Written evidence from the Trades Union Congress (TUC) (ASB0030)

About the Trades Union Congress

The TUC speaks on behalf of our 48 trade union affiliates and 6.5 million working people in trade unions. We welcome this opportunity to present our views on the work of the Health and Safety Executive's management of asbestos. We would like to see much greater interest among parliamentarians in the issue of health and safety at work—we have accordingly supported the work of the All-Party Parliamentary Group on Occupational Safety and Health since its relaunch in 1996. We advocate on behalf of the entire workforce, not only our members. Workers overwhelmingly share concern about asbestos exposure, regardless of occupation, or whether they are union members or not[1].

This submission aims to answer several the questions put to the inquiry:

- What are the current risks posed by asbestos in the workplace? Which groups of workers are most at risk?
- How effective is the current legislative and regulatory framework for the management of asbestos?
- Is HSE making best use of available technology and systems to monitor the safety of asbestos which remains in buildings?
- How robust is the available data about the risks and impact of asbestos in the workplace? What gaps in evidence need to be filled?
- Does HSE commit adequate resources to asbestos management in line with the level of risk?
- How effectively does HSE engage with external stakeholders and experts about its approach to the regulation of asbestos?
- 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?
- Does HSE keep adequate records of asbestos in public buildings?

The risks

Asbestos continues to be the biggest cause of workplace deaths. This year more than 5,000 people are likely to die prematurely as a result of asbestos exposure[2]. This is around three times the number of road accident deaths. Most of those who die do so as a result of mesothelioma, a kind of cancer that can be caused by very low levels of exposure.

Asbestos-containing materials can be found in around half a million non-domestic premises (and probably around a million domestic ones). This means that people are still being exposed to asbestos. It is often people who are working in maintenance, refurbishment or

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[1] P 61 https://www.hse.gov.uk/research/rrpdf/rr783.pdf

[2] https://www.hse.gov.uk/sTATIsTICs/causdis/asbestos-related-disease.pdf

demolition, but people can, and do, become exposed simply by working in a building with asbestos, as fibres can become dislodged and breathed in.

It is impossible to give a clear figure for the number of people who are exposed to asbestos today, or the levels they are exposed to, but we do know it is happening on a daily basis. The Health and Safety Executive (HSE) estimates that 1.3 million tradespeople are at risk of exposure, and they could come into contact with deadly asbestos on average more than 100 times a year.

An analysis of mesothelioma deaths shows that they are far more common amongst occupations such as carpenters, plumbers and electricians, but also occur amongst other workers with no history of work in the construction-related sector but who are likely to be affected through exposure in their workplace. This includes shopworkers, teachers, health-care workers and telephone engineers.

All workers are at risk. The TUC strongly believes there is no safe threshold of exposure to asbestos fibres. This means that the inhalation of small quantities, even over a short period, can lead to mesothelioma several decades after exposure.

It is estimated that over six million tonnes of asbestos fibres were imported into Britain during the last century. Most of this asbestos is still here. So long as this asbestos is in place, workers will continue to be exposed and thousands more will die as a result of exposure.

The TUC is concerned by what we view as an ongoing complacency regarding levels of asbestos-related illness. The HSE's 2017 review of the 2012 Control of Asbestos Regulations referred to the 5,500 deaths a year as a result of past exposure from a time when asbestos was "less well-regulated than today". It states that the present high number of deaths from mesothelioma is likely to peak at around 2,500 for the rest of this decade before falling. Yet previous estimates said asbestos deaths were going to peak in 2010 at 1,500 a year. The number of women affected is rising, indicating the types of occupations most affected are changing, too. We must not continue to shrug this off as a legacy concern, when the statistics demonstrate otherwise.

There has been a marked reduction in the number of people who have reported asbestos exposure during the past 50 years. However, much of this fall in reporting is due to changes in the way people are becoming exposed. In the 1970s people were working directly with asbestos and so knew they were exposed. Now, most people who are exposed do not know, and therefore never report it. A previous report by the HSE had estimated that 1.3 million tradespeople are at risk and they could come into contact with asbestos on average more than 100 times a year. An earlier report said that 1.8 million workers were directly at risk, however millions more also risk exposure as they work in offices, shops, schools etc., where there is hidden asbestos that could be disturbed at any time[3].

