritise schools, then DfE should do so.

Recommendation

- It is recommended that the DfE's review of asbestos policy in schools should study and then consider adopting the long term strategic policies for asbestos in schools that Australia has adopted.

Since 1986 USA has had specific asbestos laws for schools

201. The EPA is the US equivalent of the HSE. In 1980 an EPA report was compiled for the US Congress that examined the likely extent of friable asbestos in schools, the likely exposure of the occupants and the resultant risks. The report stressed the increased risk to children because of their longer life expectancy.¹⁴⁸
202. The report to Congress estimated how many staff and children could be expected to subsequently die from their asbestos exposure at school. They concluded that over a thirty year period "*The most reasonable estimate is approximately 1,000 premature deaths. About 90% of these deaths are expected to occur among persons exposed as school children.*"¹⁴⁹ So that the scale of the problem could be accurately determined, and financial forecasts made, an audit was carried out of the friable asbestos in the nation's schools.
203. In 1986 stringent laws were introduced in the USA specifically for schools, for it was acknowledged that, because of the increased vulnerability of children, schools had to be treated with special care. Resources were allocated, training was made mandatory and systems introduced so that the asbestos could be rigorously managed, and by law staff and parents were informed of the asbestos in their schools and the system of management. A system of inspection was introduced to ensure schools were achieving safe standards.¹⁵⁰

¹⁴⁷ HSE web-site Asbestos health and safety.

¹⁴⁸ EPA Support document for the proposed rule on friable asbestos-containing materials in school buildings EPA report 560/12-80-003 p 52 and 55

¹⁴⁹ American Academy of Pediatrics Asbestos Exposure in schools Pediatrics vol 79, no 2 Feb 1987 p301- 305 Reaffirmed May 1994 . EPA Support document for the proposed rule on friable asbestos-containing materials in school buildings EPA report 560/12-80-003 p92

¹⁵⁰ AHERA US code: title 15,2643. EPA regulations Chapter 53. EPA Fact sheet AHERA 1986 Statement EPA Administrator 23 Oct 1986

204. In contrast in the UK no such laws existed for managing asbestos until eighteen years later when the 2004 CAWR duty to manage regulation was introduced. However an audit of asbestos in schools has not been carried out, rather it was specifically excluded from the audit of the condition of school buildings.¹⁵¹ The particular vulnerability of children has so far not been taken into account, instead HSE considers that the risks from asbestos in schools are “very low” and because of this treats schools as any other workplace. Training is not mandatory and proactive inspections have been scrapped. There is insufficient funding to maintain school buildings let alone fund rigorous systems of asbestos management.
205. The USA recognised the particular risks to children in schools and took radical measures to address the problem. Air tests of school and other public buildings in the USA have shown that 98% of airborne fibres are chrysotile,¹⁵² however the asbestos problem in UK schools is significantly greater as our schools contain large amounts of the amphiboles, and in particular amosite, in places vulnerable to damage by children. It is therefore a reasonable assumption that proportionately the number of deaths among staff and children in UK schools will be higher than in the USA. This is borne out by a leading epidemiologist’s estimate that in Britain between 200 and 300 people could die each year from their asbestos exposure as children at school in the 1960s and 1970s.¹⁵³
206. More than thirty years ago the EPA and US Government acknowledged that there was a problem of asbestos in schools. They assessed the scale of the problem and the risks then passed stringent laws that provided the resources so that schools really could manage their asbestos. In the UK no such measures have been taken. That is because Government policies have been based on advice from HSE that assures them that the risks are very low. Because of this the Government is unable to justify devoting resources in solving a problem that HSE assures them does not exist. The HSE advice that justifies Government asbestos policy for schools in this country runs contrary to the evidence and the expert advice given by their counterparts to the governments of other countries.

Recommendation

- It is recommended that the policy review examines the strategic policies and practice in the USA.

Japan has carried out an audit of asbestos in schools.

207. In 1987 the Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) carried out an audit of asbestos containing materials in 80,185 schools and colleges. (although in practice the surveys mainly looked for sprayed asbestos.) Asbestos was identified in 2,542 (3.2 %). MEXT then implemented measures for removal, encapsulation and enclosures of the materials and provided the necessary financial support to schools.
208. However the surveys were not sufficiently rigorous and neither were the remedial measures. In 2005 MEXT once again carried out a national audit of asbestos materials in their schools and colleges. Each year follow up surveys are also conducted. As at October 2013 a total of 135,892 schools and colleges have been inspected and only 25 are left to be completed. Asbestos has been identified in 4,290 schools and colleges (3.2%) in 45,120 rooms. Removal, encapsulation and enclosure work has been carried out in 3,184 schools and colleges.¹⁵⁴
209. Britain has a far greater problem of asbestos in schools than Japan. 3.2% of schools in Japan contain asbestos whereas more than 75% of schools in Britain contain asbestos. However Japan’s Department

¹⁵¹ Property data survey programme memorandum of supplementary information 17 Oct 2011 p8

¹⁵² Toxicological profile for asbestos . US Department of Health and Human Services. Potential for human exposure. Sep 2001 para 6.4.1 p 163

¹⁵³ Education Select Committee hearing Asbestos in Schools. 13 Mar 2013. Q13

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/c1056-i/c105601.htm> . Personal correspondence Professor Peto/Lees 3 May 2013

¹⁵⁴ “Asbestos in school” in Japan Sugio FURUYA Ban Asbestos Network Japan (BANJAN) January 22, 2014

for Education has carried out an audit of asbestos in schools, they have recognised that schools have to be given priority and they have taken comprehensive measures to eliminate the risks.

210. The principles and the risks to children are the same in the UK and Japan. It would therefore be reasonable to assume that the reason that Japan has taken the logical and practical measures they have, and we have not, is because the scale of the problem of asbestos in their schools is manageable, whereas ours is not. This particular point was summed up by the UK Parliament's All Party Parliamentary Group on Occupational Health and Safety who concluded *"There is also a view that successive governments have seen the issue as 'too big to handle.'*"¹⁵⁵

European Parliament bill passed with large majority.

211. In 2013 the European Parliament voted by a large majority (558 votes in favour - 51 against) for the resolution "Asbestos related occupational health threats and prospects for abolishing all existing asbestos."¹⁵⁶ The proposals in the bill are similar to those proposed by Australia. This is an important bill that proposes radical policies that would address the European wide asbestos problem. Britain has the worst asbestos problem in Europe, the worst asbestos problem in schools and leads the world on the incidence of mesothelioma. The UK therefore has to be central to the negotiations on future EU legislation. However, many of the proposed measures in the EU Bill run contrary to HSE advice and DfE policies for asbestos in schools.

Selected points are as follows:

- "Calls on the EU to devise models for monitoring asbestos fibres in the air in the workplace
- Urges the EU to develop models for monitoring existing asbestos in private and public buildings
- Urges the EU to conduct an impact assessment and cost benefit analysis of the possibility of establishing action plans for the safe removal of asbestos from public buildings and buildings providing services which require regular public access by 2028..... competent government ministers should coordinate the action ...
- Urges the Commission to recommend the Member States develop public asbestos registers
- Urges the Commission, in cooperation with the Member States, to ensure the effective and unhindered implementation of European asbestos legislation and to step up official inspections."

Recommendations

212. The following are recommendations:

- It is strongly recommended that the DfE policy review examines the policies in other countries and if it is considered that the policies will eliminate, or significantly reduce, the risks to staff and pupils in schools then they should consider adopting them.
- It is recommended that the DfE policy review notes the strong support for the EU asbestos bill in the European Parliament. It is further recommended that the UK Government gives the bill its backing.

¹⁵⁵ All Party Parliamentary Group on Occupational Health and Safety 'Asbestos in Schools.' February 2012 updated March 2014

¹⁵⁶ EU Bill texts adopted "Asbestos related occupational health threats and prospects for abolishing all existing asbestos (2012/2065(INI))" 14 March 2013

Question 6

6 Are there any particular barriers or disincentives that hinder the effective management of asbestos in schools? Please provide details.

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
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213. Yes there are a number of barriers and disincentives that hinder the effective management of asbestos in schools. They have been discussed in the previous answers. Some examples are:
214. There is a general lack of knowledge about the dangers of asbestos amongst governors, headteachers, support staff and teachers in schools. This is in part because of the lack of training but also because Ministers, DfE and HSE play down the risk to the occupants of schools. There is therefore a disincentive for governors and headteachers to allocate their limited resources to managing asbestos when they are assured the risks are low and that staff and pupils are not at risk.
215. Asbestos is left in places where it is vulnerable to damage because the guidance only takes into account surface damage and not the release of asbestos fibres from the reverse face. Also damaged AIB, asbestos debris and fibres are left in locations such as walls voids, ceiling voids, warm air cabinet heaters and columns when they should be removed, but the DfE and HSE guidance encourages the practice, despite the fact that fibres can enter the rooms. Therefore the school is assured it is managing its asbestos and complying with the regulations, when in fact the asbestos is not safe. There is a disincentive for schools to have the asbestos removed because they are under the false impression that they are safely 'managing' it as DfE and HSE advice is that it is safer to manage it than remove it.
216. HSE research has shown that the 'playing down' of risks from asbestos is counter-productive. In 2013 HSE undertook research to "*identify audience barriers and drivers to taking action to protect themselves against asbestos.*" They found that:
- "For most respondents there was a strong sense that the current risk posed by asbestos was low or negligible, regardless of the building type or any other risk factor.*
- There were some examples amongst those with some level of existing knowledge, of counter-narratives that undermined the seriousness of the asbestos risk. The idea that low levels of exposure had a negligible impact or that the likelihood of becoming ill was related to chance, or other factors beyond one's control, all worked as significant barriers to action."¹⁵⁷*
217. Frequently statements are made that undermine the seriousness of the asbestos risk, and examples were given in the answer to question 1a. The epitome of this was when a senior director of HSE informed the Education Select Committee that a school in Wales was "*perfectly safe to reopen*" when two separate firms of asbestos consultants, the Council and an independent assessor had concluded it was unsafe. Not only was an unjustified assurance given to that school, but the same message was given to every other school in the country that one can have widespread asbestos contamination, tests that show amosite fibres are emitted into classrooms, evidence of repeated damage to classroom AIB panels and yet the risks are 'negligible'¹⁵⁸ and the school is 'perfectly safe.' The playing down of the risks from

¹⁵⁷ HSE Insight research to inform the *Asbestos 2013-14* Campaign. Final Report Oct 2013.
<http://www.hse.gov.uk/asbestos/insight-research-2013-14.pdf>

¹⁵⁸ Letter HSE acting Chief Executive/ Government's Chief Scientific Advisor 15 Jan 2014

asbestos in schools is counter-productive and presents a significant barrier to action in every school in the country.

Recommendation

- It is recommended that the risks from asbestos in schools are not played down. Instead people are provided unembellished facts so that they are aware of the actual risks from asbestos in schools.

Question 7

7. What evidence is there that the current policy needs changing or that improvements need to be made? Please provide details.

218. This is detailed in the answers to previous and subsequent questions.

Question 8

8. Do you have evidence to show that duty holders are not fulfilling their responsibilities? If so, please provide evidence of the underlying problems.

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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219. Although many dutyholders are fulfilling their responsibilities there is considerable evidence that a significant number are not.

220. This answer examines:

- Asbestos incidents in schools.
- Enforcement carried out by HSE.
- Inspections of schools carried out by asbestos consultants.
- Surveys of members by teachers and support staff unions.

Asbestos Incidents

Dutyholders and employers' responsibilities under the law

221. The Health and Safety at Work Act (HSWA) 1974 states:

"Section 2 (1) It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees.

(a) the provision and maintenance of plant and systems of work that are, so far as is reasonably practicable, safe and without risks to health...

(c) the provision of such information, instruction, training and supervision as is necessary to ensure, so far as is reasonably practicable, the health and safety at work of his employees...

(e) the provision and maintenance of a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health...

Section 3 (1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety."

222. DfE Guidance defines who the employer and dutyholders are. It can be confusing, but it is essential that local authorities, school governors, headteachers and school staff clearly understand who the dutyholder is. This is not only for practical purposes but also because there are serious legal implications if the individual or body is not clearly defined. DfE state:

"Anyone who has responsibility for the maintenance or repair of non-domestic premises, including schools, is a dutyholder as defined in Regulation 4 of the Control of Asbestos Regulations 2012. For most schools, the main dutyholder will be the employer, with dutyholder responsibilities in some schools also being shared with the person responsible for the site.

The local authority is the employer for community schools, community special schools, voluntary-controlled schools, maintained nursery schools and pupil referral units.

The governing body is the employer for academies, free schools, voluntary-aided and foundation schools.

For independent schools, the employer may be the proprietor, governors or trustees.

Where budgets for building management are delegated to schools, for example by an LA or academy trust, the duty to manage asbestos will be shared between the schools and the LA or trust.

Dutyholder responsibilities are often established via an explicit funding agreement/contract. The extent of the duty depends on the nature of the agreement and responsibilities for repairs and maintenance, as distinct from capital expenditure.

In the case of LAs, a written scheme for the financing of maintained schools will set out the categories of work that will either be financed from the delegated school budget share (revenue repairs and maintenance) or remain the responsibility of the LA (capital expenditure). Both parties will then have dutyholder responsibilities for the repair and maintenance of the premises."¹⁵⁹

223. Regulation 4 of the Control of Asbestos Regulations *"covers the duty to manage asbestos in non-domestic premises. It requires dutyholders to identify the location and condition of asbestos in non-domestic premises and to manage the risk to prevent harm to anyone who works on the building or to building occupants."*¹⁶⁰

224. Therefore if the measures that are in place do not provide a safe environment for school staff and pupils in schools the employer has not fulfilled his responsibilities under the Health and Safety at Work Act. Also if the system of asbestos management fails so that people are exposed to asbestos then the dutyholder has failed to fulfil his duty under the Control of Asbestos Regulations.

