

## **Education Select Committee Hearing on Asbestos in Schools.**

*Comment by the Asbestos in Schools Group and the Joint Union Asbestos Committee*

This is a comment by the Asbestos in Schools Group and the Joint Union Asbestos Committee on the evidence given to the Education Select Committee hearing on asbestos in schools. There were two panels giving evidence. The first panel were Julie Winn the Chair of JUAC, Professor Julian Peto a leading epidemiologist, Roger Leighton a headteacher, and me a member of the Asbestos in Schools Group (AiS). The second panel members were the Minister, Rt Hon David Laws MP, and a senior director of HSE, David Ashton.

### **General comment**

The evidence given by the Minister and Mr Ashton was predictable. They defended their present policies, and offered very little prospect that any fundamental changes would be made. The Minister confirmed that his Department would be reviewing their policies following the receipt of the report from the Committee on Carcinogenicity into the relative vulnerability of children to asbestos. It was, however, clear from his and HSE's answers that their internal review would confirm that, in almost every area, their present policies are working - despite evidence to the contrary.

The complacency shown by the HSE director in particular was remarkable. In addition he made a number of statements that were incorrect and misleading. For instance he misled the committee by claiming that a school in Wales was perfectly safe to reopen when he was aware that is not the case; HSL tests have shown that the classroom heaters are emitting amosite fibres. In addition the expert opinion of the council and two independent firms of asbestos consultants was that it would be unsafe to reoccupy the school until extensive asbestos remedial work has been undertaken.

The answers given by the Minister were disappointing. He made statements to the Select Committee that were either wrong or cannot be substantiated. AiS met David Laws in January when he made similar statements. At that meeting AiS produced evidence that a number of his statements were factually wrong or could not be substantiated, and yet he repeated the same flawed statements to the committee without acknowledging that he knew what he said was wrong or needed caveats.

On several occasions he justified his policies by saying that they were on the advice of the HSE. His main point at the January meeting was that HSE have advised DfE that the risk from asbestos to the occupants of schools is very low. There is considerable evidence to show they are wrong. HSE's position is based on limited evidence and they discount the growing evidence that runs contrary to their policies.

DfE and HSE have not assessed the scale of the asbestos problem in schools or estimated how many people are likely to die from their asbestos exposure at school. They refuse to train the majority of school staff and do not have a robust system for identifying whether schools are safely managing their asbestos. They keep repeating the mantra that it is safer to manage asbestos than it is to remove it when evidence is that the policy is failing in many schools. They have been asked for the evidence to justify the policy but have not provided it. They have also not provided the resources for schools to safely manage their asbestos.

The Minister claimed in his evidence to the Committee that an expensive and intrusive physical survey of schools prevented him including asbestos in his Property Data Survey Programme. He knows that is wrong. All that is required is collation of information already held by local authorities and schools.

There appeared to be general agreement that a cost benefit analysis has to be undertaken. But that cannot be done unless the scale of the problem and the risks are assessed, and DfE and HSE have failed to do that. They also consistently claim that the risks to staff and pupils are very low. Therefore any cost benefit analysis they have done is flawed as it has been based on inadequate data and a predetermined assumption that the risks are very low.

The lack of adequate data and unjustified assumptions, have formed a flawed basis for both HSE's policy and that of DfE, who rely unquestionably on HSE advice. It means that although schools contain children, HSE do not treat them any differently from any other workplace.<sup>1</sup>

An HSE director with responsibility for policy and advising DfE dismissed the risks to staff and pupils in schools by stating, incorrectly, that *"Even if asbestos dust was released from floor tiles, ceiling tiles, wall panels and other common materials and was inhaled by teachers and pupils, the doses would be too low to cause any problems."*<sup>2</sup> He also denied that children are more at risk, by stating *"There is also no evidence to suggest asbestos can affect children more than adults"*<sup>3</sup> - despite this being contrary to expert opinion.

### **Mesothelioma deaths of former pupils**

Professor Peto provided evidence to the Committee that asbestos does affect children more than adults. He was asked if children are more susceptible to asbestos exposure. He replied:

*"They are more susceptible, yes..."*<sup>4</sup>

*"The risk keeps going up...once you have been exposed to asbestos, the risk goes on increasing for the rest of your life. It increases very steeply after a very long latency..."*<sup>5</sup> *There is very good evidence that living 20 years longer after exposure vastly increases your risk. That is the fundamental point"*<sup>6</sup>

*There are now 400 deaths a year in women from mesothelioma; most of those are from asbestos in buildings—a good two-thirds of them are caused by asbestos in buildings. It is reasonable to assume that a fair fraction of that is due to asbestos in schools, because what happens to you when you are young is worse than what happens when you are old, in terms of causing cancer. It is reasonable to say that something of the order of 100 or 150 deaths per year from mesothelioma in women could in the future be due to asbestos levels in schools up to the 1960s and 1970s."*<sup>7</sup>

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<sup>1</sup> HSE meeting. HSE Head of Services Sector, HSE Head of Asbestos Policy. HSE Director of Disease Reduction Programme. AIS 3 Sep 2009

<sup>2</sup> Western Mail The danger of asbestos in the classroom is exaggerated 27 Aug 2009

<http://www.walesonline.co.uk/news/wales-news/2009/08/27/the-danger-of-asbestos-in-classrooms-is-exaggerated-91466-24541973/>

<sup>3</sup> Daily Post Interview with HSE Director of Disease Reduction Programme Coldrick. 2 Nov 2009

<http://www.dailypost.co.uk/news/north-wales-news/2009/11/02/asbestos-is-killing-hundreds-in-north-wales-55578-25067463/>

