

## Written evidence from AEC (ASB0005)

My reason for submitting evidence is that I am increasingly frustrated at the lack of action by HSE (who are admittedly underfunded), and their latest piece of guidance HSG248, where they ignored comments at consultation. For our organisation to be able to analyse samples or carry out air monitoring, we must be accredited by UKAS to ISO 17025. This is a requirement of Regulations 21 and 20 respectively of the Control of Asbestos Regulations 2012. This guidance (HSG 248) is likely to be literally interpreted by UKAS and therefore increase costs and overheads significantly in our business and industry. The HSE have supplied no evidence of misanalysis of samples but have increased QCs and restricted numbers in this guidance. No rationale for the restrictions of numbers have been provided. Where they do have evidence of poor performance of asbestos removal i.e. the activities they both license and should enforce, and they appear to have put the responsibility for this on to the analyst!

Of course, this is an investigation into the effectiveness of HSE. I am certain that would improve with increased resources. They, like every other sector in public life, are too underfunded to make a real difference, and a review of their funding is perhaps required before we review their effectiveness. An effective HSE with robust inspections and, where required, enforcement across health and safety regulations in the UK, such as The Control of Asbestos Regulations 2012, the COSHH Regulations, Noise at Work Regulations etc will in the long run prevent ill-health and the huge burden on our health and social care sector.

- **What are the current risks posed by asbestos in the workplace? Which groups of workers are most at risk?**

I think it is clear that the trades involved in construction (demolition and refurbishment and repair) and maintenance of buildings are those most likely to disturb asbestos.

However, it isn't as simple as suggesting these are the only trades affected. Secondary exposures are also likely, so anyone who occupies a property could be exposed if asbestos is damaged, either accidentally or because of somebody working on it illegally.

It has been suggested that 80% of UK schools contain asbestos. If that is the case, then do we know how many children or teachers are exposed per year? It is a far wider issue that targeting specific professions or sectors.

Further to this, since the use, manufacture and sale of asbestos was prohibited in the UK (in 1999), the problem cannot be focused on professions. Nobody makes asbestos products, nor uses them, nor installs them (theoretically). But people do remove them (often illegally) and damage them, mostly unknowingly.

The 'modern' asbestos regulations came into place in 1983 (for removal) and 1989 (CAWR). Annual fatalities in the UK has remained fairly constant since. This is partly understandable due to the long latency periods of asbestos-related diseases. These deaths are recorded by physicians under RIDDOR. It has often been suggested they are under reported, particularly lung cancer deaths if the patient is a smoker.

By comparison, Legionnaires Disease has approximately 500 cases a year with a fatality rate of approximately 10%, so approximately 50 deaths per year. However, Public Health England publish a

monthly case report, Legionnaires has its own HSE Approved Code of Practice, L8 (but no direct regulations), and appears to receive similar resources.

Furthermore, HSE funding has been reduced year on year, with fewer inspections annually, fewer staff and a glacial pace of regulation. The 'big society' hasn't helped asbestos fatalities! This in turn leads to fewer prosecutions or indeed a greatly reduced deterrent – *if we can't get caught why bother complying with the regulations?*

- **How effective is the current legislative and regulatory framework for the management of asbestos?**

There is a well-established and 'mature' set of regulation for the removal of asbestos and treatment of asbestos, and a 'permissioning' regime for the removal of higher risk products.

That said, as asbestos was banned in 1999, a perception exists that this is no longer a problem.

The regulations are, in my opinion, fit for purpose. However, what is not is inspection and enforcement by HSE. For example, a licensed asbestos removal contractor (LARC) must notify work to HSE 14 days in advance. The rationale being that the HSE know in advance what work is being carried out, where, and when, to allow attendance by HSE inspectors. However, LARCs, under the terms of their license, are only assured of a single annual inspection by HSE during the three-year license term. Some may receive more, but this is pitifully low. While a trade association may audit the LARCs several times a year, there is far too little enforcement. I do, however, agree that the licensed removal sector is not the real problem in this. They are licensed by and known to the HSE, so there is an 'assumption' of compliance.

Those of concern are those working illegally. If there are fewer inspectors year on year, then how can they be identified?

And even if the HSE do prosecute an organisation for breach of the regulations, the fines are often ridiculously low. The sentencing guidelines are based on turnover, so a small jobbing builder may get fined less than it would have cost him to pay for a licensed removal. They can be better off! By contrast, the Environment Agency seem to be able to secure relatively large fines for things such as fishing without a license. There is no parity, and as a result, there is little real deterrent, as the chances of getting caught are minimal, and if they are, the fines are paltry.

One only has to read the daily reports of fly-tipped asbestos to realise that the removal is not being carried out to the regulations.

Regulation 4 the duty to manage asbestos is not, to my knowledge, specifically 'enforced' or checked by HSE inspectors, rather with 'general' safety inspections i.e. there is no HSE department checking this key regulation is being followed. An example is the Dept for Education Asbestos Management Assurance Process Report of July 2019. This report found that approximately 5% of schools do not follow this regulation! There has been a real failure to get the message out to employers on the duty to manage.

We have laws, but we don't have any carrots or any sticks!!!!

- **How does HSE's approach to managing asbestos compare to the approach taken in other countries? Are there lessons that the UK could learn from best practice elsewhere?**

I have worked overseas in this industry and my opinion is that the HSE's approach is broadly in line with other countries. However, the UK's asbestos legacy is far higher than most 'western' economies, with only Australia with similar rates of fatalities. Our historical use of asbestos (imported from the 'Empire') has resulted in the large number of deaths.

