Risk Protection Arrangement - Comments and Questions from AiS and JUAC

Question	Response
1. The briefing papers are presently worded without any explanation of why schools outside LA control may not be covered against future asbestos related claims from former pupils. It is apparent that schools are generally not aware of this, and therefore will not realise the necessity to opt into the RPA. It is therefore recommended that DfE issues clear guidance that explains the present situation and why it is essential to hold such cover. If the academy trusts, and other eligible schools, realised this they would no doubt wish to join the RPA.	Noted. The information presents the Risk Protection Arrangements rather than detail of specific aspects such as asbestos liability.
2. The cost per pupil is fixed at £25 for the first two years of the RPA. After two years on what criteria will any increase or decrease in cost be assessed?	To be determined by future actuarial analysis as the RPA scheme matures
3. The DfE background paper states "The deduction will be fixed at £25 per pupil... for the first two years of the RPA." Please can you confirm whether the total cost over those two years is £25 or whether it will cost £25 per year for each of the first two years.	£25 per pupil per year.
4. Is the £25 premium negotiable by those academies presently paying less than £25?	Those paying less than £25 per pupil and who are interested in opting in to the arrangement are invited to contact DfE and the options will be reviewed with them.
5. Will there be a discount if : a. No asbestos is present? b. Where there is a policy of phased removal? c. Conversely will there be an increase in premiums if the school has not managed its asbestos correctly, for	No. The RPA includes protection across a wide range of risks – asbestos is only one risk. Please note as the RPA is not insurance therefore the reduction in an Academy schools funding for joining the RPA is not a 'premium'.

instance, if enforcement action has been taken or an asbestos incident has occurred?	
6. Will premiums be increased if a claim or a number of claims are made?	The RPA is a mechanism through which the costs of risks (as specified in the membership rules) will be covered by government funds. The reduction in an Academy Trust's funding per pupil for joining the RPA is fixed for the first two years of the RPA, please refer to question 3.
7. What assessment has been made of the insurance risk? How has the premium been calculated? Please can we have copies of the relevant assessments?	HM Treasury and the Department for Education have given consideration to the impact of the Risk Protection Arrangement on the public purse and to the design of the scheme. The Department for Education's detailed assessment has been informed by independent actuarial analysis and consideration of loss frequency, loss severity and long-term liabilities. However, as with any policy or public spending, the design and operation of the Risk Protection Arrangement will be monitored and kept under review – including ensuring the right incentives are being placed on academies in relation to managing risk and taking action to ensure pupil safety. At this point whilst the scheme is still under development copies of our analysis are not available.
8. Employers' liability insurance is mandatory under the law. Public liability insurance is not and until it is then it is inevitable that a cash strapped school will not buy into the cover. Will DfE consider a mandatory requirement for schools to either obtain asbestos risk public liability insurance cover or join the RPA?	In accordance with Treasury requirements, as outlined in Managing Public Money, Annex 4. 4, paragraphs 4.4.22 - 24, (please see web link below), a body funded from public funds can be provided with exemption from the need for commercial Employers' Liability Insurance: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/212123/Managing_Public_Money_AA_v2_-_chapters_annex_web.pdf A4.4.23 A body funded by grant in aid need not insure against employers' liability risks. This is because the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573) provide exemption for anybody (or person who may be an employer) holding a certificate issued by a government department. Again, the decision on whether to insure will depend on a value for money assessment. If the organisation chooses not to insure, responsibility for the issue of certificates in accordance with the Act rests with the department responsible for paying

	grant in aid, provided that it is satisfied that this is the appropriate course. The Department has received approval from HM Treasury, in principle for the Department to provide exemption to entities within the academy sector as part of the Department's risk protection arrangement. We are intending to issue members with a single page document confirming that they are a member of the RPA and as such have cover for Employers, Public and Products Liability. This can be used in place of an EL insurance certificate (and can be displayed on the premises if they so wish) as well as a 'To whom it may concern' letter which can be used to demonstrate Employers, Third Party Liability, Professional Indemnity and Property Damage cover.
9. How will schools be encouraged to join the RPA?	All academies have been written to making them aware of the RPA. We understand that most academies are paying more than £25 per pupil currently.
10. What will be done to highlight the availability of RPA?	As above.
11. Will the British Insurance Brokers Association promote RPA?	The RPA is not an insurance scheme.
12. Does the cover for 'increased cost of working' due to damage include all asbestos related expenses? If so it is suggested that this is promoted as an incentive to join.	RPA provides cover for 'Increased cost of working' following a property damage loss. It is not the intention of the RPA to provide cover for the costs of replacing / repairing property damaged solely due to the discovery of asbestos. The RPA will provide cover if an Academy Trust (or MAT) is legally liable to pay compensation to an employee or third party (e.g. pupil) in the event they have been killed or injured due to exposure to asbestos whilst on Academy Trust premises.
13. How will people be encouraged to attend risk management training? Will there be financial penalties if people are not trained?	Attendance on risk management training is voluntary. There will not be financial penalties if people are not trained.
14. Will the risk management package include specific asbestos training? If so it is suggested that this package is highlighted as an incentive to schools to opt into the RPA.	The Risk Management support to the RPA is currently being developed. It is anticipated that guidance to members will include both information on statutory obligations as well as examples of best practice.
15. Will initial training for headteachers, school managers, bursars	No.

