

Welsh Government

**Review of Guidance on Management of Asbestos in
Schools**



A response by the Association of Personal Injury Lawyers

March 2019

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 25 years of working to help injured people gain access to justice they need and deserve. We have over 3,400 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which 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;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to respond to a further draft of the Welsh Government's guidance on management of asbestos in schools. The issue of asbestos management in schools is by no means minor, with around 85 per cent of schools in Wales¹ containing asbestos. It is vital that any guidance to those responsible for asbestos management is clear, comprehensive, and encourages compliance with regulations by indicating clearly who the duty holder is, and demonstrating the effects of non-compliance with regulations.

We welcome that the Welsh Government has consulted on this issue, enabling it to hear from a range of experts. We recommend that a Welsh asbestos in schools steering group is set up, similar to the Department for Education steering group but focusing on issues relating to schools and colleges in Wales. This group should meet regularly, to continue the collaborative approach to the matter.

While guidance is very welcome, it is essential that Welsh Government takes steps to ensure that there is compliance with it. Evidence from the Committee on Carcinogenicity's report in June 2013 highlights how important compliance is, particularly where children are at risk of exposure. The lifetime risk of developing mesothelioma is predicted to be around 3.5 times greater for a child exposed to asbestos aged five, 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.

We have not been provided with a revised version of the accompanying guidance "Asbestos management in schools: where asbestos may be located", and would welcome an opportunity to comment on this.

Comments on guidance – Managing Asbestos in Schools

Responsibility for the safe management of asbestos in your school

We welcome that the revised guidance is clearer on who the duty holder is. Page 6 of the guidance sets out who the duty holder will be in the range of different types of school. As mentioned in our previous response, it is vital that any guidance on asbestos management in schools clearly sets out who has responsibility for that management. There is currently an issue with non compliance with duties, which could stem from the lack of certainty around who the duty holder is in each situation.

To further improve compliance, and to further raise awareness of who the duty holder is, we reiterate our suggestion that that there should be compulsory training for school governors on the dangers of asbestos. Representatives of school governing bodies must already attend training courses on various matters and incorporated into this, there should be compulsory training on the dangers of asbestos and who is responsible for managing this.³

Confusion around who is responsible for the management of asbestos in schools is not just prevalent at local government level. There remains confusion and uncertainty as to which

¹ BBC Week in Week Out 30.10.12 <http://www.bbc.co.uk/news/uk-wales-20131119>

² <https://www.gov.uk/government/publications/relative-vulnerability-of-children-to-asbestos-compared-to-adults>

³ We would commend the free E-Learning Module approved by JUAC provided by Modern Governor

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

Step 4: Make sure staff, contractors and other visitors know the risks and precautions they need to take

It is disappointing that the revised guidance continues to assert that the asbestos register should be available if requested as part of any emergency response⁴. This is simply incorrect. The Control of Asbestos Regulations 2012⁵ require duty holders to ensure that information about the location and condition of any asbestos or any such substance is made available to the emergency services. Duty holders have a legal duty to make this information available, not just on request.

What to do if things go wrong

We welcome that the guidance on what to do if things go wrong has been improved. There is no longer reference to getting advice from an asbestos expert who is “preferably formally qualified”. We suggest that the guidance could be made even clearer by adding that advice should only be obtained from a formally qualified asbestos expert. It is important that advice is taken only from those who are formally qualified to advise on the situation. If someone who is not qualified gives advice, this may result in further harm or risk of harm to those present.

We also welcome that the reference to “very minor” incidents not having to be reported to the HSE has been removed. There would be uncertainty as to what “very minor” is, and the new guidance that schools should contact their local authority and the HSE to discuss any incident and identify whether it is reportable is far preferable. This will mean that schools will not be deciding for themselves what should and should not be reported to the HSE – which may have led to some incidents not be notified to the HSE when they should be.

Useful organisations

We welcome that the Welsh Local Government Organisation, and guidance to contact the relevant local authority, property and education departments are now included in the list of useful organisations. This will ensure that duty holders and others reading the guidance are directed to the right place to obtain further information and be put in contact with the relevant people to help them.

The list of useful organisations does need to be updated, however. The National Union of Teachers and Association of Teachers and Lecturers have combined to form the National Education Union, and the list of organisations should be amended to reflect this. The University and College Union (UCU) should also be included on the list of useful organisations.

⁴ Paragraph 5, page 13 of the revised Welsh Government guidance

⁵ Regulation 4(9)(c)(ii)

Accessibility of the guidance

The guidance should be as accessible as possible to duty holders and others in schools who have a role to play in the safe management of asbestos, such as headteachers, other school leaders, governors, and trade union health and safety representatives. The guidance should not simply be buried on the Welsh Government website. The guidance should also be distributed to schools, to governors and to Trade Unions directly in hard copy form.

Review

We note that whilst there is a commitment from the Department for Education to regularly review their guidance on asbestos in schools, there is no similar commitment from the Welsh Government. The Welsh Government should commit to a timescale for reviewing the guidance to ensure that it remains up to date. There is constantly new research on the effects of asbestos, and out dated guidance could have serious consequences for the health of children and those who work in schools.

We are also aware that the Department for Education is planning to review its guidance in the next few months. Given that the new Welsh Government guidance clearly borrows very heavily from the Department for Education documents, it is likely that as soon as the new Welsh Government guidance is published (or very soon after) it will become out of date.

Managing hidden asbestos

There is currently no guidance to duty holders on assessing the potential risk from hidden asbestos. Duty holders should be required to carry out regular checks to find out if any disturbed hidden asbestos is passing into classrooms and other areas during the school day. APIL supports the Joint Union Asbestos Committee's calls for improved guidance on managing the risks of hidden asbestos, requiring regular checks on seals in columns and visual checks of ceiling tiles, and for evidence of water ingress. There should also be regular asbestos air test checks.

APIL believes that surveys should be carried out to identify the location of asbestos in schools, and that the results of these 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. The Department for Education has accepted that information on asbestos in school buildings should be made available locally and easily accessible to parents and local communities. We agree with the Public Accounts Committee's recent document on Academy School Finances, which called for the Department for Education to publish the results of its ongoing exercise to collect data on asbestos; and make clear to Local Authorities and academy trusts that information should be made available by the end of June 2018.

We call on the Welsh Government to commit to publishing data on the extent of asbestos in schools in Wales.