

Update 15th October 2011

HSE enforcement action shows a failure of schools to safely manage their asbestos

HSE has completed the inspection of 168 schools outside local authority control to assess their standards of asbestos management.¹ The schools included Academies, independent schools, voluntary aided schools and foundation schools. The results show an appalling failure amongst a significant proportion of them to safely manage their asbestos.

Enforcement action was taken against thirty two schools outside local authority control for failures in asbestos management and further action was taken against two local authority schools. In one there was the potential for disturbance of asbestos and in the other asbestos debris was still present after refurbishment work had been carried out. In total fifty two Improvement Notices were issued.²

There were forty breaches of the Health and Safety at Work Act for failing to ensure the health and safety of the staff, and a further twenty eight breaches for failing to ensure that the pupils were not exposed to risks to their health and safety.

There were eighty four 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.”*³

Almost a fifth of the 168 schools outside local authority control that were inspected had enforcement action taken against them for failing to manage their asbestos. By doing so they had potentially put staff and pupils’ health at risk. A further 110 had “Advice” given to improve their asbestos management. 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. Three of the five Academies inspected had enforcement action taken against them, another school has now become 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. 49 schools did not have a proper system in place to tell their staff where the asbestos is in the buildings, and twenty of them there was no system at all. HSE warn that *“Not having a system in place, or operating a system*

¹ 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. 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=DNIS

² 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=DNIS

³ HSE a comprehensive guide to managing asbestos in premises.”

with major gaps or flaws, is a major source of risk as potentially anyone in a school can disturb asbestos containing materials”

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.⁴ It is therefore disgraceful that twenty five years later these schools have failed to do so.

Government policy encourages schools to become Academies or Free Schools, consequently there are increasing numbers of schools outside local authority control. About three million staff and pupils are presently in independent, faith schools and schools not directly under local authority control.⁵ 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.

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. In the round of inspections, 60% of the schools that are now Academies had enforcement action taken, and, although the numbers are small, it is indicative that the governors and owners of these schools are not adequately equipped to manage their asbestos. There are now 800 academies and another 1,463 applications have been accepted, giving a total of 2,263.⁶ Measures should be taken now to determine how many of these schools are incapable of managing their asbestos and then further measures should be taken to ensure that they have the skills to do so. Unless that is done now at this early stage, this could be a major problem for the future given the large and increasing numbers of schools that are converting to Academies.

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.”* 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. 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.”*

⁴ 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

⁵ National Statistics Education and training statistics for the United Kingdom 2008 Table 1.2, 1.3, 1.5 table No statistics available for support staff in the independent sector. In maintained schools there 326,000 and the ratio of teachers to support staff is about 3:4, therefore a similar ratio has been presumed for independent schools. National statistics school workforce England. 29 Apr 2009. Statistics Faith schools Numbers of schools, teachers and pupils. 2001.

⁶ DfE Find Academies. <http://www.education.gov.uk/schools/leadership/typesofschools/academies/search>

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.⁷ Although the information requested in the questionnaire should have been at 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. These latest inspections have 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'.

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 could be 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.

Of 168 schools outside local authority control that were inspected 32 warranted enforcement action, which is about 19%. 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 taken⁸, 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 schools outside local authority control is significantly worse than in other sectors of business.

In 2004 the HSE were warned that the standards of asbestos management in many schools was poor or non-existent, and that standards in small independent and church schools were particularly bad. As a consequence the HSE and the Department for Education established a campaign to improve the asbestos management in schools with the overall aim to "*dramatically reduce the exposures*" of teachers, support staff and children. However before the first meeting took place the campaign was scrapped so that targets could be achieved in reducing the asbestos exposures of plumbers, electricians, carpenters and decorators. One of the first tasks of the 2004 schools campaign was to be an assessment of the standards of asbestos management in schools outside local authority control, but when the campaign was dropped the assessment never took place.