Western Mail The danger of asbestos in the classroom is exaggerated 27 Aug 2009

<http://www.walesonline.co.uk/news/wales-news/2009/08/27/the-danger-of-asbestos-in-classrooms-is-exaggerated-91466-24541973/>

<sup>4</sup> Q20

<sup>5</sup> Q21

<sup>6</sup> Q 22

<sup>7</sup> Q13

It is a reasonable assumption that the same number of males as females are dying of mesothelioma caused by their asbestos exposure at school. Professor Peto considered that perhaps between 100 to 150 females could die a year. If similar numbers of males die, then between 200 to 300 people could die a year of mesothelioma because of their asbestos exposure as children at school. It is therefore a reasonable assumption that more than 3,000 mesothelioma deaths have occurred because of asbestos exposure as a child at school. It is equally reasonable to assume that so long as asbestos remains in schools the deaths will continue and only gradually reduce over the next fifty years.

Despite the confidence shown by DfE and HSE that their policies are working, neither has estimated how many staff and pupils have died so far and will die in the future, from their asbestos exposure at school. In comparison the USA made such an estimate in the 1980s and concluded that for every teacher and support staff mesothelioma death nine former pupils could die from their asbestos exposure as a child at school.<sup>8</sup> Professor Peto stated that *“It is certainly more than one. I do not know whether it is nine or three or five, but it is substantially more than one. The risk is not to the teacher; it is to the children. That is the fundamental point. If asbestos in schools is a concern, teachers are not the primary issue; children are the primary issue.”*<sup>9</sup>

Mr Lees agreed, and considered that schools should be treated as a special case and have more stringent regulations than other workplaces because *“they contain children. Absolutely everyone attends schools. The Medical Research Council...in 1997 looked at the amount of asbestos in schools and said it is not unreasonable to assume that the entire school population has been exposed to asbestos in school buildings, and they also considered that that exposure would be a significant part of a lifetime exposure. You are looking at pretty well everyone in this country-a large proportion have been exposed to asbestos at a very young age. They are a special case.”*<sup>10</sup>

### **Mesothelioma deaths of teachers and support staff**

There is evidence that in addition to pupils, school teachers and support staff are being exposed to asbestos at school, in some case over the course of many years.<sup>11</sup> Many are also dying of mesothelioma. There was debate over the significance of school teacher’s mesothelioma deaths and whether they are more at risk than other occupations.

Mr Lees considered that there was evidence of a greater risk to school teachers than people in similar professions and a considerably greater risk than those in occupations who do not work in buildings.<sup>12</sup> Professor Peto agreed that people are dying because of their asbestos exposure in buildings. Although he disagreed that female teachers are at a statistically higher risk than other females, he did agree that the reason they have a higher mesothelioma incidence than female nurses is because schools contained more asbestos than hospitals.<sup>13</sup>

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<sup>8</sup> EPA Support document for the proposed rule on friable asbestos-containing materials in school buildings EPA report 560/12-80-003 p92. American Academy of Pediatrics Asbestos Exposure in schools Pediatrics vol 79, no 2 Feb 1987 p301- 305 Reaffirmed May 1994 .

<sup>9</sup> Q19

<sup>10</sup> Q41

<sup>11</sup> See Asbestos in Schools. Pages 11-28 <http://www.iacoc.org.uk/papers/documents/AiSreportonASBESTOSINSCHOOLS.pdf>

<sup>12</sup> Q23

<sup>13</sup> Q24 and Q23

Mr Lees concluded from the evidence given at the first panel that there was agreement that people were being exposed to asbestos at school and dying of mesothelioma. The only debate was over the numbers of people dying.<sup>14</sup>

Mr Ashton dismissed teachers' mesotheliomas as having been caused by their asbestos exposure at school. He instead expressed his opinion they had been exposed elsewhere in "*the active asbestos era*", and gave an example of teachers being exposed to asbestos when the Ark Royal was broken up. He thought that policy should not be based on the assumption that because school teachers are dying of mesothelioma that both they and children in schools are at an elevated risk.<sup>15</sup>

At the meeting with AiS in January the Minister stated that HSE have advised his Department the risk from asbestos to staff and pupils in schools is very low. In my opinion most people would not consider the risks are very low when it is known that more than 269 school teachers have died of mesothelioma,<sup>16</sup> also an unknown number of school support staff have died of the cancer. In addition it is possible that more than 3,000 people have died from their asbestos exposure as a child at school. Most people would consider that the risks are unacceptable and that urgent action should be taken by the Government to make schools safe so that further deaths can be prevented.

### **Audit**

As well as failing to assess how many staff and pupils have died, and will die from their asbestos exposure at school, neither DfE nor HSE have assessed the extent, type or condition of asbestos in schools. Nor do they have a system in place to assess the standards of asbestos management. The opposite is the case as DfE have specifically excluded asbestos from the assessment of the condition of the fabric of school buildings. Mr Ashton concurred with the decision. When he was asked by Mr Ward MP "*Do we need a national audit?*" he replied "*We would not find that useful.*"<sup>17</sup>

Siobhain McDonagh asked the Minister "*Why is asbestos not included in the property data survey that will in future be used to allocate funding for school maintenance?*"

Mr Laws replied "*Firstly, it is because we think there are already duty holders who have the responsibility to do this job. The nature of the survey that we are doing in those schools is very much a visual one. To get very detailed information about the existence of asbestos in these schools, we would need to go around with quite intrusive surveys and we would need to dig around in school buildings and elsewhere. This would not only raise the cost but would potentially endanger and destabilise some of the materials that are there.*"

*In terms of this survey... a little over 8,000, we are relying on data that have been sent in by local authorities from their existing surveys of the condition of their schools*