and headteachers include an element about the RPA and insurance cover?	
16. The 14th February letter referred to the cover provided in the new scheme as insurance cover. In contrast the later briefings specifically highlight that the RPA is not an insurance scheme, when to all intents and purposes it is. Why is that?	The RPA was previously referred to as a risk pooling scheme – as an option to traditional insurance. The subsequent letter clarified the scheme as the RPA with the costs of any risks that materialise being covered from Government funds. It is not an insurance scheme.
17. What is the legal status of the fund and who underwrites it?	The Risk Protection Arrangement has the backing of HM Treasury and the financial sustainability has been considered as part of the actuarial analysis that has been completed. The Risk Protection Arrangement is simply part of the Department's overall activity within its overall budget, so there will not be a limitation on the funds available from year to year.
18. The second paragraph of the Introduction of the DfE background paper states "The RPA is not an insurance scheme but is a mechanism through **which the cost of risk that materialise from 1st September 2014** will be covered from Government funds." In relation to asbestos what does the emphasised phrase mean?	The RPA covers risks that materialise from 1st September 2014. In relation to claims for asbestos specifically the RPA will respond if the claim is made after the date the Academy Trust (or MAT) becomes a member of RPA. This could include claims relating to an exposure that occurred prior to the effective date of membership but will exclude: 1. Claims relating to exposure occurring prior to the date the school or college became an Academy Trust 2. Claims where an indemnity is provided by an insurance policy. 3. Claims that the Academy Trust were aware of prior to joining the RPA
19. Foundation, trust and voluntary aided schools are not included in the RPA. What provision is there for them to obtain asbestos risk insurance cover for pupils and non-employees?	As now.
20. Sixth form colleges have been outside local authority control since 1992, will they be included in the RPA?	No.
21. Although there are a very limited number of state schools outside local authority control in Wales, Northern Ireland and Scotland is a similar scheme being considered in those countries?	Not known – this is a matter for the devolved administrations.

22. Will local authority schools be able to buy into the RPA?	No.
23. Will independent schools be able to buy into RPA?	No.
24. Who will be the defendants in any future asbestos related claims, the academy trust or EFA?	The academy trust.
25. Under the RPA when is it deemed that the injury occurred: When the exposure took place or at the onset of malignancy? Will this be clearly stated in the policy?	Please see response to question 18.
26. Some schools were under LA control, then became Grant Maintained, then Trusts and then Academies. If a former pupil develops mesothelioma and asbestos exposure occurred over a period of time extending over the different statuses held by the school into the time cover was provided by the RPA, will the RPA meet such a claim in full? Or will it seek to apportion liability?	The claim would be apportioned between the Academy Trust and the local authority. The extent to which RPA will indemnify an Academy Trust is described in response to question 18.
27. What happens to those claims where negligent exposure has occurred in the gap between leaving LA control and opting into the RPA if public liability asbestos risk insurance cover was not available? Or where the school does not opt in? It is suggested that there should be a fund to meet this and/or the arrangement should be made compulsory. It is further suggested that the Government needs to ensure that there is no class of claimant left in an 'uninsured' position.	The extent to which RPA will indemnify an Academy Trust is described in response to question 18.
28. The RPA was launched on 14 Feb 2014. As the lack of public liability insurance cover had been raised by the DfE Asbestos Steering Group then the members should have been informed of the RPA earlier than 30th April 2014. Particularly as the issue had been raised earlier in Parliamentary questions, the Education Select Committee and then by MPs in a	The RPA was launched on 14 February but details of the risks included were only published on 8th April.

Parliamentary debate on the Mesothelioma compensation bill.	
29. Presently it is routine to destroy asbestos surveys, management plans and registers when a school building is demolished. This makes any asbestos related claim very difficult. It is recommended that all asbestos related documents are retained for a considerably greater period than the 40 years required for asbestos related medical documents. The records should be easily accessible. It is suggested that this should be included in guidance about the RPA.	Thank you for this information, will consider as we develop the risk management support for the RPA.
30. Will Radon related claims be covered by the RPA for a) employees and b) pupils and non-employees?	It is not excluded.