This round of inspections has shown that almost a third of the fee paying independent schools had failed to safely manage their asbestos, and a number of those were church schools. The proportion

⁷ 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](http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091021/text/91021w0027.htm#column_1561w)

⁸ 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. Councilors handbook Jul 2008

of independent schools that are not properly managing their asbestos is high, and considerably greater than in local authority or foundation schools. There are about 2,300 independent schools in England⁹, 159¹⁰ in Scotland and 66 in Wales¹¹ These inspections confirm that there is a serious failure in a significant proportion of independent schools to manage their asbestos. This should have been determined and addressed seven years ago. Now that it has been confirmed, action has to be taken to raise asbestos awareness and bring the asbestos management in these schools up to an acceptable standard.

In recent years HSE has also conducted two rounds of inspections of local authorities to determine compliance with guidance for managing asbestos in System Built schools. In the first round in 2007-2008 twenty improvement notices were issued¹² and in the second in 2009 -2010 a further eighteen were issued, with a quarter of the local authorities that were targeted warranting enforcement action.¹³ On a number of occasions enforcement action was taken against the local authority because they were not managing asbestos safely in all their System built schools in general. So although the number of Improvement Notices issued was similar to the number issued against non-LA schools, they represented widespread flaws in a large number of schools. It is also likely that other local authorities were failing to achieve acceptable standards but HSE only inspected those local authorities who had not responded satisfactorily to the questionnaire, and accepted the veracity of the answers from the others. The local authorities criticised the questionnaire as its design would inevitably elicit a more positive picture than actually exists. Therefore the problems are likely to be far greater than the conclusions drawn from the flawed questionnaire. HSE have stated that the compliance with the asbestos regulations is broadly similar in LA and non-LA schools. Indeed they are, and the enforcement action demonstrates similar flaws in both sectors.

A few years ago HSE rarely inspected the standards of asbestos management in schools, and it is only in recent years that they have started doing so. The failures in asbestos management in these schools were only uncovered because of pro-active inspections, and it must be hoped that because of them standards will improve. The Coalition Government have recently announced that HSE will no longer carry out pro-active health and safety inspections in local authority schools, although they will be continued in schools outside local authority control. This round of inspections, and the previous ones in local authority schools, uncovered flaws in asbestos management in a significant number of schools, and by doing so have proved how essential it is to visit schools to check whether they are achieving acceptable standards. It is therefore a retrograde step that pro-active inspections will no longer take place in local authority schools. It will mean that in future those schools that fail to manage their asbestos will pass unnoticed, with the inevitable result that the occupants will be put at risk.

If the Government expects schools to manage their asbestos then they have to assess the scale of the problem and the risks and allocate the proportionate resources so that they can achieve that. They also have to have a proper system of regulation to identify those schools, regardless of type, who are not effectively managing their asbestos so that they can be brought up to the standards of

⁹ DfE Types of schools England http://www.direct.gov.uk/en/Parents/Schoolslearninganddevelopment/ChoosingASchool/DG_4016312

¹⁰ The Scottish Government Independent school census 2009 <http://www.scotland.gov.uk/Publications/2010/04/23144208/3>

¹¹ Statistics Wales. Independent school census. <http://wales.gov.uk/docs/statistics/2011/110920sb862011en.pdf>

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

¹³ HSE Inspection Findings: Asbestos management in Local Authority school system buildings 2009/10

the best. Government policy of asbestos management rather than removal is not a cheap option and it has to be properly resourced. Training, funding, proper surveys, maintaining schools in a structurally sound condition and proper regulation are all an essential part of that. But over the years successive Governments have failed to provide the necessary resources so that schools can effectively manage their asbestos.

For more than thirty years Government policy for schools has been "*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.*"¹⁴ The enforcement action in these schools shows that the policy of managing asbestos has failed in a significant proportion of schools, and as a direct result thousands of teachers, support staff and children's lives have been put at risk. Lessons have to be learnt from these inspections and policies implemented so that our schools are made safe from the dangers of asbestos.

Michael Lees

11th October 2011

Updated 15th October 2011

¹⁴ [08 February 2011 Parliamentary Written Answers](http://services.parliament.uk/hansard/Commons/bydate/20110208/writtenanswers/part015.html) Education Schools: Asbestos John Mann MP/ Secretary of State for Schools Nick Gibb MP <http://services.parliament.uk/hansard/Commons/bydate/20110208/writtenanswers/part015.html>