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<sup>14</sup> Q24

<sup>15</sup> Q51

<sup>16</sup> 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. House of Lords written answer. Health: Mesothelioma Lord Wigley /Lord Wallace of Saltire. [HL5165] 6 Feb 2013 : Column WA68. HSE Mesothelioma Occupation Statistics Male and female deaths aged 16-74 in Great Britain 2002-2010

<sup>17</sup> Q58

*Just to be clear... This survey, for the reasons I have given, is focused on basic school condition problems; it is not an attempt to have an intrusive survey into the existence of asbestos.*<sup>18</sup>

The Minister gave the same answer at the meeting with AiS in January. He is aware that AiS' proposal is not to do intrusive surveys, but to collate the existing data already held by LAs and schools on asbestos on the DfE Asset Management Software. This is precisely the same way that existing data on all other aspects of schools buildings is being collated for the Property Data Survey Programme (PDSP.)

The Minister's excuse that duty holders have the responsibility for asbestos is also an invalid reason for specifically excluding it from the PDSP. Duty Holders are also responsible for every other aspect of a school building, but that hasn't excluded the collation of that data.

Mrs Winn stressed that asbestos *"has to be included, because if it is not, the financial forecasts that will come from that about managing the school stock will be meaningless."*<sup>19</sup>

Siobhain McDonagh asked: *"Would you say the decision to exclude asbestos was deliberate?"*

The Minister distanced himself from the decision making process, and stated *"This survey was established and agreed some time ago. Therefore, I cannot anticipate precisely what was in the minds of the people who made the decision. My understanding is that it was an explicit decision to construct the survey in this way in order not to have a very intrusive survey and not to have one that would be unnecessary, since we already have duty holders who have these responsibilities."*<sup>20</sup>

The Minister again used the same flawed excuses. There have been a series of excuses given by DfE officials and Ministers since the decision was taken. (See <sup>21</sup>) When asked, the Chair of the DfE Asbestos Steering Group stated that the decision to exclude asbestos was made by "Ministers and management."<sup>22</sup> Mr Laws has recently taken over as Minister and was unable to tell the Select Committee what was in the minds of the people who made the decision.

An FOI request for the documents and correspondence that would show why the decision had been taken was refused under section 35(1)(a) *"Withholding of information if it relates to the formulation or development of government policy."*<sup>23</sup> FOI requests can be blocked, but Mr Laws could easily establish why the decision was taken.

Ministerial briefings from another FOI request show the reason why a previous Government had refused to undertake an audit of asbestos in schools:

*"We would not be in favour of a national audit in which returns are made to DFE. These matters are trusted to LEAs and governors and they should be fully responsible. (In any case, a nationwide DFE*

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<sup>18</sup> Q62

<sup>19</sup> Q26

<sup>20</sup> Q63

<sup>21</sup> Exclusion of asbestos from the audit of schools

[http://www.asbestosexposureschools.co.uk/pdfnewslinks/AUDIT%20EXCLUSION%20OF%20ASBESTOS.pdf?zoom\\_highlight=pdsp&zoom\\_highlight=audit#search="audit"](http://www.asbestosexposureschools.co.uk/pdfnewslinks/AUDIT%20EXCLUSION%20OF%20ASBESTOS.pdf?zoom_highlight=pdsp&zoom_highlight=audit#search=)

<sup>22</sup> DfE Asbestos Steering Group AiS Note 14 Jun 2012

<sup>23</sup> FOI request Case Reference 2012/0021609 17 May 2012

*organised audit would be bound to lead to further demands for additional expenditure on school buildings, at a time of increased resource squeeze.)”<sup>24</sup>*

*“Commissioning a nationwide survey might provoke unnecessary panic.”<sup>25</sup>*

It is a reasonable assumption that the actual reason for excluding asbestos from the present audit of the condition of school buildings is precisely the same.

### **Proactive inspections**

Because the policy of successive Governments has intentionally excluded auditing the scale of the problem, they are unaware of the extent, type and condition of asbestos in schools. In addition they have scrapped the system of determining whether schools are safely managing their asbestos. Since the publication by the Government in 2011 of “Good Health and Safety, Good for Everyone” HSE has not been permitted to pro-actively inspect the standards of asbestos management in local authority schools.<sup>26</sup> Instead they will only carry out an inspection after an asbestos incident has occurred or when a member of staff alerts them to a problem.<sup>27</sup> However the system is different in schools outside LA control, as, in the coming year, HSE will be carrying out a one off programme of inspecting 150 schools.

Evidence was given that two previous series of HSE inspections had shown that about a fifth of schools are failing to achieve acceptable standards in asbestos management.<sup>28</sup> 28 (17%) of the 164 schools outside local authority control that were inspected had enforcement action taken against them for failing to manage their asbestos. A further 110 had “Advice” given to improve their asbestos management, giving a total of 84% where enforcement action or advice was given.