225. There have been numerous failures in asbestos management in schools that have resulted in the release of asbestos fibres, contamination of the schools and all too often the exposures of the

¹⁵⁹ DfE Asbestos management in schools Nov 2013

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/276032/asbestos_management_in_schools_2013.pdf

¹⁶⁰ Control of Asbestos Regulations 2012 Summary Regulation 4 p 26

occupants. The failures have frequently been because people have not been trained, which is a contravention of the HSWA.

226. Many of the incidents have taken place during building maintenance or refurbishment when asbestos materials have been disturbed. All too often the asbestos had not been identified beforehand as much of it is hidden and not detected on normal asbestos surveys. In some cases the asbestos surveys have been superficial which has led to a false sense of security and the inevitable disturbance of unidentified asbestos material. In many cases the hidden asbestos has deteriorated with asbestos debris and fibres lying in the wall, ceiling and columns voids, and whenever disturbed has released fibres into the rooms for many years. The dutyholders have therefore not complied with the CAR 2012 *“to manage the risk to prevent harm to anyone who works on the building or to building occupants.”*
227. Much of the school estate is in a dilapidated condition. All the asbestos in schools is old and much of it is deteriorating but there has not been the money to maintain schools in good condition, so as the fabric of the schools have deteriorated then so has the asbestos. There are cases of schools containing large amounts of asbestos with flat roofs being damaged, water running down walls, rotten windows and badly damaged ceiling tiles with nothing being done for months and even years to rectify the situation. All of which potentially allows the release of asbestos fibres. The employers have therefore not provided and maintained *“a working environment for his employees that is, so far as is reasonably practicable, safe, without risks to health.”*
228. Although building and maintenance work can release asbestos fibres, most asbestos fibre releases in schools pass unnoticed when fibres are released from normal everyday classroom activity such as children running into a wall, taking a book out of a stationary cupboard, sticking a drawing pin in a wall or even children and staff handling WWII gas masks. Therefore, although the individuals might not be aware that they are at risk, the Government, DfE, HSE, local authorities and schools are aware that these activities can release asbestos fibres and put children and staff at risk.
229. The HSE and some local authorities have been aware for more than twenty five years of the serious problem of asbestos fibre release from ‘System built’ schools, where just slamming a door or sitting on a window sill can release many thousands of asbestos fibres into the rooms.
230. Other examples are of friable, damaged, deteriorating asbestos lagging that has lain beneath the floor boards or in the attics of Victorian schools, so that, when disturbed, the fibres have filtered into the classrooms. This has been known about but HSE advice has been followed and the asbestos has been left in place and ‘managed’.
231. HSE, local authorities and schools have known about the problem of warm air cabinet heaters blowing amosite fibres into classrooms for more than thirty years, and yet the buildings and heaters remain in service despite the fact they are known to be unsafe. The employers have therefore failed to provide and maintain its plant that is *“safe and without risks to health.”*
232. In some incidents the asbestos fibre releases have been considerable with widespread contamination and the exposure of the occupants, however in most cases the asbestos fibre release has been small but frequent. Each exposure, however small, is cumulative and adds to the likelihood of a tumour developing. The end result is that some of those who have been exposed develop mesothelioma and die as a result.
233. The employers and dutyholders have therefore failed to fulfil their duty under the Health and Safety at Work Act and the Control of Asbestos Regulations.

234. DfE defined their policy and responsibility in their submission to the Education Select committee:

“Department for Education policy, as in other aspects of schools management, is to give schools the support they need to fulfil their responsibilities effectively....

Our policy is to provide and promote guidance material for schools, which is based on the expert advice of the HSE, to manage asbestos safely and effectively....

The Department does not manage the schools estate; our capital funding responsibilities are to provide funding for new school places (basic need) and to fund schools and local authorities to maintain their existing buildings.¹⁶¹”

235. The Government, DfE and HSE have failed in their duty to maintain the school estate in such a condition that provides a safe working place for the occupants. They also have failed in their duty to provide the necessary training and resources so that people can safely manage their asbestos.

Asbestos incidents and failures to manage asbestos

236. A list of asbestos incidents has been collated in chronological order in a paper which is at this link:¹⁶²

237. The incidents listed in the paper are just some of those that have been reported in the press, the result of enforcement action or have come to light only after a person has died of asbestos related disease many years later. Most incidents are not reported in the local press and it is rare that an asbestos incident is reported in the national press. They are but a tiny fraction of those that take place in schools throughout the country. The vast bulk of asbestos fibre releases take place without anyone being aware they have happened, and without staff and pupils being aware that they have inhaled the fibres – naturally none of those have been included in the list.

238. The paper includes accounts of a few of the many deaths from mesothelioma of caretakers, cleaners, maintenance staff, teaching assistants, headteachers, teachers and former pupils.

239. The paper provides the evidence that duty holders are not fulfilling their responsibilities, and provides the evidence of the underlying problems.

240. Most asbestos incidents and exposures of staff and pupils do not result in enforcement action, however some do and the following section examines enforcement action carried by the HSE for failures in asbestos management.

HSE Enforcement

241. HSE guidance states *“If you don’t manage the asbestos-containing materials in your premises, you could be putting your employees’ and other people’s health at risk.”¹⁶³*

242. The following is a summary of enforcement action carried out in schools since December 2005 for failures in asbestos management. It includes HSE prosecutions and improvement notices issued to schools and colleges. It provides the evidence that a significant number of dutyholders are failing to fulfil their responsibilities.

¹⁶¹ Education Select Committee DfE written submission March 2013

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/writev/1056/contents.htm>

¹⁶² Asbestos Incidents and failures in asbestos management updated 28 Mar 2014

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/ASBESTOS%20INCIDENTS%203%20work%20in%20progress%20update%2017%20Mar%2014.pdf>

¹⁶³ HSE a comprehensive guide to managing asbestos in premises.”

243. A paper that contains comprehensive lists of the prosecutions, prohibition notices and improvement notices is at this link:¹⁶⁴ The narrative of the paper is the same as this section of this answer, however in addition the annex's in the paper contain lists, tables and HSE press releases.
244. In the last five years there have been at least 14 successful prosecutions where asbestos management has failed in schools and colleges causing damage to asbestos and the exposures of people including children, school staff and contractors. The prosecutions have been taken following HSE inspections that have taken place because of serious asbestos incidents.
245. HSE has also undertaken proactive inspections in schools. They have found that a significant number of schools are not complying with the guidance and are not managing their asbestos either effectively or safely. Advice has been given and follow-up inspections carried out to ensure that standards have improved.
246. As the result of the inspections in the last five years 117 Improvement Notices and 3 Prohibition Notices have been issued by HSE because of failures to manage asbestos in schools and colleges. 140 Improvement Notices and 4 Prohibition Notices have been issued since December 2006.¹⁶⁵
247. HSE has probably inspected less than 500 schools since the year 2000. That represents about 2% of the 28,950 schools¹⁶⁶ in Britain. Since 2007 the bulk of proactive inspections have been in four rounds of inspections.
248. More than a sixth of schools and local authorities inspected in the rounds of inspections had failed to manage their asbestos to the extent that enforcement action was necessary. If the percentage of schools that had enforcement action taken was representative of all schools in Britain that contain asbestos then it would equate to more than a million pupils occupying more than 3,500 schools failing to effectively manage their asbestos to the extent that they required enforcement action.

Inspections should be an integral part of successful asbestos management

249. It must be borne in mind that since March 2011 HSE have not been allowed to undertake proactive inspections of asbestos management in local authority schools.¹⁶⁷ The vast majority of enforcement action since then has therefore been against schools outside local authority control, whereas before that date the majority of enforcement action was against local authorities and their schools. Before 2004 it was unusual for HSE to inspect the standards of asbestos management in any school.
250. The inspections have proved their worth as they have identified many schools and local authorities that are not effectively or safely managing their asbestos. Advice has been given so that corrective measures could be taken to improve their standards of asbestos management. Proactive inspections are no longer allowed in local authority schools and it still has to be confirmed if they will be in schools outside local authority control now that the final round of inspections of their schools have been completed.

¹⁶⁴ HSE enforcement <http://www.asbestosexposureschools.co.uk/pdfnewlinks/HSE%20ENFORCEMENT%20SCHOOLS%2027%20Mar%202014.pdf>

¹⁶⁵ See: HSE Enforcement action in schools and colleges under CAR 2012:

http://www.hse.gov.uk/notices/notices/notice_list.asp?PN=1&ST=N&CO=%2C+AND&SN=F%2C+P&x=21&SF=SICD%2C+%7C%2C+REG%2C+%7C&EO=LIKE%2C+%3D&SV=Education%2C+%7C%2C+1114%2C+%7C&y=11&SO=DNIS

HSE Enforcement action in schools and colleges under CAR 2006:

http://www.hse.gov.uk/notices/notices/notice_list.asp?ST=N&CO=%2C+AND%2C+AND&SN=F%2C+P&SF=SICD%2C+%7C%2C+REG%2C+%7C&EO=LIKE%2C+%3D&SV=Education%2C+%7C%2C+1098%2C+%7C&x=27&y=7

¹⁶⁶ School numbers 2011 England <http://www.education.gov.uk/rsgateway/DB/SFR/s001012/sfr12-2011.pdf> Scotland

<http://www.scotland.gov.uk/Resource/Doc/310296/0097954.pdf> Wales <http://wales.gov.uk/docs/statistics/2011/111213sdr1532011ren.pdf>

¹⁶⁷ Good Health and Safety for Everyone. Targeting and Reducing Inspections 21 Mar 2011 para 3 iii p 9

Recommendation

- As schools are expected to manage their asbestos then inspections are a proven means of ensuring they do. It is recommended that pro-active inspections are reintroduced for all schools that contain asbestos.

Summary of prosecutions

251. Prosecutions have taken place where serious asbestos incidents have occurred, asbestos damaged and more often than not people exposed. Over the last five years prosecutions have been instigated by HSE for:

- Exposing a nursery class, school staff and two joiners to asbestos fibres.¹⁶⁸
- A serious asbestos incident occurred when refurbishment contractors removed seven ceilings of AIB tiles.¹⁶⁹
- Despite children occupying adjacent classrooms, the go ahead was still given for the workers to begin to strip out the area.¹⁷⁰
- Failed to identify the presence of asbestos in a number of areas within the schools, resulted in construction workers being exposed to a potential risk to their health.¹⁷¹
- Failure to manage asbestos resulting in exposure of employees.¹⁷²
- The school caretaker swept the school boiler house, unaware that it was contaminated with asbestos. This posed a huge risk to the caretaker's health.¹⁷³
- All contractors failed to implement basic requirements to prevent the spread and exposure to asbestos to both those removing the materials and to others working at the school at the time.¹⁷⁴
- Prosecution following exposure to asbestos. University fined for putting staff, students and contractors at risk of exposure to asbestos.¹⁷⁵
- This was a clear example of a local Authority failing to manage asbestos across its schools for a number of years. The caretaker regularly worked in the boiler room with dust and debris over a period of six years. She will have been exposed to asbestos fibres.¹⁷⁶
- Two men colluded with each other to commit fraud by falsifying a record stating that a school in Abingdon had been properly cleaned of asbestos.¹⁷⁷
- The unsafe removal of asbestos insulation boards at a large independent school in Dorset led to several people being exposed to asbestos fibres.¹⁷⁸
- Having correctly commissioned an asbestos survey...no one bothered to read it. Or if they did, they disregarded its contents and failed to act to protect site workers from exposure. As a result, several people, including the young apprentice, were unnecessarily exposed to the risk of inhaling asbestos fibres.¹⁷⁹
- A Suffolk window replacement company has been fined after it exposed workers to potentially fatal asbestos material during work to replace window units at a school in Bury St Edmunds. This incident has been extremely stressful for those affected and has also been disruptive and costly for the school.¹⁸⁰
- AIB removed with crowbars. Academy fined for failing to properly manage refurbishment works and exposing workers to asbestos. Although the school had not been under local authority control since

¹⁶⁸ Council and building firm fined for asbestos exposure during school refurbishment. HSE/197/12 14 Dec 2012

¹⁶⁹ Council and building firm fined for asbestos exposure during school refurbishment. HSE/197/12 14 Dec 2012

¹⁷⁰ HSE Building firm fined after asbestos disturbed at primary school Release WM211/10 19 Aug 2010

¹⁷¹ Survey company prosecuted as HSE campaign to raise awareness of asbestos danger begins Release COI/W/HSE588 17 Oct 2008

¹⁷² Edinburgh council fined £14,000 for asbestos failures that put workers at risk SCO/177/09 11 Nov 2009

¹⁷³ Council fined after school caretaker exposed to asbestos NE/451/08 5 Sep 2008

¹⁷⁴ Unlicensed asbestos removal will be penalised warns HSE HSE/YH/332/2009 4 Sep 2009

¹⁷⁵ Lincoln University fined for asbestos failings HSE/269/11 16 Nov 2011

¹⁷⁶ Council in court for ignoring asbestos threat in school HSE-E-010/13 1 Mar 2013

¹⁷⁷ Fraudsters collude to trick independent school SE/149/12 17 Aug 2012

¹⁷⁸ Safety failings led to asbestos exposure at Sherborne School for boys 13 July 2012

¹⁷⁹ Surrey firm in court after asbestos find at girls' school HSE 13 Jan 2014

¹⁸⁰ Suffolk firm in court after workers exposed to asbestos HSE 13 Feb 2014

2011, it failed to ensure employees and management received adequate training to make up for the loss of local authority support and ensure that a suitable asbestos management plan was in place.¹⁸¹

HSE inspections

252. Four rounds of proactive HSE inspections have taken place. The first two examined compliance with guidance for sealing asbestos in columns, walls and ceilings of system built schools to inhibit the release of amosite fibres into the rooms. The inspections in both sets of inspections were triggered by local authorities' responses to questionnaires. As well as examining the standards of compliance with the guidance, inspections were also carried out in schools to assess whether the remedial actions had been completed. Damaged deteriorating asbestos was found and a failure to prevent the release of asbestos fibres. In some cases local authorities had failed to follow the guidance in all their schools.