The regulatory framework

The current asbestos regulations (Control of Asbestos Regulations 2012) state that those responsible for maintenance of non-domestic premises have a duty to manage the asbestos in them and to protect anyone using or working in the premises from the risks to

[3] https://www.hse.gov.uk/asbestos/assets/docs/insight-research-2013-14.pdf

health that exposure to asbestos causes. They also state that, before doing any building or maintenance work in premises that might contain asbestos, you need to identify where it is, its type (blue, white, brown) and what condition it's in; this helps with assessing the risks and putting in place the right controls to manage these risks. A case must also be made for why the asbestos would not be removed.

In practice this should mean that for almost all buildings built before 2000 the employer should assume that the building does contain asbestos and do a survey if any work is to take place in the building. However, this is often not done.

In most cases, work with asbestos needs to be done by a licensed contractor, but even non-licensed asbestos work requires effective controls. Training is required for anyone liable to be exposed to asbestos fibres at work. This includes maintenance workers and others who may come into contact with or disturb asbestos, as well as those involved in asbestos removal work.

However, if existing asbestos-containing materials are in good condition and are not likely to be damaged, the current regulations say that it may be left in place; its condition must then be monitored and managed to ensure it is not disturbed.

The advice that asbestos-containing products can be left in place and just managed, provided they are in good condition and not likely to be disturbed during the normal use of the building, has been the generally accepted practice in the past, but was always seen as a temporary measure. Yet 15 years after the introduction of a ban on its use, the vast majority of asbestos is still in place and poses a major hazard to both workers and the wider public. The control limit for asbestos of 0.1f/cm3 is not a "safe" level. Inhalation of small quantities of asbestos can lead to mesothelioma decades later.

The TUC agrees with the Asbestos Victims Support Group Forum UK in their comments: "The presumption underpinning the current HSE position is that asbestos is safe providing it is in good condition and that it is undisturbed. In practice, this gives unscrupulous duty holders too much leeway to retain asbestos indefinitely, as they can simply argue that it is 'in good condition' (even when this is not the case)." A previous review recommended a "more objective assessment of compliance levels and the presence of asbestos (e.g. through surveying or reviewing of duty holder surveys on a larger scale) in UK building stock."[4] This would still be welcomed.

IDespite the regulations calling for all premises to be surveyed and asbestos-containing materials to be regularly inspected and labelled, we know that this is not happening because of the number of prosecutions of shops, local authorities, factories and others for allowing workers to become exposed. Yet those prosecuted are only a tiny proportion of the employers who put the lives of their workers at risk by exposing them to asbestos. The asbestos regulations, however good they are, are simply not being complied with. In workplaces across Britain, most asbestos-containing material remains unrecognised and even where it has been identified, accidental disturbances by contractors and others are common-place.

There must be more effective regulation on the purchasing and transporting of asbestos-containing materials. While it is prohibited to send asbestos samples in the post, there remain private laboratories who continue to advertise freely, selling 'DIY' testing kits with return postage included. Similarly, online retailers continue to allow the sale of historic

[4] https://www.hse.gov.uk/research/rrpdf/rr783.pdf

collectables known to contain asbestos, such as World War gas masks. This poses severe risk to couriers and postal workers handling these items unknowingly.

If any worker is exposed to asbestos then the employer needs to keep a health record and provide medical surveillance. Also, many unions keep their own asbestos register of anyone who is exposed. It is important that there is a record, not only in case the worker has to make a claim for compensation, but to ensure that the employer takes measures to prevent any further exposure. It is important to note in this context, some workers who speak out about concerns about asbestos have faced victimisation and intimidation.