Almost a third of the sixty two independent schools that were inspected had enforcement action taken. More than half of the eighty schools 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.<sup>29</sup> If this was a representative sample then it would equate to about 6,000 schools failing to effectively manage their asbestos to the extent that they required enforcement action and a further 23,000 requiring advice. Remarkably at the time HSE described this as a picture of compliance and an HSE director described it as encouraging.<sup>30</sup>

Mr Ward addressed Mr Ashton and compared the failure of schools to manage their asbestos with safeguarding schools *“You seem remarkably relaxed. 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.*

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<sup>24</sup> Ministerial briefing Asbestos in schools DFE Hedger/PS MR Forth 12 Nov 1993

<sup>25</sup> Briefing. PS/Mr Squire. Asbestos in schools ; meeting with Doug McAvooy 14 December 1994 . Follow link for extracts <http://www.asbestosexposureschools.co.uk/Teachers%20TV.%20Today%20HSE%20flaws%20Nov%2008.pdf>

<sup>26</sup> Good Health and Safety, Good for Everyone. 21 Mar 2011 <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf> p9

<sup>27</sup> DfE Asbestos Steering Group AiS note of meeting 14 Jun 2012

<sup>28</sup> Q69

<sup>29</sup> HSE enforcement action in non-LA schools 15 Oct

2011 [http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20ACTION%20analysis.pdf?zoom\\_highlight=enforcement+action#search=enforcement action](http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20ACTION%20analysis.pdf?zoom_highlight=enforcement+action#search=enforcement%20action)

[http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20SUMMARY%20%20NOV%2010%20to%20Jul%2011.pdf?zoom\\_highlight=enforcement+action#search=enforcement action](http://www.asbestosexposureschools.co.uk/pdfnewslinks/HSE%20ENFORCEMENT%20SUMMARY%20%20NOV%2010%20to%20Jul%2011.pdf?zoom_highlight=enforcement+action#search=enforcement%20action)

<sup>30</sup> HSE press release Asbestos checks reveal compliance picture at non-LA schools 14 October 2011

Mr Ashton responded *“I have a naturally calm demeanour, but it is annoying, despite that, to find with a problem about which we know so much, where the guidance is so clear and the precautions are so straightforward, that we are not satisfied in every school that we go to.*

Mr Ward: *“Is this you when you are angry, David? David Ashton: “Yes, it probably is.”<sup>31</sup>*

Mr Cunningham asked *“How do we know where it is not being managed properly?”* Mr Ashton did not answer the question but gave a generalised answer about statistics *“When we do surveys of schools, they are samples but they are statistically valid subsets, of course, so that we can multiply up and convince our statisticians that is a valid thing to do. So, 150 non LA controlled schools this year will be a sample from which we can draw robust general conclusions.”*

The inspection of 150 schools is a one off project and represents just 0.5% of the 34,000 schools in Britain, and yet Mr Ashton considers that is a sufficient sample to draw robust general conclusions. The Minister appeared to agree as he confirmed that the Government intend drawing conclusions based on it: *“The survey the HSE will be doing, in an era when we are getting a more autonomous school system, will be important, and not only for the HSE; the Government can also look at and draw conclusions from it.”<sup>32</sup>*

The Minister appeared to consider that it was necessary to have a system to check whether schools are managing their asbestos correctly. He stated *“We have to make sure that the checks in this system are actually working.”<sup>33</sup> “But if its being managed properly, there should not be a problem; that is what you should be checking.”<sup>34</sup>* However he did not provide a solution to how schools that are not managing their asbestos would be identified. Neither did Mr Ashton. Instead they both appeared satisfied that so long as one has estimated the percentage of schools in the nation that could be failing to achieve acceptable standards, then there is no need to have a system in place to identify which the actual schools are.

A comparison with this policy would be that OFSTED inspected just 150 schools to assess academic standards, then multiplied up the figures so that DfE could draw robust general conclusions on the state of academic standards in all the nation’s schools on which to base future Government policy. Then having inspected 150 schools DfE would be content that there was no need to carry out any inspections of the remaining schools to identify which ones are actually failing to achieve acceptable standards. But that is not DfE policy. Instead they put considerable resources into identifying the individual schools who are not achieving acceptable standards academically so that they can be targeted and their standards improved.

The first panel were in agreement that there needs to be a system to identify which schools are most at risk from asbestos so that they can be targeted and their standards improved. Mr Ashton took the extraordinary position that this was unnecessary as the inspection of 150 schools would be sufficient, and the Minister appeared to agree. Practical solutions were offered by the first panel. AiS have argued for the reintroduction of pro-active inspections by HSE. But this was turned down as it is contrary to Government policy. HSE have also dismissed the involvement of LA Environmental

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<sup>31</sup> Q70

<sup>32</sup> Q65

<sup>33</sup> Q66

<sup>34</sup> Q68

Health Officers because, they stated, schools are HSE's responsibility and local authorities are not allowed to inspect them. DfE had also approached OFSTED who said they would not include any assessment of the standards of asbestos management in their inspections.<sup>35</sup>

### **Widespread air sampling in schools**

There was discussion about how to identify which schools are most at risk. Professor Peto stressed *"What matters is what people are breathing in, and there are two ways of measuring that: one is to measure it in their lungs and one is to measure it in the air..."*<sup>36</sup> *"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..."*<sup>37</sup> *"All that matters is whether or not kids are breathing in asbestos and, until you find that out, everything else is hot air."*<sup>38</sup>

Mr Lees agreed and stated *"We have specifically asked, as part of the Department for Education Asbestos in Schools Steering Group ...for a trial to be carried out by the Department for Education and the HSE into widespread air sampling in schools, so that we could take very large volumes over a long period of time while the schools were occupied. We want a trial so we can devise a system, so that we can do it effectively and identify which schools are most at risk. This really answers your question: if we had that trial, then we could perfect a system to identify those schools most at risk."*<sup>39</sup>

Mr Ashton addressed the proposal for widespread air sampling in schools and informed the Committee *"I do not think that would be useful."*<sup>40</sup> In 2012 HSE turned down AiS' proposal to undertake a trial, because in their opinion *"there is no place for widespread air sampling in schools as part of asbestos management. Air sampling only has a place where something new and novel has been identified so that a new solution is required to control the risk and reassurance is needed that the measures are appropriate."*<sup>41</sup>

### **Training and guidance**

If DfE and HSE expect schools to manage their asbestos then governors, headteachers, support staff and teachers should be trained so that they can. However evidence was presented to the Committee that shows there is a lack of training and asbestos awareness in a significant number of schools. AiS have proposed, but DfE and HSE have refused, to make asbestos awareness training mandatory. Instead last year DfE issued a twelve page guide in order to provide basic asbestos awareness guidance for headteachers, school governors and managers. This is a most constructive step forward but the guide is not mandatory and DfE specifically excluded a means of determining whether people had read it. In addition there is no means of determining whether people have absorbed its contents.