253. The final two rounds inspected standards of asbestos management in schools outside local authority control. The inspectors were instructed to assess the standards of asbestos management and not to examine the condition of asbestos in the schools. Almost every regulation in the duty to manage was broken. A significant number of schools had not trained their maintenance staff, some schools had not attempted to identify their asbestos, some had no system of asbestos management and there was confusion over areas of responsibility.

254. Enforcement action has been taken for:

Failure to manage asbestos

Failure to assess whether asbestos is present

Failure to consider the condition of the asbestos

Failure to take account of age or building plans, failure to inspect accessible parts of premises

Failure to review the survey if no longer valid or changes to buildings

Failure to record the assessment or every review

Failure to determine the risks, to record location of asbestos, to specify measures to manage risk

Failure to monitor condition, properly maintain or safely remove, inform people who might disturb it

Failure to review or revise the management plan

Failure to inform, instruct or train people who might disturb the asbestos

Failure to mitigate after release of asbestos, or restore situation or inform people of their exposure.

Failing to manage asbestos risks

Dangerous occurrence involving asbestos release

Council have failed to manage asbestos in all of its premises.

ACMs could be in a position to cause exposure.

Area contaminated with asbestos

Summary of Four Rounds of HSE Inspections

HSE 1st round of inspections of system built schools

255. In 1987 air sampling found that when doors were slammed and walls hit in system built schools significant levels of amosite fibres could be emitted into the classrooms, halls and corridors. Slamming a door five times released up to 330,000 fibres per cubic metre of mainly amosite fibres, kicking a wall up to 870,000 fibres per cubic metre of air.¹⁸² About half the schools in the country are system built and most contain large amounts of asbestos with potentially the same problems. Despite this no warning was issued.

¹⁸¹ HSE press release: School and glass contractor fined for asbestos failings 14 November 2013

¹⁸² ILEA report LSS/AP/52 (1987) Investigation into fibre release from low level asbestos panels - Ernest Bevin school May 1987. ILEA report LSS/AP/78 (1987) Investigation into fibre release from low level asbestos panels at Roehampton Gate Primary September 1987

256. The problem was rediscovered in August 2006 in a CLASP system built school when doors were slammed, columns and walls were hit and when people sat on window sills. Asbestos fibres were ejected into the classrooms, corridors and halls at levels up to 440,000 fibres in a cubic metre of air. The fibres were mainly amosite.¹⁸³ However one test recorded a level of 2.37f/ml, 2,370,000 fibres in a cubic metre of air, where a column casing was loose.¹⁸⁴
257. An urgent warning was then issued in October 2006 to CLASP schools and local authorities advising them as a priority to determine whether their schools had the same problem, and if they did then guidance advised them on measures to inhibit fibre release.¹⁸⁵ The advice was to leave the damaged AIB, asbestos debris and fibres in place but seal the cracks and gaps with silicone sealant. Tests proved that this measure did not always work and asbestos fibres could still be released, the levels were however lower than without the remedial measures. Therefore it was important that, at a very minimum, the guidance was followed and urgent action taken to reduce the exposure of staff and pupils.
258. Almost a year later HSE contacted local authorities and other public sector bodies to assess their compliance with the guidance. If HSE were not satisfied with the response an inspection was carried out. The seven HSE regions carried out 130 visits, 120 were to schools and the others were not. There was a lack of consistency and some regions conducted very few inspections compared to others. For instance 3 inspections were carried out in the South East, 2 in the North West, 3 in London, 7 in Wales and the South West and 8 in Scotland. All regions issued advice but only 2 Improvement Notices were issued, both in London.
259. In comparison Yorkshire and the North East carried out 38 inspections and, although advice was issued, no Improvement Notices were. However inspectors in the Midlands conducted 69 inspections and issued 18 Improvement Notices.¹⁸⁶
260. The two Improvement Notices in London were issued because of an ITN investigation which had determined that more than a year after the initial warning had been issued a CLASP school in Brent had failed to inspect or seal the columns in a special school. Tests showed significant levels of mainly amosite fibres were emitted into a classroom and the ceiling void. Levels of 440,000 fibres per cubic metre of air were measured in the classroom and 720,000 fibres per cubic metre of air into the ceiling voids. The level on the personal sampler of the operator carrying out the disturbance measured a level of 2.53f/ml or 2,530,000 fibres per cubic metre of air.¹⁸⁷ These tests were on par with those carried out previously in other CLASP schools. HSE were notified and an inspection carried out. The inspection resulted in enforcement action being taken against the local authority for failing to comply with the guidance and a failure to manage asbestos in this particular school and also in all their schools. The notices stated:

“Lack of evidence that an effective system is in place to manage the risks from asbestos containing materials in schools.”

“It was not possible to ascertain that asbestos containing materials (ACMs), identified or suspected, had been inspected for condition, and the possibility exists that ACMs could be in a condition which could cause exposure.”¹⁸⁸

¹⁸³ Follow the links: [Release of asbestos fibres in System Built schools part 1](#) [Release of asbestos fibres in System Built schools part 2](#)

¹⁸⁴ HSL FT 20080010493 30 Jan 2008 work/data sheets. HSL Summary of fibre concentrations in CLASP construction schools containing asbestos. HSL/2007/22 10 Apr 2007 para 3.5 Upper estimate of possible releases para 4.5

¹⁸⁵ A joint message from the HSE/LGE/DFES Asbestos - potential for exposure in “clasp” school buildings Oct 2006

¹⁸⁶ Inspection of asbestos management in clasp and other system buildings 2007/2008 Summary report of findings . updated 12 May 2008

HSE Inspection Findings - Consolidated Divisional Feedback Annex 1

¹⁸⁷ G&L Consultancy Ltd Report for asbestos investigation 15-16 Dec 2007. Hay lane Special school Brent

¹⁸⁸ HSE Improvement Notice 4099017 - Lack of evidence that an effective system is in place to manage the risks from asbestos containing materials in schools. London Borough of Brent 9 Jan 2008 . Notice number 4099016 - London Borough of Brent 9 Jan 2008

261. In September 2007 HSE inspected CLASP schools in Walsall and found that none of the actions had been carried out. The Council has 15 CLASP schools and enforcement action was taken against 11 for a failure to follow the guidance. A typical Improvement Notice stated: *“Improvement notice requiring suitable & sufficient assessment and management of potential asbestos containing materials arising from CLASP intervention project. CLASP Management I.N. 300916219 requiring suitable and sufficient assessment as to the likely presence and condition of asbestos containing materials associated with the building's columns and the preparation and implementation of a written plan for managing the risk by maintaining or removing any asbestos containing materials.”*
262. However the lessons were not learnt, because two years later in 2009 an independent inspection was carried out in one of the schools that had been the subject of HSE enforcement action and it found dangerous failures in asbestos management and concluded *“The standard of asbestos management has been proved to be dangerously inadequate, which has resulted in the contamination of the school, and the exposure of contractors and, almost inevitably, of the staff and pupils.”*¹⁸⁹
263. The level of compliance in five of the HSE areas in this first round of inspections was 100%, however very few inspections had been carried out in four of the local authorities which for statistical purposes makes the results unreliable. A total of 120 visits were made to schools of which 17% resulted in enforcement action being taken.¹⁹⁰ In London three inspections were carried out and two Improvement Notices issued (66%). In the Midlands a statistically relevant number of inspections were carried out and 26% resulted in enforcement action being taken.
264. It was clear that a significant number of schools were not complying with the guidance. A further study was therefore initiated. A questionnaire was issued by DfE and HSE in January 2009 to once again determine compliance with the guidance for system built schools. Based on the responses to the questionnaire a second round of inspection was carried out. It identified schools and local authorities who were failing to safely manage their asbestos which had not been identified in the first round and was further proof that lessons had not been learnt.
265. It also showed that some of the regimes of inspection in the first round had been inadequate as they had failed to detect those local authorities and schools.

HSE 2nd round of inspections of system built schools

266. In 2010 HSE published a report on their second round of inspections of asbestos management in system built schools. It highlighted that significant numbers of schools are not managing their asbestos effectively.¹⁹¹ As with the first round of inspections most local authorities were not inspected, but where they were 24% had enforcement action taken against them.
267. As with the first round of inspections these were also based on the responses to a questionnaire. 152 local authorities and 95 dioceses were contacted. The responses from 42 local authorities were such that they required an inspection by HSE Inspectors; 18 improvement notices and 1 prohibition notice were issued to 10 (24%) authorities and further advice was given to the other 32 (76%) authorities on actions to improve their systems for managing asbestos. 110 local authorities were not visited as their questionnaire responses were accepted by the HSE and DfE as sufficient proof that they were achieving the required standards.

¹⁸⁹ Report available on request. Dec 2009

¹⁹⁰ Inspection of asbestos management in clasp and other system buildings 2007/2008 Summary report of findings . updated 12 May 2008

¹⁹¹ HSE Inspection Findings: Asbestos management in Local Authority school system buildings 2009/10
<http://www.hse.gov.uk/services/education/fod-interventions.pdf>

268. Only a handful of responses were received from the 95 expected from the dioceses, but no attempt was made to inspect their schools and no attempt was made to assess compliance in Scotland, Ireland or Wales or in independent schools.

269. Of those authorities that were visited, failures were identified in asbestos awareness and training, a lack of knowledge of their school stock and what types of school buildings were at risk. In a number of authorities poor standards of asbestos management plans were identified. Flaws in asbestos surveys and a failure to implement the recommended measures for system built schools. Two local authorities had failed to identify those schools at risk and had failed to seal any cracks to prevent the release of asbestos fibres, some four years after the guidance was first issued.

270. The selection of which local authorities would be inspected was based on their answers to the questionnaire and was reliant on them admitting to failings in their system of asbestos management in order to trigger a visit from the HSE. The fact that an LA was not inspected should not, therefore, be taken as an indication that their standards of asbestos management were good. Also the questionnaire and inspections had a narrow remit as they focussed on just one problem in one type of school building. At least one local authority had concerns over the questionnaire. They stated:

“I’m concerned about the quality of this questionnaire and the potential for misinterpretation when the contents are analysed. It does not show the full picture of asbestos management and only concentrates on a very small area. The questions are confusing and potentially misleading (far too open to interpretation).”¹⁹²

271. The flaws in the local authorities and schools’ asbestos management were similar to the first round of inspections and had the potential for asbestos materials to be disturbed, fibres to be released and staff and pupils exposed. Tests had proved that unsealed columns and walls can potentially release significant levels of asbestos fibres, and therefore the occupants were at risk, however some authorities had failed to take the necessary remedial measures, for example the Improvement Notice issued to South Gloucestershire County Council stated:

“Measures identified in the Council’s written plan for managing the risk from asbestos in system built school buildings, ie. Sealing gaps in joints in the casing around the columns, and between such columns and skirting boards and wall, had not been carried out.”

272. This second round of inspections in system built schools confirmed the results of the first. It confirmed that a significant number of schools are not complying with the regulations or the guidance and had failed to implement measures to prevent the releases of asbestos fibres. These were not minor administrative failings, instead they had the very real potential to expose both staff and pupils to cumulatively significant levels of asbestos fibres from common classroom activities.

273. About a quarter of the local authorities and schools inspected had enforcement action taken against them. That is a statistically significant proportion. Where inspections were carried out faults were found, which proves the importance of inspections. Despite this just three months after the report was published the Department for Work and Pensions classified schools as ‘low’ risk and HSE were no longer allowed to carry out inspections to assess the standards of asbestos management in local authority schools.

274. HSE were however permitted to undertake inspections in schools outside local authority control. The response from dioceses from the questionnaire had been almost not existent with just a handful of

¹⁹² Department for Education / Health and Safety Executive Questionnaire survey on asbestos management in local authority system built schools – Alphabetical list of responses – July 2010 Dorset <http://www.hse.gov.uk/services/education/survey.pdf>

returns being made despite the deadline being extended. The failure to respond to the most basic questions showed a lack of asbestos awareness and potential problems. A round of inspections of schools outside local authority control was therefore initiated.

HSE 1st round of inspections of schools outside local authority control

275. Between November 2010 and July 2011 HSE carried out a series of inspections of schools outside local authority control to determine their standards of asbestos management.¹⁹³ The schools included Academies, independent schools, voluntary aided schools and foundation schools. The inspections resulted in enforcement action being taken against a significant proportion of schools for failing to manage their asbestos. The duty holders had therefore not fulfilled their responsibilities.

276. The following is a summary of the enforcement action:

- 164 schools were in the study but further enforcement action was taken at the same time against 4 other schools outside local authority control giving a total of 168 schools. They were not included in the HSE summary, but have been in this summary.
- Enforcement action was taken against 32 schools outside local authority control (19%). In total 49 Improvement Notices were issued.¹⁹⁴
- There were 40 breaches of the Health and Safety at Work Act for failing to ensure the health and safety of the staff, and a further 28 breaches for failing to ensure that the pupils were not exposed to risks to their health and safety.
- There were 79 breaches of the Control of Asbestos Regulations for failing to manage their asbestos as required by law. HSE guidance states *"If you don't manage the asbestos-containing materials in your premises, you could be putting your employees' and other people's health at risk."*¹⁹⁵
- A further 110 had "Advice" given to improve their asbestos management.
- 138 of 164 schools visited were issued Improvement Notices or Advice (84%)
- 32% of the 62 independent schools that were inspected had enforcement action taken.
- 41 of the 80 schools (51%) that carried out their own maintenance and building work had failed to train their staff so that they could safely undertake maintenance without potentially damaging asbestos and harming themselves and the other occupants.
- 3 of the 5 Academies inspected had enforcement action taken against them, within a short time another school became an Academy and that also had enforcement action taken against it.
- By law schools have to have a written asbestos management plan, but 51 did not.

