

**Department for Education
Policy Review: Asbestos Management in Schools**



A response by the Association of Personal Injury Lawyers

March 2014

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- to promote full and just compensation for all types of personal injury;
- to promote and develop expertise in the practice of personal injury law;
- to promote wider redress for personal injury in the legal system;
- to campaign for improvements in personal injury law;
- to promote safety and alert the public to hazards wherever they arise; and
- to provide a communication network for members.

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Introduction

APIL welcomes the opportunity to respond to the Department for Education's policy review on asbestos management in schools. As apparent from the Committee on Carcinogenicity's June 2013 report, children exposed to asbestos are more vulnerable to the development of mesothelioma than adults¹. The lifetime risk of developing mesothelioma is predicted to be around 3.5 times greater for a child exposed to asbestos aged 5 compared to an adult first exposed at age 25, and five times greater for a child exposed aged 5 compared to an adult first exposed at age 30². The Department for Education's own guidance states that more than three quarters of schools in England have at least some buildings that contain asbestos. There has been no survey into the condition of this asbestos, however, so the scale of the problem has not been specifically addressed.

The seriousness of asbestos exposure appears to be under-appreciated, because the effects of such exposure do not develop until many years later. As such, the current government policies in place are piecemeal and largely involve asbestos remaining in situ with little regard for whether it would actually be safer (and indeed more economic in the long run) for it to be removed. There is often a lack of clarity as to which body is ultimately responsible for asbestos management in the school in question. It is even unclear, for example, which government is responsible for asbestos management for schools in Wales. The short term outlook and lack of clarity over responsibility mean that the current policies are unsatisfactory, and will put children, and those who work in schools, at risk. There must be a movement from a reactive to a proactive approach. This must be a co-ordinated approach for the whole of the United Kingdom.

As an organisation that promotes safety against hazards, APIL supports the call for:

- Clearer and greater central responsibility for tackling the problem of asbestos in schools;
- Investment into locating asbestos, and into air sampling to gain necessary information about the scale of the problem. The location of asbestos should be registered and should be made available for those in school. Where appropriate, asbestos can be left in situ or encapsulated, but if necessary – where there is dilapidation, for example - the asbestos should be taken away safely before it is accidentally disturbed and there is a serious risk to health;
- Reintroduction of proactive inspections for schools;

¹<http://www.iacoc.org.uk/papers/documents/EFFECTOFLIFEEXPECTATIONONLIKELYMESOTHELIOMARISK2Howie.pdf>

²<http://www.iacoc.org.uk/statements/documents/Asbestosinschoolsstatement.pdf>

- Mandatory training and raised awareness of asbestos for those who work in schools;
- A long-term plan for phased removal of asbestos needs to be carefully considered. Priority should be given to those schools where the asbestos is in the most dangerous or damaged condition.

Clear, central responsibility and accountability for tackling the problem of asbestos in schools

The level of confusion and uncertainty as to which body holds responsibility for management of asbestos in schools across the different jurisdictions of the UK is unacceptable. At present, the UK government and Welsh government take a differing view as to who is responsible for the management of asbestos of schools in Wales, and for policy regarding asbestos in schools in Wales. A clear strategy cannot be put together without clear assignment of responsibility.

Even at local government level, there is uncertainty as to who holds responsibility for managing asbestos in schools. This is particularly the case in England, where there are increasing numbers of academies and free schools. For most schools, the duty holder will be the local authority. This body will most likely have the experience to carry out asbestos management effectively, and there will be a consistent approach across the local authority's jurisdiction. Academies and free schools, however, are outside the jurisdiction of the local authority, and the responsibility for asbestos management most likely falls to the school governors. Because of this uncertainty, duty holders may not be aware of their responsibilities, and effective asbestos management may not take place. This is obviously unacceptable and dangerous.

We also question the current approach for management of asbestos in private schools and nurseries. Many nurseries are converted Victorian or Georgian houses, and are highly likely to contain some asbestos. As clear from the Committee on Carcinogenicity report, the younger a child is, the more likely they are to develop mesothelioma in later life.³ Nursery school aged children are particularly at risk. Yet, it may be unclear who the duty holder is in these establishments, and asbestos will not be effectively managed. It is particularly important to address the issue in relation to nurseries, given the government's recent announcement that it will contribute up to £2,000 per child per year in childcare costs. This will surely increase the number of children in nursery care.

As the Department for Education states in its policy review paper, the DfE does not manage the schools estate in England, and responsibility for asbestos management rests with the duty holder. We suggest that a central government department, ideally the Department for Education, should have responsibility for asbestos management in all schools, including private schools and nurseries, free schools and academies. The duty holder – whoever they may be - should be required to report to the government department to ensure that the asbestos is being managed correctly.

It must also be clear on a UK-wide level which government assumes responsibility for the problem of asbestos in schools, and it must also be clear who the duty holder is in respect of each kind of school. It is extremely difficult to have a clear policy on asbestos management if numerous bodies are apparently responsible for tackling the issue.

Necessary investment by the government to establish the scale of the issue

In order to effectively manage asbestos, the government must provide funding to locate asbestos materials in school buildings. As above, 75 per cent of schools in England, and 85 per cent of schools in Wales contain asbestos in some form. The condition of this asbestos is largely unknown. The Department for Education has specifically excluded asbestos data from the Property Data Survey Programme 2013 - 2014, which was intended to provide up to date and accurate information on the condition of schools in England. This survey will not collate any information on asbestos into its database, and so the results will be misleading. It is illogical to leave such a dangerous and costly risk out of the survey. The government must invest in locating and finding out the condition of asbestos in schools, and this will then allow an effective plan to be implemented– the problem is not simply going to disappear if it is ignored.