There is, however, one very specific area in which the HSE differs for licensed (high risk) work. The HSE '*strongly recommends*' that the client employs the LARC and the analyst separately, '*to avoid conflict of interest*'. Under Regulation 17, the work has to be inspected by an 'independent' analytical company accredited by UKAS to ISO 17025. However, this is not in the legal framework, resulting in the key problem that analysts are employed directly by the LARC, to critique their work. This, of course is a conflict of interest (seemingly acknowledged, but not acted upon, by HSE).

This situation does not exist elsewhere. Other countries, such as USA, Australia, France, Hong Kong explicitly require the LARC and the analyst must be independent and employed separately by the client.

The HSE's most recent issue of guidance, the document HSG 264 Asbestos: The analysts' guide, was reissued in May 2021. The consultative document for this update was circulated in November 2015! The HSE largely ignored comments made by the industry and the two trade associations. This document was first published in 2005 and was rendered out of date in 2006 by the publication of the Control of Asbestos Regulations 2006. It took HSE 9 years for a consultation, then a further 6 years to publish, which is unacceptable. In this guidance the HSE is clearly putting the 'policing' of the removal work by LARCs on to analysts, but still not making this role independent. It is farcical. In this document the HSE acknowledges that analysts are put under pressure and potentially threatened by LARCs., and then states that the analysts' employer must train their staff how to deal with such threats. It appears that they are washing their hands of the entire issue. Effectively the analyst is becoming more of a policing body to correct and report back on mistakes made on site, as opposed to providing the independent check the regulations suggest.

A further issue is that the HSE move slowly and communicate poorly, so other government departments issue guidance e.g. Dept for Education on asbestos in schools.

- **How does HSE measure and report its progress in mitigating the risks of asbestos?**

Does anyone really know? As stated in question 1, deaths are reported under RIDDOR by medical professionals. These could be doctors or GPs. Without going into the entire farce of the NHS, how can this reporting be reliable? I have real concerns that Covid-19 will mask true figures of deaths resulting from asbestos exposure, not to mention these deaths from exposure to welding fume, respirable crystalline silica and other toxic metals and minerals.

Further to this, since the Hidden Killer campaign of 2008, the HSE appears to have done not a lot.

- **Does HSE keep adequate records of asbestos in public buildings?**

No it does not. This will be down to the duty holder.

- **Is HSE making best use of available technology and systems to monitor the safety of asbestos which remains in buildings?**

No

- **Does HSE commit adequate resources to asbestos management in line with the level of risk?**

Clearly it does not. In October 2012 the HSE introduced its (controversial) Fee For Intervention (FFI) scheme, whereas they 'charge' for their time. While the HSE are grossly and embarrassingly underfunded by successive Governments, the FFI scheme could be used effectively to enforce asbestos compliance if they had more staff, or indeed sub-contracted out inspections. The HSE does not seem to have had much problem in attending workplaces to check for Covid-19 compliance, either in person or via telephone call. Could this not happen for asbestos?

Interestingly it appears that resources are found by the Government and HSE for tragic events such as the Grenfell Tower fire, and also during Covid-19, but a constant (& underestimated?) 4500 to 5000 annual deaths from asbestos exposure does not seem to warrant the same level of scrutiny and input.

Legionella, on the other hand appears to have an over-exaggerated risk, whereas other carcinogens such as welding fume, wood dust, respirable crystalline silica (all used in construction, our largest industry) would appear to have little enforcement action.

Of course, now 'life expectancy' has increased, then many diagnoses are in the older (usually male) cohort of society. The burden of medical care increases of course and is a real risk for future generations as a burden on the NHS – keeping alive, sick and elderly patients who were historically exposed to asbestos.

It is interesting that in the UK our **safety** record is exemplary. Why, then is our **health** record so poor?

- **How robust is the available data about the risks and impact of asbestos in the workplace? What gaps in evidence need to be filled?**

There does not seem to be any real analysis of statistics of fatalities, such as professions, and separating those who would not be expected to be exposed to asbestos e.g. comparisons on ill-health of, say teachers or bus drivers, with construction trades. There is lots of anecdotal evidence of asbestos disease in family members of those who worked with asbestos, such as washing contaminated clothing, and these are often highlighted in the press. They would illustrate secondary exposure as being a large risk, but this does not appear to have been considered. After all they are not at work.

One of the issues is that secondary exposures cannot be 'measured', so the real risk cannot and will not be known. On one hand HSE have a 'no known safe level of exposure' and on the other don't seem to know where and how people are exposed.

- **Is HSE drawing on a wide body of international and national regulatory and industry expertise to inform its approach to the management of asbestos safety in buildings?**

I suspect the HSE would suggest it consults with industry and bodies, unions, and trade associations. Indeed 'stakeholders' do have committees and meet. The meetings though are infrequent, and progress would appear to be v slow. One real area of confusion in construction is asbestos in soils.

However, the HSE and the EA seem incapable of agreeing a joint stance on risk and issuing clear guidance. The cost to industry is potentially huge.

- **How effectively does HSE engage with external stakeholders and experts about its approach to the regulation of asbestos?**

It seems the HSE does engage but would appear to lack resources to make any progress. Furthermore, when the HSE does consult, as with HSG 248 in 2015 it does not appear to take into consideration the comments made. Many were astonished to see the publication of a document almost six years later, when the voice of the industry has been ignored.

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