¹⁹³ Asbestos checks reveal compliance picture at non-LA schools <http://www.hse.gov.uk/press/2011/hse-asbestosinschools.htm> Summary Managing asbestos in schools outside LA control <http://www.hse.gov.uk/services/education/asbestos-summary-1011.htm> List of schools inspected and results. <http://www.hse.gov.uk/services/education/asbestos-management-1011.htm> HSE Enforcement data base http://www.hse.gov.uk/notices/notices/notice_list.asp?PN=2&rdoNType=&NT=&SN=F&x=23&EO=LIKE&SF=SICD&SV=education&ST=N&y=10&SO=D NIS

¹⁹⁴ HSE Enforcement data base

http://www.hse.gov.uk/notices/notices/notice_list.asp?PN=2&rdoNType=&NT=&SN=F&x=23&EO=LIKE&SF=SICD&SV=education&ST=N&y=10&SO=D NIS

¹⁹⁵ HSE a comprehensive guide to managing asbestos in premises."

- 49 schools did not have a proper system in place to tell their staff where the asbestos is in the buildings, and 20 of them there was no system at all. HSE warn that *“Not having a system in place, or operating a system with major gaps or flaws, is a major source of risk as potentially anyone in a school can disturb asbestos containing materials”*¹⁹⁶
- During the same period enforcement action was taken against one local authority school for the potential disturbance of asbestos and in another enforcement action was taken because asbestos debris was still present after refurbishment work had been carried out.
- The following are breaches of the Control of Asbestos Regulations 2006 (CAR) in the non-LA schools:

10 breaches	of CAR 4	Failure to manage asbestos
8 breaches	of CAR 4/3	Failure to assess whether asbestos is present
3 breaches	of CAR 4/4	Failure to consider the condition of the asbestos
3 breaches	of CAR 4/5	Failure to take account of age or building plans, failure to inspect accessible parts of premises
2 breach	of CAR 4/6	Failure to review the survey if no longer valid or changes to buildings
2 breaches	of CAR 4/7	Failure to record the assessment or every review
13 breaches	of CAR 4/8	Failure to determine the risks, to record location of asbestos, to specify measures to manage risk
11 breaches	of CAR 4/9	Failure to monitor condition, properly maintain or safely remove, inform people who might disturb it
10 breaches	of CAR 4/10	Failure to review or revise the management plan
16 breaches	of CAR 10	Failure to inform, instruct or train people who might disturb asbestos
1 breach	of CAR 15/4	Failure to mitigate after release of asbestos, or restore situation or to inform people of their exposure.

In TOTAL 79 breaches of the CAR 2006 in non-LA schools

277. In 1986 all schools were specifically told to identify their asbestos by extent, type and condition and assess the risks to the staff and pupils. They were told to draft and implement a plan to manage the asbestos, tell people where it was and train them in the precautions that are necessary to avoid damaging it.¹⁹⁷ Twenty five years later the duty holders in these schools have failed to adequately, or safely, manage their asbestos.

278. If asbestos is to be safely managed then people have to be trained, not only is that an essential practical requirement it is also a legal one. It is therefore a shocking indictment of these schools that 51% of them who were responsible for their own maintenance had not trained their staff. However it is not known how many other support staff and teachers were trained as the inspectors were specifically told not to ask that question: *“This question specifically targets caretakers, premises managers etc who undertake maintenance work. The question is not directed at the training and activities of teaching staff.”*¹⁹⁸

¹⁹⁶ HSE Managing asbestos in schools outside local authority control. Undated <http://www.hse.gov.uk/services/education/asbestos-summary-1011.htm>

¹⁹⁷ Department of the Environment Asbestos materials in buildings 1983. 1986. Department of Education and science AM3 of 86 The Use of asbestos in Educational Establishments 15 Aug 1986

¹⁹⁸ HSE Appendix 1: Questionnaire Work year 2013/14: Asbestos management in schools outside Local Authority control

279. Also the inspectors were specifically told not to identify the presence of asbestos or its condition, the inspections were purely an exercise to assess whether schools were complying with the regulations. The instructions to inspectors were very specific in the 2010/2011 inspections that *“Inspectors are not required to identify whether asbestos is present themselves but to assess compliance with DTM, and to complete a questionnaire.”*¹⁹⁹ And similarly in the 2013 inspections: *“At each visit inspectors should: NOT seek to identify whether asbestos is present themselves but assess compliance with the duty to manage requirements (DTM)...”*²⁰⁰ It is therefore not known the extent of damaged, deteriorating asbestos in these schools or the likelihood that staff and pupils were being exposed.
280. Government policy encourages schools to become Academies or Free Schools, consequently there are increasing numbers of schools outside local authority control. It is the owners, governors and headteachers of these schools who are responsible under law to safely manage their asbestos and ensure the safety of their staff and pupils, but this round of inspections adds to the evidence that many of them are not equipped to do so.
281. At least six of the schools are now Academies and four of them had enforcement action taken against them, one of them had three Improvement notices issued as they failed to produce an asbestos register, asbestos management plan or an asbestos survey, another hadn't trained its staff. These are all fundamental requirements for safely managing asbestos, but the owners and governors were clearly unaware of the regulations and guidance or that they were breaking the law, and by doing so were putting people at risk.
282. In the round of inspections, 60% of the schools that are now Academies had enforcement action taken, and, although only a few were inspected, it is indicative that the governors and owners of these schools are not adequately equipped to manage their asbestos. As at 1st March 2014 there are 3689 academies,²⁰¹ and therefore this indicates a serious problem in a large number of schools.
283. The HSE summary highlights that *“Schools that bought back services from the local authority were often uncertain or unaware of their own duties and were reliant on the local authority.”*²⁰² The confusion was particularly apparent in the sixty Voluntary Aided schools that were inspected, and the same principle applies to some Academies and Foundation schools.
284. Some of the schools rely on the local authorities and buy back their expertise to manage their asbestos, however some employers and governors were not aware that, regardless of whether they were buying in expertise, they still have the legal responsibility for managing the asbestos in their school. HSE emphasise the need for governors to be trained in asbestos awareness, and state *“The governing body needs to be aware of what is involved in the duty to manage asbestos and ensure that everyone whose work is liable to bring them into contact with ACMs has the appropriate competencies.”*
285. Voluntary Aided schools are mainly religious or faith schools. This round of inspections was triggered by an almost total failure of dioceses to respond to an HSE and Department for Education questionnaire that was issued in January 2009 to determine the standards of compliance with asbestos guidance for system built schools.²⁰³ Although the information requested in the questionnaire should have been at

¹⁹⁹ Work year 2010/2011: Inspection programme on asbestos management in schools outside of Local Authority control SIM 07/2010/02 <http://www.hse.gov.uk/foi/internalops/sectors/public/071002.htm#annex>

²⁰⁰ Workplan 2013/14: Asbestos management in schools outside Local Authority control SIM 07/2012/08 . 27 Mar 2013 http://www.hse.gov.uk/foi/internalops/sims/pub_serv/071208.htm

²⁰¹ DfE open Academies. <https://www.gov.uk/government/publications/open-academies-and-academy-projects-in-development>

²⁰² HSE Managing asbestos in schools outside local authority control. Undated <http://www.hse.gov.uk/services/education/asbestos-summary-1011.htm>

²⁰³ Meeting Schools Minister Diana Johnson MP 11 Nov 2009. Contemporaneous notes Lees. Hansard column 1561W Question 294157, Nick Gibb MP/ Diana Johnson MP Schools asbestos 21 Oct 2009.

HTTP://WWW.PUBLICATIONS.PARLIAMENT.UK/PA/CM200809/CMHANSRD/CM091021/TEXT/91021W0027.HTM#COLUMN_1561W

the authorities' finger tips, it was clear from the dioceses lack of response that they were unaware of which of their schools are system built, or the extent of asbestos in those schools. The inspections added to the evidence that dioceses, and their schools, do not have an adequate grasp of what are their roles and responsibilities and to what extent they can rely on the expertise of their local authorities.

286. Many of the schools that had enforcement action taken have been established for many years and therefore should have had the necessary skills to manage their asbestos, yet they had failed to obey the law and follow the guidance. They presumably thought that they were safely managing their asbestos, but because of a lack of asbestos awareness they were potentially putting people's lives at risk. The situation is worse in Free Schools and some Academies as most parents and governors do not have the training and experience to manage asbestos but are taking on the legal and practical responsibilities to do just that. Unless training is made mandatory for governors, headteachers and all staff it is inevitable that this problem will worsen over the coming years.

287. 19% of the schools outside local authority control that were inspected warranted enforcement action. That is a high proportion when compared to similar exercises. For instance HSE carried out a similar round of inspections to assess the standards of asbestos management and targeted businesses with particular emphasis on hotels, restaurants, public houses and manufacturing sites. 400 inspections took place and 24 businesses had enforcement action taken²⁰⁴, which is just 6%. Enforcement action in the round of inspections of schools was three times greater than in the inspections of other businesses. If this is representative of the whole country it indicates that the standard of asbestos management in both local authority and non-local authority schools is significantly worse than in other sectors of business.

288. This round of inspections showed that a significant number of schools outside local authority control had failed to manage their asbestos effectively. The duty holders had not fulfilled their responsibilities, and by doing so they had infringed the regulations and the law and potentially put staff and pupils at risk.

2nd round of inspections of schools outside local authority control.

289. The latest round of inspections of 150 schools outside local authority control ran from April to December 2013. The results of the study have not been published, however the HSE enforcement website as at 26th March 2014 lists 20 Improvement notices issued to 20 schools for breaches of the HSWA 1974 and the CAR 2012.

290. Enforcement action was carried out for similar breaches of the regulations as had been found in previous rounds of inspections. A full analysis will be completed once HSE publishes all the results.

291. The following is an interim summary:

- 150 schools were scheduled to be inspected.
- 20 non-LA schools had enforcement action taken against them.
- Therefore 13% had enforcement action taken.
- 37 breaches of the CAR 2012
- 20 breaches of the HSWA 1974/2/1
- 19 breaches of the HSWA 1974/3/1
- 7 academies had enforcement action taken
- 2 voluntary aided schools had enforcement action taken
- 11 independent schools had enforcement action taken

²⁰⁴ Suffolk – Asbestos Duty to Manage Project A report by the HSE's Partnership Team – East of England Region 18 – 27 September 2007. HSE Lacors Your council's involvement in health and safety regulation. Councillors handbook Jul 2008

The following are breaches of the Control of Asbestos Regulations 2012 (CAR):

10 breaches	of CAR 4	Failure to manage asbestos
5 breaches	of CAR 4/3	Failure to assess whether asbestos is present
2 breaches	of CAR 4/4	Failure to consider the condition of the asbestos
1 breach	of CAR 4/5	Failure to take account of age or building plans, failure to inspect accessible parts of premises
1 breach	of CAR 4/6	Failure to review the survey if no longer valid or changes to buildings
1 breaches	of CAR 4/7	Failure to record the assessment or every review
5 breaches	of CAR 4/8	Failure to determine the risks, to record location of asbestos, to specify measures to manage risk
5 breaches	of CAR 4/9	Failure to monitor condition, properly maintain or safely remove, inform people who might disturb it
4 breaches	of CAR 4/10	Failure to review or revise the management plan
3 breaches	of CAR 10	Failure to inform, instruct or train people who might disturb asbestos

Conclusion

The HSE inspections show that a significant number of schools and local authorities have failed to manage their asbestos to the extent that enforcement action had to be taken. Formal advice was also given on how to improve their asbestos management. The flaws were such that asbestos could potentially have been damaged and pupils and staff exposed. In a number of schools essential safety guidance had not been followed so that it is likely that asbestos fibres had been released and people exposed. The prosecutions were carried out after serious asbestos incidents had occurred, asbestos had been damaged, fibres released and contractors, staff and pupils exposed.

These are but a fraction of the total number of schools in the country that in all probability are not safely managing their asbestos. That is because HSE has only inspected a very small proportion of schools. However asbestos consultants visit most schools in the country and they find that many schools do not have adequate measures in place to ensure the safety of the occupants from the dangers of asbestos.

The evidence is that a significant proportion of duty holders are not fulfilling their responsibilities.

ATAC inspections

292. Members of the asbestos consultants association ATAC inspect thousands of schools throughout the country and they concluded: *"We are in agreement with the statement that properly-managed asbestos presents little risk. However, we can provide literally hundreds of examples each year that we personally have first-hand knowledge of, where effective management controls have either broken down, or were not present at all....."*

To believe that asbestos management is in the main effective, is to deny the evidence that we see repeatedly, every day, not only in schools but also in offices, public buildings, hospitals, rented accommodation, private workplaces....