Depending on a person's role in a school they should be trained in asbestos management or awareness training. The training should be properly funded and it should be mandatory.

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<sup>35</sup> DfE Asbestos Steering Group. AiS Note of meeting. 14 Jun 2012

<sup>36</sup> Q26

<sup>37</sup> Q30

<sup>38</sup> Q37

<sup>39</sup> Q30

<sup>40</sup> Q56

<sup>41</sup> DfE Asbestos Steering Group. AiS Note of meeting. 14 Jun 2012

## **Governors in academies and free schools**

Mr Lees was particularly concerned that in general governors are not equipped to oversee the management of asbestos in schools. Academies are a particular concern as governors are taking on the responsibility for managing asbestos without having the training or awareness to realise the priority that it warrants. There appeared to be agreement amongst the first panel that this is a problem.

Mr Leighton agreed and stated *"I am going to keep coming back to the role of a middle tier; let's call it "local authorities" for the moment, shall we? There has to be something local sitting above governing bodies for me to really feel that this is going to work properly. There is this idea that you have 24,000 schools and the Health and Safety Executive going in and doing inspections; I cannot see that working. It is about the local authority."*

Mr Cunningham expressed concern about the expertise of academies and free schools to manage asbestos; *"Local authorities hold the ring on a lot of this stuff. They have the expertise, the understanding and they have worked with schools for many years, but now we have seen this responsibility disappearing across free schools, academies and others. Do you have any additional concerns about how this is managed into the future in the light of that, Minister?"*

This is about the only point that Mr Laws conceded that he had concerns. He replied *"Yes, this is an issue that I would certainly keep under review, and look at closely when we hold this review, which I mentioned earlier on to all of you, and when we get the information back from the HSE about the studies they are carrying out."*<sup>42</sup>

### **HSE: Cwmcarn "Is perfectly safe to reopen."**

The Chairman asked Mr Lees what evidence there was about some schools being unsafe. He gave the following example: *"There was a recent case at Cwmcarn, which is a school in Wales, where they found that the heaters were emitting amosite fibres...A warning was sent out about this in 1982 by the Health and Safety Executive. They warned them that they must seal the asbestos in these heaters or remove it. Yet, here we are in 2012 and these heaters were emitting asbestos fibres into the rooms. That is just one case."*<sup>43</sup>

Mr Ashton rebutted Mr Lees' statement that Cwmcarn was unsafe *"It was from that that Mr Lees extrapolated the rather alarming figures from a school called Cwmcarn. We did electron microscopy in that school, and our advice to the local authority there is that it is perfectly safe to reopen that school because the actual levels, by that more sophisticated method, were at the limits of measurable quantification by a more sophisticated technique."*<sup>44</sup>

Mr Ashton is wrong and his statement is misleading. His opinion that the school is safe is contrary to the considered opinion of the local authority<sup>45</sup> and two firms of asbestos consultants who have carried out comprehensive assessments of the school buildings within the last few months.<sup>46</sup> The following is the evidence:

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<sup>42</sup> Q65

<sup>43</sup> Q2

<sup>44</sup> Q56

<sup>45</sup> Caerphilly County Borough Council Interim report regarding Cwmcarn High School 20 Nov 2012

<sup>46</sup> Asbestos Investigation Report Cwmcarn High School, Santia 26 Oct 2012. Ensafes Asbestos remediation proposals. undated published on line 14 Mar 2013

Electron microscopy analysis by HSL of samples taken in four classrooms containing warm air cabinet heaters showed that when disturbance was carried out amosite fibres were being emitted into the rooms. The levels analysed by the “more sophisticated technique” were between 1,700 fibres per cubic metres of air ( $f/m^3$ ) and 4,300  $f/m^3$ , which were above the measurable quantification.

Three firms of asbestos consultants have identified asbestos debris and fibres, unsealed and damaged asbestos insulating board panels (AIB) in the heaters.<sup>47</sup> In 1981 air sampling in CLASP schools identified that levels up to 60,000  $f/m^3$  could be emitted from this type of heaters. The CLASP asbestos handbook warns : “if damaged, fibres can be readily circulated...”<sup>48</sup> The Health and Safety Commission issued a warning about this type of heaters in 1982 advising schools that they should either seal the AIB panels or preferably remove them.<sup>49</sup> At Cwmcarn, some thirty years later, the advice had not been followed and the heaters were unsealed and damaged and readily circulating amosite fibres. The consultants have recommended the total removal of the heaters from eight classrooms before the school is reoccupied.<sup>50</sup>

This type of heater was one of the most popular forms of heating schools. AiS asked the Minister to issue a warning to all schools about the potential dangers inherent in the heaters. The Minister stated that once the HSE investigation is complete they will consider what action, if any, to take.<sup>51</sup> On the 8<sup>th</sup> April, contrary to what the Minister had said, his Department stated that HSE would not now be publishing a report and that, following the HSE investigation, the DfE would not be issuing a warning to other schools about the heaters.<sup>52</sup> HSE and DfE are aware that these heaters are emitting amosite fibres into classrooms. This school had not carried out the remedial actions that had been advised some thirty years before, and it is inevitable that other schools are in the same situation. It is irresponsible not to warn them.