It is also important to know where asbestos is located, as the current HSE policy is that asbestos is safe if it is undisturbed. Unless all those (including teachers, teaching assistants, caretakers and cleaners) who may potentially disturb the asbestos know where it is to be found within the schools or nursery where they work, then there will always remain a risk that the asbestos will be disturbed. Furthermore, schools are special workplaces containing large numbers of children who are known to be more vulnerable to asbestos than adults. Children run around, slam doors and bump into walls and so on. Children and those working in schools cannot be protected if the school is unaware of the location of the asbestos. Surveys should be carried out to identify the location of asbestos. The results of these surveys should be readily and centrally available both to workers at schools who may be exposed to asbestos, and to the parents of children at schools where asbestos is located.

There should be increased consistency in how surveys should be carried out, with regular review of such surveys. This review should be carried out centrally. It is extremely important to locate the asbestos so that the risks can be regularly assessed and managed, and so that removal can take place if deemed necessary.

Reintroduction of pro-active inspections

Having regard to the fact that schools are special workplaces containing children who are more vulnerable than adults to the development of mesothelioma from asbestos exposure; and to ensure that duty holders are complying with their responsibilities, including the locating of asbestos, proactive HSE inspections for schools should be reintroduced. The usefulness of these inspections, which were discontinued in 2011 for local authority schools, is evident from the published results of the last inspections. In total, enforcement action was taken against 17 per cent of the 164 schools inspected in 2011⁴. Proactive inspections must take place, because for risks such as asbestos exposure, it is not satisfactory to do something once exposure has occurred. It takes a single fibre of asbestos to lead to sometimes fatal illness and disease, therefore prevention of exposure must be the priority. In the case of Cwmcarn School in Caerphilly, Wales, it was only when asbestos was found via a structural report that the problem was identified and a review was carried out. By then, the exposure had already occurred. If asbestos is located before it is disturbed it can safely be encapsulated or removed, and a serious risk to health can be prevented or at least minimized.

Mandatory training and raising awareness for those who work in schools

Awareness of the dangers of asbestos is key. There should be mandatory training for duty holders to ensure that they are aware of their responsibilities. In a recent survey conducted by a number of trade unions representing teaching and school support staff, nearly 90 per cent had not received training on asbestos at all⁵. It should be compulsory for teachers and others likely to come across asbestos to be briefed on the risks of exposure. For example, a teacher may bring a gas mask into the classroom and allow pupils to try it on, without realizing the mask contains asbestos.

A further problem is that increasing numbers of free schools and academies have moved away from local authority control, and thus lost the expertise of that local authority in dealing with asbestos management. If school governors have not undertaken training on asbestos management, they will be unaware of the risks.

⁴<http://www.hse.gov.uk/press/2011/hse-asbestosinschools.htm>

⁵<http://www.unison.org.uk/news/articles/unison-supports-review-into-asbestos-management-in-schools>

A long-term plan for removal of asbestos in schools

All of the above recommendations should be placed within a framework of a long-term plan for the phased removal of all asbestos in schools. For too long now, the UK government's policy on asbestos has been focused on the short term, piecemeal solution. The policy of leaving asbestos in situ unless it is damaged is no longer appropriate. All of the asbestos in place is old and many of the buildings are deteriorated, with the asbestos no longer in a suitable condition to be left in place. It must also be recognized that children present heightened and significant risks compared to other "workforces", and the guidance and policies must be adapted accordingly. HSE guidance states that if asbestos is undamaged and unlikely to be disturbed, it is usually safer to leave it in place and to manage it. Asbestos left in situ in schools is far more likely to be disturbed by children than in other workplace settings. This enlarged risk is obvious; children will run around, slam doors and bump into walls, throw things at ceilings, and if told not to go near something, are much more likely to do so than adults and so on.

A blanket policy that asbestos should be left in situ has dangerous consequences, and is likely to cost the government more money in the long run as they adopt a piecemeal short term fix, when the better approach is the safe and planned removal. We support the suggestion that the UK should move towards a similar approach to that of Australia. In Australia, a National Strategic Plan for asbestos has recently been introduced which will establish long-term strategic policies for the eradication of asbestos and therefore asbestos related disease. This will set systems, timelines and processes for the safe removal of asbestos materials from public and commercial buildings, and priority will be given to schools.

APIL suggests that the government policy on asbestos in schools is improved in the following way

- The UK government, in a co-ordinated approach with the other governments of the United Kingdom, should take central responsibility for tackling the issue of asbestos in schools. There should be clarity in who the duty holder is in relation to each kind of school, and the duty holders should report to the Department for Education, and like Departments for the rest of the UK, on matters relating to asbestos management. This should take place as part of a wider strategic plan for asbestos removal, or containment for all public places.
- Proactive inspections should be reintroduced, and all asbestos in schools should be located. Asbestos deemed "safe" by experts should be encapsulated and sealed, and

its location should be placed on a register which is made available for anyone who comes to the school. This will ensure that asbestos is not disturbed. All other asbestos should be safely removed.

- All duty holders and teachers should receive mandatory training on asbestos safety.
- A long term plan should be put in place which will eventually lead to all asbestos being removed from all schools.

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