As long as people are around asbestos, the evidence shows that reliance on management controls is often ineffective. The only safe way to draw a line under these repeated exposures is to either remove the people from the building, or the asbestos."²⁰⁵

293. ATAC carried out a study of a number of schools who had volunteered to have their standard of asbestos management assessed. They concluded: *"The conclusion is that in the majority of these*

²⁰⁵ ATAC Release Press Statement re Asbestos Management 9 Feb 2012
<http://www.atac.org.uk/asbestos-testing-consultancy/ATaC-article.asp?ArticleID=316>

*schools the systems of asbestos management are not of an acceptable standard, they are ineffective and at times dangerous. The small sample highlighted that there is a serious problem.... The results reflect what they regularly find in schools throughout the country – that the majority are not managing their asbestos effectively or safely... These are not minor problems that have crept in over recent years; rather they are fundamental problems that are endemic in schools in the UK...”*²⁰⁶ The full report is at this link:

294. The assessment found common faults that were not only bad practice they also contravened the regulations and demonstrated a basic lack of asbestos awareness and training:
- At times there was a lack of clarity between local authorities and schools over responsibilities and who was legally the dutyholder, so nobody was entirely clear who was in charge or who was responsible for what.
 - Some of the surveys were superficial having failed to look in places most likely to contain the most dangerous asbestos, they instead just identified the easily identifiable, but low risk, floor tiles and lavatory cisterns.
 - Some surveys failed to record that they had not looked in the less accessible places, so that contractors entered the areas as they were under the false impression that they had been assessed and no asbestos found. This resulted in actual and potential contamination of the contractors and the schools.
 - In some schools the asbestos management plans were superficial or even non-existent.
 - Regular reviews are meant to be undertaken but in some there was no evidence that had been done, and in one school recommendations made thirteen years ago had not been carried out.
 - Maintenance or building work can easily damage asbestos materials and therefore stringent measures have to be taken to ensure that contractors are trained, know of the presence of asbestos and are tightly controlled.
 - Although some schools had a reasonable control of contractors, in others the controls were seriously flawed to the extent that asbestos was damaged, the school contaminated and inevitably people exposed.
 - *“In the majority of schools the training of the individuals who are expected to manage asbestos was either poor or non-existent. It is not therefore surprising that the standards of asbestos management were unacceptable in the majority of schools. This should have been identified and corrected, but because there was no real awareness of asbestos matters amongst the school authorities and local authorities officials these faults passed undetected and uncorrected.”*
 - The report concluded: *“In the majority of the schools it was apparent that failures in asbestos management had led, or could have led, to damage to asbestos materials. In some there was evidence of the release of asbestos fibres causing localised contamination episodes and the possibility of exposure having occurred.”*

²⁰⁶ Assessment of asbestos management in schools Asbestos Testing and Consultancy Association 24 Jan 2010
<http://www.atac.org.uk/downloads/ATAC%20ASSESSMENT%20OF%20ASBESTOS%20MANAGEMENT%20IN%20SCHOOLS.%2022%20FEB%202010.pdf>

Union Surveys of Members

JUAC survey 2013

295. In the Autumn of 2013 the Joint Union Asbestos Committee (JUAC) undertook a survey of members and safety representatives in schools in order to gauge to what extent asbestos is being well managed in schools.

296. A total of 1353 responses were received, most respondents were teaching assistants, which is indicative of high levels of concern among this group of staff.

- 39% of respondents said asbestos was present in their school. 52% were not sure. 9% said no.
- 74% did not know who was responsible for day to day management of asbestos in their school.
- 21% were not confident that asbestos was well managed in their school. 60% were not sure. 19% were confident it was well managed.
- 90% had not received asbestos awareness training. 8% had.
- 66% of those who required asbestos management training did not consider they had received adequate training. (This question was only relevant to a total of 6% of the total number of respondents)
- 97% were unaware of the existence of the DfE on line asbestos guidance.
- Only 1% knew of someone in their school had accessed the guidance.
- 39% said that asbestos is not clearly marked in their school. 54% were unsure and 7% said it was.
- 4% said that contractors are not advised of the location of asbestos. 78% were not sure and 18% knew that they were advised.
- 27% said there was no clear process to follow if asbestos is disturbed. 64% were not sure and 9% said there is a process.
- 12% were aware of an asbestos incident in their school. 26% were not and 62% did not know.
- 60% of those who were aware of an incident were dissatisfied with how it was handled. 40% were satisfied.
- 10% had raised concerns over asbestos management. Of which 64% were not satisfied with the response. 36% were.
- 82% said health and safety consultations do not take place where asbestos management can be discussed. 18% said they do take place.
- 4% were sure the warm air heaters had not been checked. 3% were sure they had. 65% did not know whether they had or not. 28% said that their school does not have this type of heater.
- 3% said that WWII gas masks were still being handled and worn in their school. 8% said this did happen but not anymore. 13% said their school had always been aware of the risks. 77% did not know the answer to the question.

297. In conclusion: Overall the results reveal a disappointing picture of lack of knowledge and awareness in many areas, including provision of training and information, knowledge of who is responsible for asbestos management, whether asbestos is clearly marked, whether contractors are advised of the location of asbestos, whether consultation meetings take place and whether concerns, when raised, are properly addressed.

298. The large number of 'don't know' or 'not sure' answers is worrying in itself.

299. The majority of the respondents were teaching assistants. They are the very people who are likely to disturb asbestos by displaying the children's work with staples or drawing pins in AIB or hang mobiles and Christmas decorations from suspended ceilings. It is therefore most concerning that they have a lack of asbestos awareness.

300. These results show that 90% of teaching assistants have had no training in asbestos awareness. The percentage is higher than that found in the first HSE study of schools outside LA control. In that study 50% of people who carried out maintenance in their schools had not been trained. HSE only assessed whether caretakers, maintenance staff or managers had been trained, and made no attempt to assess whether other support staff or teachers had been trained.

Recommendation

- It is recommended that future HSE inspections determined whether all members of staff have been trained, as clearly they should be.

NAHT Survey

301. Head teachers are subject to a number of statutory duties in relation to the management of asbestos in schools and the National Association of Headteachers (NAHT) is concerned about the quality and availability of training and information on this issue.

302. An online survey was designed to assess members' awareness and understanding of these responsibilities, and their access to related training and information, in order to inform NAHT's work in this area.

303. The survey was conducted between 30th September and 14th October 2013. It was distributed to all head teacher members in England, Wales and Northern Ireland. A total of 1,278 responses were received, overwhelmingly from members in the primary education sector. There was an even distribution of respondents across geographical areas.

304. Findings were analysed from respondents in maintained schools compared to those in academies or other forms of non maintained schools and this is included in the report.

305. The key findings from the survey were:

- 43% of respondents had not received asbestos training. 57% had.
- Despite this lack of training, the majority of respondents (97.2%) indicated that the responsibility for managing contractors on site for day to day repairs rests with the school; a role which requires significant knowledge of asbestos management to ensure that risks are managed.
- 54% have in-house staff who carry out maintenance.
- 15% of the in house staff had not received asbestos training. 73% had and 12% did not know.
- 59% said that none of the governing body had received asbestos training. 17% had and 25% were not sure.
- Non-maintained school respondents appeared to be more fully aware of the range of their responsibilities in relation to asbestos, with 41.3% recognising all of their responsibilities in relation to asbestos, compared with 25.7% of maintained schools.
- 18% did not know who the 'dutyholder' was. There is a lack of clarity about the role of the Duty Holder and there was further confusion between responsibilities of the Governing Body and Local Authority.
- 7% were not aware of the requirements in the Control of Asbestos at Work Regulations in relation to dutyholders. 93% were.
- There is also confusion over the extent of school leaders' responsibilities, with only 30% of respondents recognising all of their responsibilities in relation to asbestos.
- Concerns were also highlighted about the quality of surveys, with members reporting that older surveys did not identify areas which were later found to contain asbestos.
- Whilst there was very little variation in responses between respondents working in maintained and non maintained schools, there were 17% of non maintained schools that had not had an asbestos survey in the last five years, as compared to only 9% of maintained schools.

- Findings for Wales and Northern Ireland are largely similar; however findings suggest a lower level of knowledge and appropriate management of asbestos in Northern Ireland than the sample as a whole (based on level of training and identifying duties)

306. NAHT concluded “It is clear that more training is needed for head teachers given the extent of their responsibilities in relation to asbestos, and as mentioned above, given the lack of confidence in the management by some of those who are responsible for it. Those respondents who are not head teachers, head of school or executive heads (and therefore not duty holders) accounted for only 20 of those respondents who had not received training. It is extremely worrying that just over half of head teachers have received training on asbestos.”

Voice survey

307. In 2010 the teaching and support staff union Voice published the results of a survey of their members. 790 responded. The majority were teachers but also responses were from support staff which includes nursery nurses, teaching assistant, school secretaries, midday supervisors, caretakers, bursars, cooks and technicians.

308. The results reflected what has been found in inspections and the subsequent surveys of headteachers, teachers and support staff.

309. The deep concern of all the school staff unions is that there is a continuing risk to staff and pupils in schools where little is known about where asbestos is and what condition it is in. In these circumstances it follows that asbestos cannot be safely managed.

310. The unions are calling for an informed risk assessment of asbestos in schools and proportionate control measures. At school level, head teachers, staff and governing bodies must be adequately informed and adequately trained.

311. The following are the results:

- 52% of respondents said that no one in their workplace had received training. 23% had and 25% didn't know
- 72% said that their employer does not supply information about asbestos management. 23% do and 5% did not know.
- 67% said they had not been told where asbestos was in their building. 28% had been and 5% did not know.
- 49% had not been informed of the results of an asbestos survey. 44% had and 7% did not know.

312. There are a significant number of schools where staff are not aware of the dangers of asbestos, they do not know where it is and are not involved in its management. How can they be expected not to damage it and to ensure that pupils do not damage it?

313. This survey provides substantial evidence that urgent action is required to improve standards of asbestos management, particularly training for staff and authorities.

314. Voice called for:

The creation of an action plan for asbestos in schools, including: an audit of the extent, type and condition of asbestos in educational institutions and the standard of management; an assessment of the risk to those who work and learn in educational institutions; the provision of relevant training and guidance and the raising of awareness of the dangers of asbestos in these institutions so they can

manage asbestos risks appropriately; and for all the asbestos to be identified and removed in a phased programme when schools are refurbished.”

Question 9

9. What could be improved, how and by whom? What practical difference would your suggestion make to duty holders, school staff and pupils?

Mandatory training would allow asbestos to be managed effectively

Recommendation

- It is recommended that as schools are expected to manage their asbestos then governors, headteachers, support staff and teachers have to be trained, and the training should be mandatory. This will allow schools to effectively manage their asbestos. See the answer to question 1b.

Proactive inspections would identify flaws in asbestos management and would improve standards

Recommendation

- It is recommended that pro-active inspections are reinstated in all schools to determine the standards of asbestos management. This would identify those schools where asbestos is not being effectively managed, and allow advice to be given to bring them up to satisfactory standards. See the answer to question 1b.

Widespread air sampling in schools would identify risk

315. Frequently it is only air sampling that has identified that asbestos fibres were being released into the rooms. In some cases it is probable that the releases had been taking place for many years but had passed unnoticed. For instance the release of amosite fibres from classroom cupboards, slamming doors, hitting walls and columns, from displaying children’s work with drawing pins and from heaters were only identified by air sampling.²⁰⁷

316. The hazard is the presence of the asbestos, but the risk to the occupants is when the asbestos fibres become airborne and can be inhaled. Because the danger is the inhalation of airborne fibres there should be a method in schools of identifying whether asbestos fibres are being released into the rooms.

317. A leading epidemiologist gave evidence to the Education Select Committee and emphasised the importance of measuring airborne asbestos fibre levels in schools. He stated: *“You want a very focused approach to identifying schools, if any, where the levels are much higher... At the moment, the air sampling is so expensive. What I would recommend to the HSE is —it is easier said than done—some procedure whereby you are getting a very large volume air sample over a period of time, and then you measure the asbestos fibres in it. It is expensive but it is probably not as expensive as what is being done now.”*²⁰⁸

²⁰⁷ Asbestos in Schools The scale of the problem and the implications. 30 Oct 2011 P11-25
<http://www.asbestosexposureschools.co.uk/pdfnewslinks/AiSreportonASBESTOSINSCHOOLS.pdf>

²⁰⁸ Parliamentary Education Select Committee hearing ‘Asbestos in Schools.’ Question 29. 13 Mar 2013

“...All that matters is whether or not kids are breathing in asbestos and, until you find that out, everything else is hot air.”²⁰⁹

318. The Committee on Carcinogenicity also concluded that air sampling is necessary in schools so that present levels can be determined and a more accurate assessment could be made of the risks to the occupants. They recommended that: *“The information on levels found in schools is largely historical and there is a lack of contemporary data on asbestos in schools. In view of the importance of this issue, there would be a benefit in generating new exposure data.”*²¹⁰
319. AiS members have conducted trials to perfect a system where quantification can be achieved to very low levels by sampling large volumes of air, using reduced area filters and examining more fields. There is however the ongoing cost of analysis. Therefore in January 2014 AiS attended a briefing on ‘ALERT,’ an asbestos fibre detector that gives an instant readout and differentiates between asbestos and other fibres.²¹¹ The system is presently in the final stage of development and is a considerable improvement on other instant fibre detectors. It has the potential to act as a ‘smoke’ alarm so that it indicates when asbestos fibres are detected,²¹² at which point conventional sampling could be carried out to determine the precise level. Trials are presently being carried out by the designers to determine its suitability for schools. The cost is the initial purchase of the equipment but the running costs are minimal as it eliminates the cost of analysis. The cost of the equipment will not be expensive at a few hundred pounds, but is to be finalised.
320. The CoC and other experts have recommended that air sampling should take place in schools. HSE has offered no solution how the recommendations can be fulfilled, instead they have opposed such action. The HSE representative on the DfE Asbestos Steering Group stated that air sampling has no place in the management of asbestos in schools. They have also refused to have a trial to perfect the

²⁰⁹ Parliamentary Education Select Committee hearing ‘Asbestos in Schools.’ Question 37. 13 Mar 2013

²¹⁰ COMMITTEE ON CARCINOGENICITY OF CHEMICALS IN FOOD, CONSUMER PRODUCTS AND THE ENVIRONMENT STATEMENT ON THE RELATIVE VULNERABILITY OF CHILDREN TO ASBESTOS COMPARED TO ADULTS. CC/13/S1 7 Jun 2013
http://www.iacoc.org.uk/statements/documents/Asbestosinschoolsstatement_000.pdf