In addition to the damaged heaters there is extensive asbestos debris in the ceiling void, evidence that AIB window panels are regularly damaged, and amosite fibres have been found in classrooms and stairwells.<sup>53</sup> One firm of asbestos consultants concluded “There is evidence that Cwmcarn High School poses a potential serious risk to health...”<sup>54</sup> Another concluded that it would cost about £1million to carry out the necessary asbestos remedial work to “create a safe site for reoccupation.”<sup>55</sup>

This situation is known to Mr Ashton but he was prepared to tell a Parliamentary Committee that it is perfectly safe for children to return to the school, even though he is aware that there is a likelihood they will be exposed to amosite fibres. This is a practical illustration of HSE advice to DfE. The general advice by HSE to DfE that the risks from asbestos in schools in Britain are very low has the same foundation, in that HSE accept, in practice, a level of exposure and contamination in the school that both the experts, and common sense, consider is unsafe.

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<sup>47</sup> Enquin. Asbestos survey Cwmcarn High Schools 28 Apr 2009. Santia Asbestos Investigation Report Cwmcarn High School, 26 Oct 2012. Ensafe Asbestos remediation proposals. undated published on line 14 Mar 2013

<sup>48</sup> Scape CLASP asbestos handbook Asbestos in CLASP standard details. P11 para 1.02

<sup>49</sup> HSE Asbestos in warm air heating systems. (Revised) LAAIC/C 3/5 Health and Safety Commission Aug 1982.

<sup>50</sup> Ensafe Asbestos remediation proposals. undated published on line 14 Mar 2013 Para 5.1

<sup>51</sup> Meeting David Laws MP contemporaneous notes Lees 10 Jan 13. PQ Lord Wigley/Lord Nash 28 February 2013, c358W

<sup>52</sup> E-mail DfE Beckett/Lees Cwmcarn HSE report 8<sup>th</sup> Apr 2013

<sup>53</sup> Asbestos Investigation Report Cwmcarn High School, Santia 26 Oct 2012 p6 para d. Ensafe Asbestos remediation proposals. Para 2.2.2 undated published on line 14 Mar 2013

<sup>54</sup> Asbestos Investigation Report Cwmcarn High School, Santia 26 Oct 2012 Conclusions para 5.1

<sup>55</sup> Ensafe Asbestos remediation proposals. undated published on line 14 Mar 2013 Para 3.1.1 and 5.2 and 5.3.

The Minister made it clear to the Committee that the Department bases its policy on advice from HSE, of which Mr Ashton is a senior director. If the Minister accepts his advice that the school is safe to reoccupy, then it will confirm that DfE also considers that this level of exposure to children is acceptable. In which case, they would both be wrong.

### **Priority Schools Building Programme**

Mr Ward asked *“Does the existence of asbestos in schools fit in, in any way, with the schools building investment programme at all? Is it a consideration when looking at investment in school buildings?”*

Mr Laws answered *“The existence of asbestos? Only in this way; as you know, we have identified in the Priority Schools Building programme the 261 schools in the country that we think are in the worst state. That is just about the overall state of their buildings and not specifically asbestos issues. We are then going to basically rebuild all of those schools from scratch. Any asbestos issues that arise in them-and I am sure many of them will have asbestos in them-will be dealt with.”*<sup>56</sup>

The Minister’s answer is incorrect as not all the 261 schools are to be rebuilt from scratch. In some, for instance, there is only sufficient funding to replace half the windows, refurbish a flat roof and replace a boiler.<sup>57</sup> The Minister’s implication was that as the schools are being rebuilt from scratch that extensive work would be done on the asbestos they contain. However it is unlikely in the schools where only limited refurbishment work is being done that there is sufficient funding to do any remedial work on asbestos other than on materials that might be directly disturbed.

### **Manage or remove asbestos**

Mr Law’s predecessor answered a Parliamentary question about the Government’s policy on removing asbestos when a school is refurbished. He replied that it is the responsibility of the schools and LAs to decide on what action to take, but DfE’s advice is to leave the asbestos in situ and manage it for the remaining life of the building as HSE consider it is safer for the occupants.<sup>58</sup>

The Association of Metropolitan Authorities had a policy of phased removal of asbestos in buildings where asbestos in the most dangerous condition was identified and removed as they considered that it was not only safer but in the long run it was also cheaper.<sup>59</sup> Over time this would have eventually solved the asbestos problem in schools. Mr Ashton disagreed with the policy and stated:

*“I would also make the point that, in deciding whether or not to remove asbestos from schools to a timetable and whether to accelerate its removal or to leave it till the end-of-life point of schools, the latter is our strong advice because we think that is safer. ....You will create potential exposures in orders of magnitude above what there could conceivably be from simply occupying schools.”*<sup>60</sup>

The Minister acknowledged that this is DfE’s policy when he was asked what assessment he had made of the risk by replacing the Building Schools for the Future initiative (BSF) with the Priority

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56 Q61

57 BBC News Priority School Building Programme funding for Devon 24 May 2012 [http://www.bbc.co.uk/news/uk-england-devon-18195080#story\\_continues\\_1](http://www.bbc.co.uk/news/uk-england-devon-18195080#story_continues_1) This is Devon Schools get cash for their revamp Friday, June 01, 2012

<http://www.thisisdevon.co.uk/Schools-cash-revamp/story-16248623-detail/story.html#ixzz2PDwwO5S0>

58 Parliamentary written answers 8 Dec 2010

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101208/text/101208w0004.htm#10120883001750>

Parliamentary written answer 08 February 2011 Parliamentary Written Answers

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

60 Q69

Schools Building Programme. He also confirmed once again that DfE policy relies entirely on advice from HSE, and not on any assessment within his own Department:

*“We have not made any assessment other than the broad assessment that we make as a conclusion of what the HSE has told us, which is where asbestos is in place...it is safe, provided it is maintained properly. But provided the other schools are being properly maintained, which is the key issue, there should not be any materially heightened risk.”<sup>61</sup>*

AiS asked DfE and HSE for the evidence that supports this policy, but six months later the evidence has not been provided.<sup>62</sup>

The crux of the matter is that DfE relies unquestionably on advice from HSE. HSE advice is flawed. It relies on asbestos being in good condition, not disturbed and being managed effectively. There is considerable evidence that many schools are not managing their asbestos effectively and that it is being disturbed. Also many school buildings have not been properly maintained so that as they deteriorate then so does the asbestos within their structure. A Ministerial briefing raised questions over the veracity of the policy:

*“In general, fibres are not released unless asbestos materials are disturbed or damaged, and undisturbed materials in good condition present little or no risk. The balance of risk points to leaving in place sound asbestos materials not liable to damage. This is because the process of asbestos removal, however carefully undertaken, will present a degree of risk to the operatives, who tend to be young and therefore at risk despite the latency periods for asbestos relate diseases. It may also although the evidence is limited, given rise to higher asbestos fibre levels in the atmosphere for some months after, despite stringent precautions. This is not undisputed territory, however, nor is it helpful as a public position, because there will still be cases where asbestos removal is appropriate and yet the premises need to be reoccupied soon afterwards. HSE consider this to be acceptable, provided the work is properly done.*

*The NUT claim that any asbestos materials that are accessible to pupils should be regarded as being prone to damage and, therefore, fibre release. This argument carries some weight. Techniques of asbestos encapsulation (ie sealing the surface with a specialist membrane coating) may not provide sufficient resistance to accidental or mischievous damage from children...”<sup>63</sup>*

### **Asbestos risk insurance**

There are increasing numbers of asbestos related claims against schools and local authorities, which will inevitably continue so long as asbestos remains in school buildings. Despite this, in general schools are no longer able to obtain insurance to cover claims from former pupils who are dying because of their asbestos exposure as a child at school. The Schools Minister confirmed this in a Parliamentary written answer *“there is a general asbestos exclusion for public liability insurance.”<sup>64</sup>*

The fact that insurance companies will not provide insurance cover for pupils puts the risks from asbestos in schools into perspective. However, in the absence of commercial insurance, future

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<sup>61</sup> Q64

<sup>62</sup> E-mail Chairman Asbestos Steering Group to all members 21 Sep 2012. DfE Steering Group AiS Note of meeting 24 Sep 2012

<sup>63</sup> DfE Ministerial briefing. Mr Forth’s meeting with NUT on 1.12.93 Background note on asbestos in school buildings

<sup>64</sup> Parliamentary written answer Schools asbestos. Ian Lavery MP/ Minister of State Nick Gibb MP 21 Mar 2012 see Annex 2.

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. (See summary)<sup>65</sup>

AiS raised this problem with DfE more than a year ago and asked how any future claims made against an academy trust would be settled. DfE said that they would look into it and provide answers by last October,<sup>66</sup> however almost six months later no satisfactory answers have been provided. It would appear from the Minister's reply to a question from Mr Ward that DfE still do not have a viable solution, other than hoping that there will not be many successful claims. Mr Ward asked the Minister *"...if schools are unable to meet the claims against them, is there a risk that central Government will have to pick up the bill for this?"*

The Minister replied *"All I would say on that is that our judgment of the potential financial risk is that it is not a huge one, even if it fell back on the Government; I think I am right in saying that, so far, there has only been one successful case in this area. We would expect the first line of accountability to be the duty holder. Given the fact that there has only been one successful case, it also does not look like a very large contingent liability for the Government."*<sup>67</sup>

Insurance actuaries have examined the potential cost of future claims from pupils who are being exposed to asbestos at school. Although there has so far only been one successful claim from a former pupil, the insurance industry has taken the decision that they will not provide insurance to meet any future claims. It is therefore a reasonable assumption that the insurance industry considers that the potential for future claims is considerable. The Minister however considers the very opposite to be the case. AiS had asked for a representative from the insurance industry to attend the September meeting of the DfE Asbestos Steering Group to answer questions such as this, but, for whatever reason, that did not happen. One must ask on what advice the Minister based his conclusion. That advice and the reason the insurance industry will not provide insurance cover, should be made public as this affects many thousands of people.

The Minister was pressed further on who would be liable to pay the compensation if insurance was not available *"Would there be a risk for governors in future cases if the local authority was not there to cover the insurance costs?"* The Minister acknowledged that the school governors would be liable *"The governors are the people who are the duty holders, and therefore they have the responsibility here. Obviously, in practice, the Government would not wish to see any school suffer and be penalised."*<sup>68</sup> Mr Ward: *"Would that be the case for free schools and academies?"* Mr Laws: *"Yes, absolutely; there will be the same responsibility there"*<sup>69</sup>

DfE summarised their position at a DfE Asbestos Steering Group and made it clear that the financial liability would rest on the academy *"Current DfE policy is that Academies and Free schools are autonomous institutions. As such, they are responsible for making their own arrangements for insurance. The Secretary of State is not legally responsible for any compensation awarded, and nor is*

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<sup>65</sup> <http://www.asbestosexposureschools.co.uk/npaper%20links/125.htm> and [http://www.asbestosexposureschools.co.uk/pdfnewslinks/INSURANCE%20response%20to%20DfE%2010%20Sep%2012%20\\_2\\_.pdf?zoom\\_highlight=insurance#search='insurance'](http://www.asbestosexposureschools.co.uk/pdfnewslinks/INSURANCE%20response%20to%20DfE%2010%20Sep%2012%20_2_.pdf?zoom_highlight=insurance#search='insurance')