Currently there are different frequencies for medical examinations for those doing licensable work (every two years) and those doing notifiable work (every three years). The report recommended looking at aligning these, so that all examinations were every three years. Thankfully, this proposal was later scrapped.

In addition, there is a clear lack of awareness amongst those most at risk. In 2014, when asked by the HSE, only 30% of 500 tradespeople were able to identify all the correct measures for working safely with asbestos[5]. For this reason there is a need to ensure that all workplaces have a programme of identifying, managing and safely removing and disposing of all asbestos.

The TUC, along with trade unions, asbestos victims support groups and the all-party parliamentary group on occupational safety and health, believe that the Government should pass legislation requiring all employers to do this; but while we lobby, union health and safety representatives press their employers to remove existing asbestos rather than just "managing" it.

Trade union reps play a particularly key role within the legislative and regulatory framework. Union safety reps play an important role in controlling workplace risks and can help to prevent exposure to asbestos. They are entitled to be provided with any information on asbestos, including any risk assessments and surveys. They legally must be consulted on their employer's plans to manage asbestos.

Trade unions work closely with the HSE in sharing information and keeping advice and guidance up to date. The TUC and HSE have jointly produced guidance for safety representatives.

Although the law only requires that asbestos is "managed", for unions that is not enough. We know from the huge number of people still being exposed that asbestos is not properly managed. That is why unions call for an agreed plan to safely remove and dispose of all asbestos once and for all.

Previous HSE reviews contain complex calculations comparing the effects of removing all control requirements with the effects of keeping them: naturally they show that it is better to keep the regulations. However, reviews fail to assess the possible effect of improving controls. Calculations of the effect on death rates if the Government were to require employers to remove the millions of tons of asbestos that is still in place would be most welcomed.

So long as asbestos can be found in an estimated half a million workplaces (and around a

[5] https://www.hse.gov.uk/asbestos/assets/docs/beware-asbestos-campaign-2014-15-final-evaluation-report.pdf

million homes), people will be exposed. That means that people will continue to die from mesothelioma, not just for the next thirty or forty years, but for as long as the asbestos is out there.

The Health and Safety Executive

HSE's position is that generally asbestos should be managed in situ, rather than removed, and that asbestos exposure should be prevented as far as is reasonably practicable.

Within the scope of its current policy, the HSE is constantly reviewing new technology to aid in the monitoring of asbestos. Research on new products that appear on the market or new analyses in the scientific literature by HSE's scientists inform this. Some of this research is published and some only as internal trials.

The TUC has confidence that HSE's assessments of equipment and processes are appropriate. As the regulator with expertise in this area, it is appropriate that the HSE continues as the organisation with this responsibility, with the independence to determine which technology is most effective and appropriate.

The HSE generally requires much more funding for resources to begin with. In order to ensure asbestos management is done in line with risk, a bigger inspection and enforcement operation would be needed: this requires central government funding. HSE funding was cut from £239 million in 2009/2010 to £136 million in 2017/2018. Since 2010 the HSE budget has been cut by 50% in real terms. Over the same period the number of HSE inspectors fell from 1,495 to just 978[6].

Current occupational data is inadequate and does not reflect the working lives of those diagnosed with mesothelioma. The average age of someone diagnosed with mesothelioma is 74 and sadly, following death, occupational background is not recorded for over 75's. This means the official count is lower than the real number of those who pass away as a result of work-related exposure. Lifetime occupations should also be recorded.

Engagement

The HSE itself is a tripartite organisation: its Executive Board is composed of government, employer and worker representatives. It is through this function, as well as its day-to-day work, that the HSE engages with trade unions as a key external stakeholder in their work.

Furthermore, the TUC provides the secretariat to the All-Party Parliamentary Group on Occupational Safety and Health; and Asbestos. These groups comprise a range of external stakeholders including MPs, charities, trade unions and asbestos victim support groups. The HSE engages with these groups, providing presentations at several points throughout the year.