²¹¹ ALERT briefing Hertfordshire University Professor Kaye 22 January 2014

²¹² ALERT instant asbestos fibre detector

http://www.opticsinfobase.org/view_article.cfm?gotourl=http%3A%2F%2Fwww%2Eopticsinfobase%2Eorg%2FDirectPDFAccess%2FECEAB9FA%2DB3C6%2D0F8E%2DC0F8AAD569066ECE%5F253224%2Foe%2D21%2D9%2D11356%2Epdf%3Fda%3D1%26id%3D253224%26seq%3D0%26mobile%3Dno&org= Real-time detection of airborne asbestos by light scattering from magnetically re-aligned fibers Kaye, Stopford 6 May 2013 | Vol. 21, No. 9 | DOI:10.1364/OE.21.011356 | OPTICS EXPRESS 11356

http://www.eurekaalert.org/pub_releases/2013-05/tos-oad050213.php

<http://www.alphagalileo.org/ViewItem.aspx?ItemId=130836&CultureCode=en>

<http://news.cision.com/university-of-hertfordshire/r/new-on-site-asbestos-detector-improves-work-place-safety.c9409767>

Reuters - <http://www.reuters.com/article/2013/05/02/dc-optical-society-idUSnBw025915a+100+BSW20130502>

Wall Street Journal - <http://online.wsj.com/article/PR-CO-20130502-911411.html>

Phys.org - <http://phys.org/news/2013-05-on-site-asbestos-detector-workplace-safety.html>

e-science - <http://esciencenews.com/sources/physorg/2013/05/02/on.site.asbestos.detector.offers.promise.better.workplace.safety>

Redorbit - <http://www.redorbit.com/news/technology/1112836558/better-workplace-safety-on-site-asbestos-detector-050213/>

Mesothelioma expert - <http://www.mesotheliomaexpert.org/on-site-asbestos-detector-ids-fibers-in-real-time-rd-magazine-r-d-magazine/>

Laser focus world <http://www.laserfocusworld.com/articles/2013/05/Hertfordshire-asbestos-detector.html>

Electronic Component News - <http://www.ecnmag.com/news/2013/05/site-asbestos-detector-offers-promise-better-workplace-safety>

Gizmag - <http://www.gizmag.com/portable-asbestos-detector/27365/>

R&D Mag - <http://www.rdmag.com/news/2013/05/site-asbestos-detector-ids-fibers-real-time>

PDD net - <http://www.pddnet.com/news/2013/05/asbestos-detector-offers-promise-better-workplace-safety>

Street insider - <http://www.streetinsider.com/Press+Releases/On-site+Asbestos+Detector+Offers+Promise+of+Better+Workplace+Safety/8298571.html>

Green Technology - <http://green.tmcnet.com/news/2013/05/02/7107201.htm>

Tmc net - <http://www.tmcnet.com/submit/2013/05/02/7107201.htm>

Select Science - <http://www.selectscience.net/product-news/The-Optical-Society/On-site-Asbestos-Detector-Offers-Promise-of-Better-Work-Place-Safety/?&artID=28638>

News Blaze - <http://bw.newsblaze.com/story/2013050206514100001.bw/topstory.html>

Eon business wire - <http://eon.businesswire.com/news/eon/20130502005917/en/On-site-Asbestos-Detector-Offers-Promise-Workplace-Safety>

Business wire - <http://www.businesswire.com/news/home/20130502005915/en>

methodology for widespread air sampling in schools.²¹³ A senior HSE director gave evidence to the Education Select committee, dismissed criticism of the present regulations, and stated “*You heard one criticism, which was that they should be replaced with sampling, which we disagree with. Sampling is a snapshot. It would be in the order of £5,000 to £10,000 per school to carry out the sort of sophisticated sampling that would give you meaningful information.*”²¹⁴ There are other options that should be examined rather than dismissing the whole concept of widespread air sampling.

321. The present system does not identify whether people are being exposed to asbestos whereas widespread air sampling offers a solution. The Minister of State for Schools has reflected the high priority DfE place on child safety in schools by saying: “*If the evidence was that asbestos posed a risk to school staff and pupils then, regardless of cost, measures would be taken to ensure that schools were made safe.*”²¹⁵ DfE should therefore support a trial of widespread air sampling that has the potential to identify those schools at risk so that measures can be taken to make them safe.

322. An asbestos survey identifies the hazard, but rarely identifies the risk, whereas widespread air sampling in schools would identify the risk and would allow targeted measures to be taken to prevent further releases. It would be cost effective as remedial measures could be targeted at those schools, and even rooms, where there really is a problem. In the long run it would not only save lives, it would also save money.

Recommendation

- It is recommended that further trials are carried out to perfect the methodology for widespread air sampling in schools.

Environmental level for schools would reduce the risks to staff and pupils

323. Workplace airborne fibre control levels for asbestos are applied to the occupants of schools. This is unsafe and inappropriate. There is no known threshold exposure to asbestos below which there is no risk. In addition workplace levels were designed for adults and not children, and it is known that children are more at risk.

324. The Clearance Indicator is 0.01 f/ml or 10,000 fibres in a cubic metre of air. It is a workplace level for asbestos contractors, but, because there is no other standard, it has been adopted by default as a level at which classrooms can be re-occupied following work on asbestos or after an asbestos incident in a school. But it is not a safe level as a person will inhale 6000-10,000 fibres an hour. HSE advise it is not an acceptable environmental level for normal occupation.²¹⁶

325. The World Health Organisation acknowledged the absence of a known threshold and stated “*No threshold has been identified for the carcinogenic risks to chrysotile.*”²¹⁷ The HSE’s Hodgson and Darnton paper on risks from asbestos exposure examined the various studies into the level of exposure that can cause mesothelioma and concluded “*All these observations suggest that relatively brief exposures may carry a low, but non-zero, risk of causing mesothelioma. Taking this evidence together we do not believe there is a good case for assuming any threshold for mesothelioma.*”²¹⁸ The evidence was re-examined by the government’s advisory committee on science, WATCH, who in 2011 confirmed that “*The risk will be lower, the lower the exposure, but “safe” thresholds are not identifiable.*”²¹⁹

²¹³ DfE Asbestos Steering Group meeting contemporaneous notes Lees 14 Jun 2012

²¹⁴ Parliamentary Education Select Committee hearing ‘Asbestos in Schools.’ Question 56. 13 Mar 2013

²¹⁵ Meeting Minister of State for Schools David Laws/ AiS 19 Nov 2013. Lees contemporaneous notes

²¹⁶ HSC CAWR 2006 Work with materials containing asbestos ACOP para 17 p68. Personal correspondence HSE Gibson/Lees 1 Dec 2012

²¹⁷ World Health Organisation Elimination of asbestos related diseases. Sep 2006 . WHO environmental Health criteria 203: Chrysotile Asbestos 1998

²¹⁸ Hodgson & Darnton The quantitative risks of mesothelioma and lung cancer in relation to asbestos exposure. Epidemiology and medical statistics unit HSE. Ann Occup Hyg vol 44 p583 Is there a threshold? 2000)

²¹⁹ Final WATCH Position on asbestos risk assessment: February 2011

326. A report commissioned by the Medical Research Council concluded that the background asbestos fibre level in schools with asbestos in good condition is 0.0005f/ml²²⁰ (500 fibres in a cubic metre). The courts and expert medical opinion is that for legal purposes exposures above that level are “significant” and can materially increase the risk of mesothelioma developing.²²¹ The Clearance Indicator is twenty times greater than this background level and will therefore in both medical and legal terms materially increase the risk of mesothelioma developing.
327. In 1979 the government’s advisory committee on asbestos warned about the increased risk to children *“As children can be expected to live longer than adults they have more chance of being affected by carcinogens with long latent periods.”*²²² In 1983 the Department for Education concluded that *“It may therefore be not unreasonable to suggest that in schools the levels should be lower than those for an “average” population and a factor of, say, 1/80th to 1/100th of the occupational limits should be adopted.”*²²³
328. The proposals have never been adopted, however the Netherlands Government have accepted the recommendations of a report by the Health Council of the Netherlands that considers that their present occupational levels are unsafe and recommends an occupational exposure limit for amosite some 300 times less than the EU level, and an environmental level some 3,000 times less than their present occupational level, at at 0.000003f/ml or 3 fibres in a cubic metre of air.²²⁴ The levels are scheduled to be implemented in 2014.²²⁵
329. Luxembourg has already adopted an environmental asbestos fibre level at 0.0005f/ml or 500 fibres in a cubic metre of air.²²⁶
330. In 2013 the Committee on Carcinogenicity confirmed that children are more vulnerable to asbestos exposure than adults. This provides further evidence that the present workplace levels are unsuitable for children in schools, and that a far lower level is long overdue.

Recommendations

331. The following are recommendations:
- It is recommended that an environmental airborne fibre level is adopted in schools in the United Kingdom.
 - That the proposal to introduce an environmental level for schools is part of the review of asbestos policy for schools.
 - That the level takes into account the increased vulnerability of children to asbestos.
 - That the level should be significantly lower than the present Clearance Indicator.
 - What level it should be set at, and the means of measuring it, should be decided by an expert panel.
332. The case for adopting an environmental level for schools is at this link:²²⁷

²²⁰ Fibrous Materials in the Environment Institute for Environment and Health. P71

²²¹ High Court QBD Liverpool District. The Hon Mr Justice Nicol . Dianne Willmore and Knowsley Metropolitan Borough Council 24 July 2009 Para 8, 57b . Supreme Court Judgment Sienkiewicz (Administratrix of the Estate of Enid Costello Deceased) (Respondent) v Greif (UK) Limited (Appellant) Knowsley Metropolitan Borough Council (Appellant) v Willmore (Respondent) 9 March 2011

²²² Asbestos. Vol 1 Final report of the advisory committee. The risk to children. 1979 Para 112 P60

²²³ DfEE AM on asbestos AB 20/17/02 D 2 Jun 1983

²²⁴ Asbestos Risks of environmental and occupational exposure Health Council of the Netherlands 3 June 2010 para 8.2 P83

²²⁵ Professor A. Burdorf/Lees personal correspondence 2 Dec 2012. And 10 Jun 2013

²²⁶ E-mail Head of Unit - Social Affairs European Parliament Faible taux d'amiante détecté dans un groupe du CPE 2. 18 Mar 2014

²²⁷ Case for an environmental level for the occupants of schools AiS JUAC 14 Jun

2014 <http://www.asbestosexposureschools.co.uk/pdfnewslinks/Environmental%20asbestos%20fibre%20level%20for%20schools%2014%20Jun%2013.pdf>

A system needs to be introduced so that future mesothelioma claims from former pupils are met

333. In general school pupils in academies and free schools are not insured against asbestos risks. In March 2012 the Schools Minister confirmed in a Parliamentary written answer that "*there is a general asbestos exclusion for public liability insurance.*"²²⁸ This means that if in the future a former pupil develops mesothelioma because of their asbestos exposure at school that in many cases there is no contingency to meet their claim. It is essential that a system is introduced so that all claims can be met.

334. The risk to children from asbestos in schools is brought into stark relief when insurance companies consider that the risks are so great that they are uninsurable.

335. However, in the absence of commercial insurance, future claims can still be met in local authority schools as they self insure. But most academies and free schools do not have the resources to do so.

336. At the DfE Asbestos Steering Group meeting of 9th February 2012 DfE officials were asked how academies and free schools could meet any future asbestos related claims from former pupils or non-employees.²²⁹ Since then the matter has been raised in subsequent meetings and a series of Parliamentary questions have been tabled, however as at 17th March 2014 no satisfactory answers have been given. It is therefore apparent that in general there are no viable means in place to meet future asbestos related claims from former pupils of academies and free schools.

337. As at 1st March 2014 there are 3,689 academies and 175 free schools,²³⁰ so this is a problem that potentially affects thousands of governors and millions of pupils and non-employees in schools. If asbestos is present in a school there is always the potential for claims.

Academies and free schools cannot be expected to manage asbestos if they are not insured

338. The lack of asbestos risk insurance cover for pupils and non-employees has far reaching implications for the government's policy of managing asbestos in schools rather than removing it.

- The Government cannot expect schools to manage their asbestos if they are unable to obtain insurance for the majority of the people in the school, the pupils.
- The Government cannot expect people to be governors of academies or free schools if they could be liable for settling any future claim.
- The Government cannot expect parents to send their children to schools that contain asbestos if they know that the schools cannot obtain asbestos risk insurance cover for their children.
- DfE should make governors aware of the risks from asbestos and inform them of the implications if they do not have full public liability asbestos risk insurance. DfE should not permit academies and free schools to sign an agreement that could have far reaching implications for their financial viability without informing them of the issues.

Recommendations

339. It is recommended that the policy review examines the problems associated with asbestos risk insurance cover and resolves the following issues:

- The Government's stated policy is transparency, so it has a duty to inform governors of academies and free schools that they could be legally and financially liable for future asbestos related claims.

²²⁸ Parliamentary written answer Schools asbestos. Ian Lavery MP/ Minister of State Nick Gibb MP 21 Mar 2012

²²⁹ DfE Asbestos Steering Group AiS note of meeting 9 Feb 2012

²³⁰ DfE web-site. Number of open academies. Number of open free schools. Downloaded 3 Dec 13

- Parents should also be told when their children are in a building that contains asbestos but there is no insurance cover for their children.
- The laws on asbestos risk public liability insurance should be brought into line with the laws on employers' liability insurance so that for insurance purposes the injury occurred at the time of exposure.
- All policies should be worded so that it is clear whether or not future asbestos related claims from pupils and non employees will be met.
- If asbestos management is to be a viable option then there is a practical and moral obligation on the Government to ensure that there are means in place to meet those claims.

