

## Written evidence from Dr Brian Gardner (ASB0013)

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

RESPONSE: In my experience the workers at most risk are still those actively working with asbestos, whether in the licensed industry or broader building trades undertaking non-licensed work. This latter group received almost no support in terms of reliable ongoing evaluations of their actual exposure risk. This is a consequence of the limitations of the current monitoring technology available – one of the key issues raised in the 2019 ResPublica report

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

RESPONSE: The HSE currently can only “*strongly recommend*” that air testing is commissioned by the duty-holder. If made mandatory this genuinely impartial role for the analyst could be further developed and would have a major knock-on effect in improving standards. I discuss this in more detail below (*Contractual arrangements for asbestos re-occupation certification*)

### 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?

RESPONSE: I think HSE should ensure that it has reviewed the situation in the Channel Isles (where the licensed removal contractor is not permitted to directly contract the analyst) and give consideration to the advisability of developing such policy for UK. I discuss this in more detail below (*Contractual arrangements for asbestos re-occupation certification*)

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

NO RESPONSE

### Does HSE keep adequate records of asbestos in public buildings?

RESPONSE: I think the current system is suitable and sufficient

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

RESPONSE: This was a key issue flagged in the 2019 ResPublica report. Current monitoring technology has a number of failings which means it cannot be used to assist in policing risk management as much as is needed. Arguably, work with asbestos requires better monitoring techniques than do most other occupational respiratory hazards, due to:

- a. the significant range of fibre exposures which can occur (much greater than for mass-based hazards), and
- b. the difficulty the worker/manager has otherwise in identifying or evaluating exposure risk for such invisible fibres

There are new AI-based technologies potentially coming available (Full disclosure: we are working on one such device) which could represent a step-change in improving functionality, quality, sensitivity, cost, speed, transparency. It is encouraging that HSE appear to be engaging with this opportunity but there are huge regulatory/accreditation etc hurdles to adoption of such technologies. While this is understandable for such a safety-critical service, it would be disappointing if UK was not to take a lead on this, given its historic, pre-eminence in global asbestos risk management policy and regulation.

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

NO RESPONSE

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

RESPONSE: I think we have very limited real-world data on actual exposures for asbestos workers, licensed removal operatives, and non-licensed tradespersons. This is one consequence of the limitations of the current monitoring method, and its costs.

**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?**

NO RESPONSE

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

NO RESPONSE

## **Contractual arrangements for asbestos re-occupation certification**

Asbestos removal work by licensed contractors can easily result in airborne fibre levels thousands of times higher than in ambient air. These areas must all have an independent inspection and test before being handed back to the occupier. But few people realise that the laboratory providing this fibre-counting service is often (~50% of the time) engaged and paid directly by the licenced contractor – the organisation whose performance they are meant to be auditing. The contractor may not quite “mark their own homework” – but they certainly closely hold the purse strings for those who do.

The consequence of this is that despite strenuous efforts to police the relationship between removal contractor and analyst (via ever-tighter, more prescriptive guidance and the UKAS-accreditation mechanism), too often the former will still informally discourage the analyst from applying full rigour to their inspection and testing work (if this may result in project delays and commercial losses).

We know that “whoever pays the piper calls the tune”, why should it be different for who pays the fibre-counter? Sadly, the industry is still rife with bad practice, fraud and inducements, an elephant in the room that HSE seem powerless to address. The few examples that come to light are the tip of the iceberg (<https://www.hvpmag.co.uk/Falsified-asbestos-record-leaves-school-and-engineers-at-risk/6663>)

Many removal contractors will place all their work with one laboratory; and some laboratories can be heavily dependent upon just one or two of these as clients. The people testing the air in your kids’ classroom are not always as impartial as we would like: a survey undertaken by HSE in 2015 (<https://www.hse.gov.uk/asbestos/assets/docs/asbestos-analysts-project-report-2015.pdf>) showed that many laboratories were significantly less stringent in applying the regulations when they didn’t happen to have HSE standing watching over them. Effectively this suggests that every year 1000s of hazardous areas (in schools, homes etc) may be being handed back to occupants before they are safe.

There is an easy solution to this, and one that in my view supports HSE’s broader aims of ensuring alignment between the duty-holder and their responsibilities for managing the asbestos on their premises. This involves making it mandatory that the regulatory duty-holder (eg building owner/manager) appoints the inspection/testing laboratory independently of the removal contractor. (This is the situation in the Channel Islands for example). There is in my view no single

change to asbestos regulation that will have the positive knock-on impact in terms of risk management that this would.

HSE did try to legislate this a few years back but backed down when lawyers for the asbestos removal contracting sector argued that any restriction on their ability to appoint the analyst was a limitation on their “freedom to trade”. The last 30 years has seen a steady erosion of public health regulation in favour of “letting the market decide”. But we have plenty evidence now to suggest this has gone too far the other way, from Volkswagen vehicle emission cheat software to Grenfell Tower. Every day in the UK over 100 hazardous asbestos zones are inspected, tested and opened up to let tenants, pupils and other occupants in to breathe the air. The HSE’s own 2015 survey strongly suggests that a few of those zones every day will not meet cleanliness requirements. The freedom of building occupants to not be exposed to asbestos fibres must come before any supposed contractor “freedoms”.

This would be timely. The UK will soon be embarking on a huge decarbonisation retrofit of buildings. A significant increase in the volume of asbestos removal works around this is anticipated. The time is surely right – post-Grenfell - for HSE finally to stand up to the narrow interests of the removal contracting industry and ensure this crucial safety-critical service can genuinely become independent.

***September 2021***