<sup>66</sup> DfE Asbestos Steering Group minutes 12 Sep 2012

<sup>67</sup> Q73

<sup>68</sup> Q75

<sup>69</sup> Q76

*he bound by the terms of the Funding Agreement to compensate an Academy for any such liability. However, the Department for Education would work with any affected Academy or Free School to ensure that it remained financially secure and the education of its pupils was not compromised. This would be done on a case by case basis, taking into account a range of factors.”<sup>70</sup>*

The fact that DfE will make decisions on a case by case basis avoids addressing the problem now and instead defers decisions and any proper solution until the first claim is made. Because of the long latency of mesothelioma that could be twenty, thirty years or more from now when the first victims from academies and free schools develop mesothelioma. At which point it is far too late for an academy to be told it should have had a contingency fund, and for a former pupil with a terminal illness to discover that their school had been unable to obtain insurance and that no one has properly thought through how to meet their claim.

The lack of asbestos risk insurance cover has far reaching implications for the government’s policy of managing asbestos in schools rather than removing it. If the issues are not resolved then the government cannot expect those schools that are unable to obtain insurance cover to manage their asbestos. They cannot expect people to be governors of academies or free schools if they could be liable for settling any future claim. And they cannot expect pupils to attend schools that contain asbestos if the schools are not insured against any future claim they may make.

In addition Academies and Free schools cannot be allowed to enter blindly into an agreement that could have far reaching implications for their financial viability. The governors have to be aware of the risks from asbestos and informed of the implications if they do not have full public liability asbestos risk insurance.

### **Precautionary Principle**

The Minister informed the Committee that DfE policy is based on HSE’s advice. At the meeting with AiS in January he stated that HSE advice is that the risks from asbestos in schools are very low, and if that is so he cannot justify spending large amounts on mitigating the affects of asbestos in schools.<sup>71</sup>

This flawed HSE advice also justifies other policies, such as it is safer to manage asbestos in schools than it is removing it. It justifies DfE’s decision to exclude asbestos from the audit of the condition of school buildings, and the Government’s decision to scrap the inspection of schools to assess their standards of asbestos management. It even justifies HSE’s advice that it is perfectly safe for school staff and children to return to a school where it is known that there is extensive AIB contamination and that the heaters are emitting amosite fibres into the classrooms.

Evidence was given to the Committee that teachers, support staff and pupils are being exposed to asbestos in schools and subsequently dying of mesothelioma. It is likely that more than 3,000 have died, and many more will die. This is in stark contrast to HSE’s advice that the risks from asbestos in schools are very low. Given the figures, most people would not consider that is so, or that it is acceptable that staff and children are dying in their thousands from attending school. Preventing further deaths is the direct responsibility of the Minister.

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<sup>70</sup> DfE Asbestos Steering Group minutes 14 Jun 2012

<sup>71</sup> Meeting Minister of State for Schools David Laws MP and AiS. 10 Jan 13

In contrast HSE's responsibilities are for all workplaces, and the risks from asbestos in schools are very low compared to a railway works or a ship-breaking yard. However in absolute terms the risks are not very low as every person in the country attends school for at least twelve years and children are far more vulnerable to exposure to asbestos than adults. In addition society accepts a level of risk in some occupations which they are not prepared to accept where children are involved.

The Minister's responsibilities are directly for the well being and safety of staff and pupils in schools. He cannot abdicate those responsibilities to the HSE. He has evidence from authoritative sources that there is a serious problem, but rather than taking the fundamental steps to address that problem, he is maintaining the status quo and in effect doing nothing. To justify inaction he hides behind the excuse that DfE policy is based on HSE advice.

HSE assure DfE that because of the measures that are in place the risks are far lower now in schools than they were in the past. The evidence for that cannot be substantiated as the school stock has not been well maintained, many schools are not managing their asbestos effectively or safely, asbestos is being damaged and people are being exposed, in some cases over long periods of time. Similar unfounded assurances that the risks are very low were given in the 1960s and have been ever since, but there is now considerable evidence that those assurances were wrong and that DfE policies failed to protect the occupants of schools. The proof that the policies have failed is that many years later, people are dying.

One cannot wait for another forty years to find out that people are still dying and that the policies that are in place now have also failed. Mrs Winn stressed to the committee that in schools in particular where there is scientific and statistical uncertainty one should err on the side of the Precautionary Principle.<sup>72</sup>

She explained to the Committee how in the 1980s the USA assessed the scale of the problem and the risks, and then passed laws specifically for schools so that they had the resources and training so that they really could manage their asbestos effectively.<sup>73</sup> In the 1980's the science was even less complete than it is now, but because children were involved the USA were not prepared to take the risk and therefore they followed the precautionary principle.

Evidence given to the committee showed that the mesothelioma incidence in the USA has stabilised since 1999 at about 14 per million per annum, whereas in Britain the incidence is 38.6 per million per annum and inexorably rising. It is the worst in the world.<sup>74</sup> It is proof that our asbestos policies over the years have failed.

The Government cannot continue denying that there remains a serious asbestos problem in schools. It is irresponsible to risk the lives of future generations of school children. The responsible way forward is to adopt the Precautionary Principle, assess the scale of the problem and the risks and then implement measures that really will make our schools safe.

*Asbestos in Schools Group and the Joint Union Asbestos Committee  
17<sup>th</sup> April 2013*

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<sup>72</sup> Q36

<sup>73</sup> Q40

<sup>74</sup> Written evidence Michael Lees para 55