340. A briefing on the absence of asbestos risk public liability insurance is at the link: ²³¹

Question 10

10 What would be the estimated cost of any improvements that you suggest? How should these improvements be funded?

341. The scale of the asbestos problem is not known because DfE has never carried out an audit of asbestos in schools and has specifically excluded asbestos from the PDSP. Therefore costs are unknown and financial forecasts cannot be made.
342. Neither does DfE have a data bank of the extra costs incurred by the presence of asbestos when maintenance or refurbishment is undertaken. Over the years Nottinghamshire has built up such a data bank so that realistic estimates can be made of the cost of maintaining their buildings that contain asbestos. It is recommended that a similar system is adopted on a national scale.
343. A cost saving would be made if widespread air sampling was adopted. The cost will depend on the system adopted. However if the trials of the ALERT system prove that it is a viable solution then the cost will be the initial purchase of the equipment, and the running costs will be minimal. The cost of the equipment has not yet been finalised, however it will be a few hundred pounds.
344. Widespread air sampling would identify the risk and would allow targeted measures to be taken to prevent further releases. It would be cost effective as remedial measures could be targeted at those schools, and even rooms, where there really is a problem. In the long run it would not only save lives, it would also save money.
345. The cost of training is very inexpensive compared to the potential costs when an asbestos incident occurs because people are not trained. Asbestos awareness courses can cost in the order of £70 per person, but costs are reduced when a number of people from the same organisation attend. This has the advantage that the course can be tailored to the needs of a specific school and can cost from about £500 for twenty people. An asbestos management course can be in the order of £300 per person and

²³¹ Lack of asbestos risk public liability insurance M. Lees 4 Dec 2013

http://www.asbestosexposureschools.co.uk/pdfnewslinks/INSURANCE%20response%20to%20DfE%2010%20Sep%2012%20_2_.pdf?zoom_highlight=insurance#search=

refresher training about £100. On line training is cheaper but cannot offer the same level of interaction and feedback as face to face training does. The combination of the two can be an option.

346. If carried out rigorously the present policy of managing asbestos for the remaining life of the buildings is expensive and has to be compared with the cost of implementing the measures proposed above and in previous sections. Taking action to remove asbestos in the long run is often more cost effective as it avoids the ongoing expense of effectively managing asbestos, the extra cost incurred when even the smallest task is carried out, and the considerable costs when asbestos is disturbed. The cost of an environmental clean and the destruction of equipment can amount to millions of pounds.

347. On top of that are the extra costs of insurance, if it can be obtained, and potential future payments from limited funds if it cannot. In addition are the potential costs of fines if asbestos regulations are infringed. If people are exposed and subsequently develop mesothelioma then costs of damages are in the order of £100,000 to £300,000. In addition to the financial costs are the unquantifiable costs of disruption to school life, destruction of pupils' work and the anxiety caused.

348. In the 1980s the Association of Metropolitan Authorities (AMA) had a policy of progressive removal by prioritising the most dangerous materials. They reasoned that it is safer and, in the long run, it is also cheaper. They stated:

*"A policy of progressive removal should be adopted... Progressive removal is thought to be both the safest and most cost effective solution, given that any asbestos is a hazard, however slight, and that buildings will be occupied and have to be maintained, and inadvertent disturbance is a continuous risk. Further, asbestos will have to be removed separately at some stage, even if this is prior to demolition."*²³²

349. The costs of maintaining a school are greatly increased when asbestos is present. Even simple tasks such as cleaning a light fitting attached to an AIB ceiling tile has to be performed under controlled conditions. The area has to be segregated and all surfaces covered in a protective sheet of polythene. The person carrying out the work has to wear protective clothing and a respirator and a specialist type 'H' vacuum has to be used. Therefore a simple task normally taking a few minutes using a duster becomes a major task involving specialist equipment and from start to finish could take a considerable length of time. The financial cost therefore reflects that. Similar precautions have to be taken when fixing a picture to wall or painting a wall or ceiling that is made of AIB.²³³

350. The void above a suspended ceiling contains the services such as electrical wiring, heating, plumbing and gas. All of which should be periodically checked and maintained. The presence of asbestos ceiling tiles, asbestos materials or debris in the ceiling void restricts access and impose severe restrictions on what can be done and by whom. Access to the void will always have to be done under stringent control conditions and often qualified asbestos experts will have to be employed. The implication of this is that some schools do not carry out the safety checks and routine maintenance they should, which has the end result that the services are not properly maintained. However if the school is safely maintained and the asbestos regulations are complied with, then the extra costs are considerable purely because of the presence of asbestos.

351. In addition to the financial costs of maintenance and management are the costs incurred when schools are shut because of an asbestos incident or when unexpected asbestos is found. For example:

- Cwmcarn High School was shut when an inspection of the condition of its asbestos assessed that it was unsafe. The sum allocated towards decanting staff and pupils to another school for fourteen

²³² Association of Metropolitan Authorities. Asbestos Policy and Practice in Local Authorities. Sep 1985 para 2,2.8 p 2

²³³ HSE Asbestos Essentials Task manual.

months was £1.4 million.²³⁴ That was in addition to the £1million estimated cost of asbestos remediation.²³⁵

- An environmental clean of a small village school after asbestos was disturbed cost £190,000.²³⁶
- Another cost £175,000 for an environmental clean of a small primary school and the pupils were decanted for eight weeks. The Council were fined £50,000.²³⁷
- A secondary school was closed for seven months after contractors disturbed AIB ceiling tiles while upgrading the school's electrical system: *"Pupils lost course work, teachers had their notes destroyed and all the school's computers were ruined because of the work.... The refit eventually cost £6.5million. A former student said "I was doing my GCSEs at the time and it had a big impact on us... The Chairman of Governors said "It was very traumatic for the school.."*²³⁸
- AIB panels were damaged on a kitchen sterilizer: *"Durham County Council estimated it cost around £40,000 to replace contaminated equipment and to make the kitchen and dining area of the school safe before staff and pupils returned."*
- Twelve improvement notices were issued to Walsall Council when they failed to comply with asbestos remedial guidance for their CLASP schools. The financial cost of the remedial work were estimated as *"surveys and any clean-up cost costing £2million- will now be carried out at all affected schools."*²³⁹
- South Ayrshire Council closed one of its schools permanently because of a backlog of repairs had built up because the presence of asbestos had meant that maintenance could not be carried out. It would have cost £13.9million to address the outstanding maintenance issues: *"Inspectors say the school is in urgent need of repair and they have serious concerns about its safety...A Council source said yesterday..."It is a potential death trap"...*
"It was reported to the committee that the combination of the ages of all the buildings, including construction materials at the time they were built, and a sustained lack of maintenance, partly due to access problems because of asbestos, had given rise to major concerns relating to water, gas and electrical supplies, fire safety and general repair."
*The consultant Quantity surveyor who carried out the condition survey indicated that the cost of the work required to address the outstanding maintenance issues across the campus would be approximately £13.9m.*²⁴⁰
- Remedial actions and an environmental clean in a CLASP school cost £1.3 million.²⁴¹ The same problem was identified in six other schools and a community centre in the same local authority. They were also closed for a £4m refurbishment.²⁴²

²³⁴ Caerphilly Council. Report to Council . Cwmcarn High School 23 Oct 2012

<http://212.219.240.82/stellent/groups/public/documents/reports/045741.pdf>

²³⁵ Ensafe Cwmcarn High School Asbestos remediation options proposal. 17 Mar 2013.

²³⁶ Western Daily Press £1,000 fine for causing Somerset school asbestos scare: <http://www.legacythisissomerset.co.uk/1-000-fine-causing-school-asbestos-scare/story-12311196-detail/story.html#ixzz2wd504mYy>

²³⁷ 24dash.com Derby City Council fined £50,000 after school asbestos scare. Silverhill primary school Derby 16 May 2007

²³⁸ Northants Evening Telegraph. £100,000 fine for asbestos blunder 6 Apr 2007

²³⁹ HSE improvement notices 12 Sep 2009 300915118 300915580 300915746 300915802 300915845 300915917

300915957 300915985 300916173 300916188 300916208 300916219

http://www.hse.gov.uk/notices/breach/breach_list.asp?ST=B&SN=F&EO=%3D&SF=NN&SV=300915580

Asbestos fear at schools Express and Star 20 Oct 2007

²⁴⁰ South Ayrshire Council news. Mainholm Academy to close April 2007. The Daily Record. Exclusive: School branded death trap for kids 19 Apr 2006.

South Ayrshire Council news. Action being taken to ensure health and safety is maintained at Mainholm 7 Nov 2006. South Ayrshire Council Consultative document Proposed closure of Mainholm Academy Jan 2007 p4. South Ayrshire Council Consultative document Proposed closure of Mainholm Academy Jan 2007 p5.

- A school in Aberdeen was closed for eighteen months at a cost of £4million: “Walker Road Primary School in Aberdeen was forced to close after potentially deadly asbestos was found. ...All 400 pupils were evacuated and “temporarily” taught at two other schools. On their return, further asbestos was discovered ...it was 18 months before a £4million refit made it safe.”²⁴³

352. There are other costs when teachers, support staff and former pupils develop mesothelioma:

- There are increasing numbers of civil actions against schools and local authorities from teachers, support staff and former pupils suffering from mesothelioma from their asbestos exposures at school. Most are settled out of court. The settlements vary. For example a former pupil died of mesothelioma, her case went to the Supreme Court who upheld the judgment that she had been negligently exposed to asbestos at school, and her husband was awarded £240,000 in damages. A teacher was exposed to asbestos in two London Schools and was awarded £180,000 damages. The money was taken from a reserve fund of £85million to meet the asbestos claims of former employees of the Greater London Council (GLC) and the Inner London Education authority (ILEA).²⁴⁴
- ILEA have a reserve fund so that they can settle future claims, and other councils similarly pay awards out of their own funds. However many schools outside local authority control will also have to meet future claims from their own resources as in general asbestos risk public liability insurance is not available. In the case of some academies and free schools that could put a substantial strain on their financial resources.²⁴⁵

353. The cost of leaving asbestos in place and managing it can therefore be very expensive and a continuous drain on resources. Any improvements in the present DfE policies would cost money, but pale into insignificance in comparison to the costs of not taking action.

354. If asbestos remains in place the maintenance and management costs are high and inevitably increase when a building has not been well maintained. The situation is exacerbated when the fabric of the building, facilities and services cannot be checked, serviced or updated because of the presence of asbestos. The potential for them to fail increases so that emergency action has to be taken when corroded pipes burst, electrical wiring deteriorates or flat roofs leak.

355. If asbestos is present it invariably has to be removed before emergency repairs can be carried out. The disruption to the school can be considerable, as can the costs. As the repair work and asbestos remediation is unplanned then funds have to be found rapidly from already overstretched and previously committed budgets. The costs and disruption would have been less if the asbestos had been removed as part of a planned programme of asbestos removal. Priorities would have been established for the removal of asbestos materials causing the greatest problems and highest risk, timetables set and sound financial forecasts made. In the long run the present system of reacting once a problem has occurred is more expensive and disruptive than a planned policy of progressive removal where costs are known and can be spread over time. The present system is also more dangerous.

241 IC Wales Refit of school shut by asbestos Feb 22 2007

242 Asbestos Survey closes 8 Buildings

243 <http://www.sundaymail.co.uk/news/newsfeed/2008/10/19/cost-of-a-clean-up-78057-20817889/> <http://www.massltd.com/news009.htm> HMIE Walker Road School Aberdeen City Council 2 September 2008 Sunday Mail Cost of clean up 19 Oct 2008

244 London Evening Standard £85m fund set up for soaring asbestos claims 27 Oct 2009 <http://www.thisislondon.co.uk/standard/article-23761094-pound-85m-fund-set-up-for-soaring-asbestos-claims.do>

245 See In general asbestos risk insurance is not available for pupils.

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/INSURANCE%20Schools.%20lack%20of%20asbestos%20risk%20public%20liability%20insurance%204%20Dec%2013.pdf>

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/INSURANCE%20Schools.%20lack%20of%20asbestos%20risk%20public%20liability%20insurance%204%20Dec%2013.pdf>

356. If asbestos is left in place then it purely defers the cost as it will have to be removed one day when the building is demolished. That cost can be considerable and if asbestos has been left in place, it is unavoidable. It should therefore always be factored into a comparison of costs of maintaining a building that contains asbestos with the cost of progressive removal. An example is:

"An extra £400,000 needs to be found to rebuild a Derbyshire secondary school after "significant levels" of asbestos were found. The £7 million rebuilding project at Aldercar Community School is expected to cost the extra £400,000 because of increased demolition costs and significant levels of asbestos which need to be cleared.

*The Langley Mill school has some of the worst conditions of any school in the county and these mainly relate to a lightweight timber-frame building "that is past its useful life", according to a Derbyshire County Council report.*²⁴⁶

357. An example of a commercial organisation that took the decision to progressively remove asbestos from their buildings is M&S. They have an ongoing policy of removing AIB ceiling tiles when their stores are maintained or refurbished,²⁴⁷ and where possible all the ceiling tiles are removed as part of the work.²⁴⁸ The removal is performed safely under strictly controlled conditions. During major refurbishments Tesco has also removed all asbestos from its stores.²⁴⁹ It is apparent that these two firms consider that the occupants of their stores are not at risk of being exposed to asbestos once the AIB tiles and other asbestos have been removed. It is also reasonable to assume that, as commercial organisations, they consider the operation is cost effective, as once the asbestos has been removed they can easily access the ceiling voids to maintain the services and no longer do they have the continual cost, and potential risks, associated with managing asbestos in their stores.

358. In some circumstances where asbestos materials are not accessible to children, or the asbestos is firmly held in its matrix, such as resin based lavatory cisterns or an asbestos cement roof on a boiler house, then a system of asbestos management can work. Where asbestos is accessible to children and more friable then selective removal is invariably better. Both ways forward rely on long term management and planning. If that planning is non-existent or the systems inappropriate and inefficient then both have the potential for sudden huge sums of unplanned expenditure and for very high profile publicity followed by emotive and expensive demands for immediate action when asbestos management failings are discovered or children have been exposed to fibres.

359. A blanket ruling that asbestos remains in place is clearly inappropriate, particularly in schools where it has deteriorated and the risks are growing. The alternative extreme position for the immediate removal of all asbestos is also impractical. Whether there is a policy of management or progressive removal, both ways forward require careful budgetary planning to ensure costs and risks are properly managed. The financial costs can remain within budget but only when they are based on sound information. At present long and short term financial management and planning at DfE is not based on sound information on the extent and costs associated with asbestos in the school estate, therefore they are unable to assess costs, set priorities or plan expenditure. This lies at the root of the problem.

²⁴⁶ [Derby Telegraph](#) February 25, 2014

²⁴⁷ Personal communication Stear/Lees 21 Aug 2013

²⁴⁸ Presentation. Retail Asbestos Working Group. BOHS Roadshows The management of asbestos containing materials in the retail sector. Jun 2-13. Stear, Blackburn. Personal communication Blackburn/Lees 1 Oct 2013

²⁴⁹ Tesco closed due to asbestos removal Sep 2012 <http://asbestosindustrynews.co.uk/2012/09/carlsle-city-centre-tesco-closed-due-to-asbestos-removal/#sthash.VT1yPTli.dpufm> Tesco store to close for refurbishment 31 Aug 2012 http://www.salisburyjournal.co.uk/news/9903930.Tesco_store_to_close_for_refurbishment/

360. Even if a policy of progressive removal is adopted many schools will require stringent measures to manage asbestos over an extended period of time. It is therefore essential that DfE ensures that systems are in place so that schools can manage their asbestos effectively. Training of governors and schools staff is an integral part of that. Also, if studies prove that widespread air sampling is viable, then that would provide a platform to assess which schools are most at risk and priorities can be set. The cost of training and widespread sampling would be offset by the substantial savings in preventing people being exposed to asbestos and would enable funds to be targeted where they are needed most.
361. If the Government is to set priorities for its limited funds then a cost benefit analysis is required. But that analysis can only be completed once the scale of the problem and the risks are known. But the scale of the problem is not known and neither are the financial costs of managing asbestos compared to removing it.
362. The benefits of one policy over the other need, in part, to be based on how many lives can be saved. Department for Transport research examined public opinion which concluded that it is broadly acceptable to spend £1,645,822 to save a life on the roads.²⁵⁰ But that figure does not take into consideration societal concerns about the risks to children. Where they are at risk the 'acceptable' cost of removing that risk is higher and the 'acceptable' level of risk is far lower.
363. The cost benefit analysis cannot just consider the financial cost as it must also factor in society's concern about causing harm to children and ultimately causing their deaths. HSE's manual for their decision making process states *"Hazards giving rise to societal concerns share a number of common features. They often give rise to risks which could cause multiple fatalities; where it is difficult for people to estimate intuitively the actual threat; where exposure involves vulnerable groups, eg children."*²⁵¹
364. HSE's framework for assessing a risk makes clear that *"Both the level of individual risks and the societal concerns engendered by the activity or process must be taken into account when deciding whether a risk is unacceptable, tolerable or broadly acceptable."*²⁵² They consider that *"An individual risk of death of one per million per annum for both workers and the public ...should be used as a guideline for the boundary between the broadly acceptable and tolerable regions."*²⁵³
365. The number of teachers dying from mesothelioma exceeds the criteria for an 'acceptable' number of deaths and the estimate for the number of deaths amongst former pupils far exceeds the value.
366. The process involved in making a cost benefit analysis must therefore be open to public scrutiny and decisions and policy must take into consideration both the financial costs and society's concerns.
367. But first, in order to carry out the cost benefit analysis, one has to know how many people have died and how many will die. It is known how many teachers have died from mesothelioma and an estimate has been made, based on the rising numbers of female deaths, that between 200 and 300 former pupils will die each year from their asbestos exposures at school.²⁵⁴
368. That figure was based on their asbestos exposure during the 1960s and 1970s. However it is not known what the airborne fibre levels were then, and it is not known what they are now. Widespread air sampling would identify present fibre levels and how many schools are at risk. This would not only mean that remedial actions could be taken, but it would also fulfil CoC's recommendation for air sampling so

²⁵⁰ Accidents Sub-Objective TAG Unit 3.4.1 Department for Transport. Transport Analysis Guidance (TAG) January 2014

http://www.dft.gov.uk/webtag/documents/expert/pdf/U3_4_1-Jan%202014.pdf

²⁵¹ HSE Reducing risks protecting people. P12

²⁵² HSE Reducing risks protecting people. P3

²⁵³ HSE Reducing risks protecting people. P3

²⁵⁴ Education Select Committee hearing Asbestos in schools. Professor Peto oral evidence. 13 Mar 2013. And E-mail Peto/Lees

that present levels are known and a reasonable assessment of risk can be made. An assessment of how many people are likely to die from their asbestos exposure at school can then be made and entered into the cost benefit analysis calculation.

369. The DfE policies have so far rested on the blanket assurance that policies are working and staff and pupils are not at risk. That is an unjustified assumption: The CoC confirmed that children are more at risk than adults, and that is borne out by the estimates of the considerable numbers of former pupils who will die from their asbestos exposure at school. But the problems are not just from the past as there is evidence that a significant number of schools are presently not safely managing their asbestos, there are frequent releases of asbestos fibres in schools where staff and pupils are being exposed to asbestos. Coupled with that there is no known threshold of exposure below which there is no risk. All of which show that the DfE assurances are based on assumptions without sound factual foundations.

370. A proper assessment of the scale of the problem and the risks based on sound data would enable the Minister to assess the costs, prioritise those schools most in need and allocate funds proportionate to those needs. Without taking those actions planning of the school maintenance and refurbishment budget will be incorrect, the Departmental budget will overrun and there is the continued inevitability of emergency action that will destroy financial reserves. To remain within the DfE budget collation of data, planning and good management is needed. The alternative to taking that action is an overspend which has the potential to be exceptionally large. In addition it would leave many children at risk.

371. If a cost benefit analysis was carried out based on sound data then the Minister would be able to allocate funds within budget and bid for future funds from the Treasury based on the real risks and accurate forecasts of future costs, both financial and in human terms based on societal concerns. The Government would then be able to set priorities on facts and public opinion rather than on unfounded assumptions.

Recommendations

372. It is recommended that:

- The DfE collate existing data on the extent, type and condition of asbestos in schools.
- A calculation is made of the costs of leaving asbestos in place and managing it for the remaining life of the buildings.
- An estimate is made of the cost of a policy of progressive removal.
- Trials are carried out to perfect a system of widespread air sampling so that present airborne asbestos fibre levels are known.
- An assessment is then made of the likely number of staff and pupils who will die from mesothelioma at those levels.
- A cost benefit analysis is carried out once the estimates and sufficient data is available.
- The analysis is open to parliamentary and public scrutiny.
- Funding is allocated, and government priorities set, based on the cost benefit analysis, societal concerns and parliamentary debate.

Guidance and tools for duty holders/others

We want to understand more about what is helpful to duty holders and what more can be done to provide support.

Question 11

11. Are you a duty holder for a school? If not, do you know who the duty holder is?

373. AiS is not a dutyholder

<input type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
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Question 12

12 a) Are you aware of the DfE asbestos management in schools guidance?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
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12 b) Have you read/used the guidance?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
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Question 13

13 Has the guidance been useful and relevant to your needs? What did you find most helpful?

<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>	Not Sure
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Question 14

14 Please provide any suggestions that you have to improve the DfE guidance.

373. The guidance is clear, concise and good, however the following are suggestions for improving it:

- Links to exemplary examples of asbestos surveys, registers and management plans.
- More photographs of asbestos materials in schools.
- Lists of heaters that contain asbestos, with photographs
- It should be emphasised that children are more at risk than adults.
- Link to HSE Asbestos Essentials. <http://www.hse.gov.uk/ASBESTOS/essentials/index.htm>
- Link to advice about public liability asbestos risk insurance for schools.

- Too few people are aware of the guidance, therefore there needs to be more publicity to ensure that they are made aware.
- The present guidance is basic asbestos awareness guidance. It is suggested that DfE commissions in depth guidance for managing asbestos in a similar format to the guidance that has relatively recently been published for the retail sector.

http://www.brc.org.uk/brc_show_document.asp?id=4416&moid=8011

Question 15

15 Please provide details of any other sources of guidance that you use or tools to help you understand and fulfil your responsibilities.

374. Not applicable

Question 16

16 Are there other things that could be done/provided that would help raise awareness of asbestos management issues? Please provide details.

375. Yes. There are other things that could be done that would help raise awareness of asbestos management issues.

376. A policy of openness and transparency needs to be adopted. Parents should be informed of the presence of asbestos in their schools and the measures that are taken to manage it. This policy was put into law in the USA in 1987 in the the Asbestos Hazard Emergency Response Act (AHERA) regulations.²⁵⁵ The risks from asbestos should be clearly stated and not played down as invariably happens now.

377. So long as the Government can keep the facts from the public then the problem of taking society's concerns into account are also avoided. But if people were aware of the extent of the problem then one must question whether society would consider it acceptable that school teachers, support staff and children are being exposed to asbestos and subsequently dying from the simple act of attending school.

378. It is apparent that successive governments have considered the problem of asbestos in schools too big to handle. This has led to a lack of transparency. Governments are concerned that if the public were aware of the true scale of the problem they would panic and demand the removal of all asbestos from their children's schools.²⁵⁶ This irrational fear is the reason why an assessment has never been made of the scale of the problem and has meant that proportionate action has never been taken. The policy has led to "spin" being put on public statements and even science.²⁵⁷ It has also meant that many staff and

²⁵⁵ AHERA US code: title 15,2643. EPA regulations Chapter 53. EPA Fact sheet AHERA 1986 Statement EPA Administrator 23 Oct 1986

²⁵⁶ DfES Asbestos Briefing pack for meeting at the HSE 18 June 1998. Line to take. P7. DfES EF/09/94/04 Ministerial brief. PS/Mr Squire. Asbestos in schools. Meeting with Doug McAvoy 14 Dec 1994

²⁵⁷ For example: Asbestos in schools. The scale of the problem and the implications. P 64
<http://www.asbestosexposureschools.co.uk/pdfnewslinks/AiSreportonASBESTOSINSCHOOLS.pdf>

parents have not been informed of asbestos incidents or of their exposure and that of their children.²⁵⁸
This lack of transparency is contrary to the open policies of both the Opposition and the Government.

379. As the facts have been kept from the public there has been no pressure on successive Governments to tackle the problem, and they have therefore been able to delay indefinitely having to take the action that is required. That policy is no longer sustainable as there is increasing public awareness so that parents, teachers, school support staff and the unions are questioning whether the assurances they have been given are justified. They are understandably concerned whether the schools they work in, or their children attend, really are safe. And if they are not safe they now expect positive action to be taken.

380. In contrast for more than twenty five years the USA has required parents and teachers to be annually updated on the presence and condition of any asbestos and the measures taken to manage it.²⁵⁹ This has not created panic, but it has meant that staff and parents are aware of the dangers of asbestos and has in general led to schools achieving acceptable standards so that the occupants are safe.

381. A decision making process often relies on a cost benefit analysis that weighs the financial cost of taking action against benefits. In the case of asbestos one of the benefits is measured in terms of the number of lives saved. Particularly where children are involved the process must be open to public scrutiny and decisions and policy must take into consideration society's concerns. That has happened in the USA, but not in Britain. In Britain the scale of the problem and the risks have not been assessed, so decision making and cost benefit analyses have not been based on sound scientific data. In addition, because of a lack of transparency, the public have not been included so that calculations and decisions have been without public influence and scrutiny.

382. All Governments, of whatever political party, have failed to properly address the considerable problem of asbestos in schools. All the parties should now practice their commonly stated policy of transparency, assess the scale of the problem and the risks and work together to solve the problem of asbestos in schools.

383. The policy review provides the opportunity for individuals and organisations to submit evidence to the Government that will show them the scale of the problem. The Government should then impartially and radically review its policies. It should follow the example of the USA and Australia and adopt long term strategic policies that prioritise schools. Proportionate resources should be provided so that schools can effectively manage their asbestos, and a long term strategic policy adopted that really does ensure that children and staff are safe from the dangers of asbestos in schools.

Question 17

17. What would be the cost of any improvements that you suggest? How should these improvements be funded?

384. See the answer to question 10

²⁵⁸ Informing staff and parents following an asbestos incident in a school 15 Jul 2012

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/INFORMING%20following%20an%20asbestos%20incident%20in%20a%20school%2015%20Jul%202011.pdf>

²⁵⁹ AHERA US code: title 15,2643. EPA regulations Chapter 53. EPA Fact sheet AHERA 1986 Statement EPA Administrator 23 Oct 1986

Question 18

18. If you have further views about asbestos management in schools that you would like to share, please add here or return with this response form.

385. See all previous sections.

386. Attached:

- A chronological list of asbestos incidents and failures in asbestos management. At the following link: <http://www.asbestosexposureschools.co.uk/pdfnewlinks/ASBESTOS%20INCIDENTS%203%20work%20in%20progress%20update%2017%20Mar%202014.pdf>
- A summary of HSE enforcement in schools for failures in asbestos management. At the following link: <http://www.asbestosexposureschools.co.uk/pdfnewlinks/HSE%20ENFORCEMENT%20SCHOOLS%2027%20Mar%202014.pdf>
- The case for an environmental level for schools. At the following link: <http://www.asbestosexposureschools.co.uk/pdfnewlinks/Environmental%20asbestos%20fibre%20level%20for%20schools%2014%20Jun%202013.pdf>

MRL
30 Mar14

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply.	x
E-mail address for acknowledgement: christine.payne@parliament.uk michael@lees1262.fsworld.co.uk	

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, please confirm below if you would be willing to be contacted again from time to time either for research or to send through consultation documents?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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