Previously, the Advisory Committee on Toxic Substances (ACTS) existed to advise the HSE

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[6] https://prospect.org.uk/health-and-safety-executive/#:~:text=Since%202010%20the%20budget%20of,over%2050%25%20in%20real%20terms.&text=The%20COVID%2D19%20pandemic%20has,we%20recover%20from%20this%20crisis.

board on concerns relating to the supply or use of toxic substances at work7. This advisory group, like the Board, was tripartite and included input from trade unions. Among its functions, it was involved in recommending limits. ACTS no longer exists, but we would support the creation of a similar advisory group, particularly in the post-Brexit context.

The approach elsewhere

There are several parts of the world we can look to for alternative strategies and cases of good practise. The Asbestos Safety and Eradication Agency (ASEA) in Australia has greatly improved workplace protection from asbestos. The main reason the agency was established was to coordinate priorities and strategic actions. It brings government agencies and non-government organisations together within a jurisdiction to ensure that actions are coordinated. For the purposes of this submission, the TUC made contact with ASEA: "As far as workplace laws go we consider the *Work Health and Safety Act* that operates in the Australian Capital Territory (ACT) to be best practice[8]. Unlike the UK Asbestos regulations:

- It clearly prohibits unlicensed removal work apart in the limited circumstance of minor repair. Under the Dangerous Goods Act this prohibition extends to domestic premises.
- It has a clear duty for workers to be trained in asbestos awareness and prescribes what courses they should undertake.
- It requires assessment of asbestos to be undertaken by a licensed asbestos assessor in all circumstances.

Also in the ACT there is a duty on a vendor to disclose the presence of asbestos when selling a residential property under the Sale of Land Act."

Elsewhere, in the Netherlands, Germany, France and Poland there are national government-backed campaigns for the removal of asbestos.

Three countries in Europe have implemented binding occupational exposure limits (OELs) below the EU (and British) OEL of 0.1 fibres/cm^3:
The Netherlands: 0.002 fibres/cm^3
France: 0.01 fibres/cm^3
Switzerland: 0.01 fibres/cm^3 [9]

We welcome the European Commission's assignment to the European Chemicals Agency (ECHA) to prepare a scientific opinion to update the EU OEL on asbestos, as it is outdated, and other countries demonstrate a lower OEL achieves fewer deadly consequences.

Even within our own devolved authorities we can see progress being made, not replicated across the UK. The Workforce Partnership Council in Wales has issued a new drive for employers in devolved public services to meet their duty in the safe management of asbestos[10]. Similarly, the Welsh Department for Education has published clear guidance emphasising the steps duty holders in schools must take to control risks[11]. A similar approach from the UK government would be welcomed.

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[7] https://www.hse.gov.uk/aboutus/meetings/iacs/acts/index.htm
[8] https://www.legislation.act.gov.au/a/2011-35
[9] Source: ETUI. These data are extracted from a study to be published soon by the European Commission in the framework of the revision of the Asbestos at work Directive
[10] https://gov.wales/sites/default/files/publications/2020-07/workforce-partnership-council-joint-statement-on-managing-asbestos-in-public-buildings.pdf
[11] https://gov.wales/sites/default/files/publications/2019-08/asbestos-management-in-schools-19.pdf

Keeping records

Maintaining a record of asbestos presence in all public buildings would be an extraordinarily expensive exercise for HSE. We would sooner see additional resources dedicated to its regulatory and enforcement activity, as opposed to managing the upkeep of a register.

This is not to say a record would not be useful, and it would certainly help target sites for removal and provide transparency to workers and others accessing sites. This record would need to be managed centrally by the government, but it is not necessarily the HSE's responsibility to do this.

To whom the contents of such a register be made available must be carefully considered. Workers and their unions must be able to easily find out if their workplace(s) are included. However there will be businesses wishing to use such a record for profit-making purposes not necessarily of benefit to risk management or regulation.

Conclusion

The HSE is the body best-placed to carry out asbestos management, regulation and enforcement. It has, however, suffered a decade of under-investment. The Government must provide adequate and sustained funding to support the HSE in carrying out its function in holding duty holders to account and keeping workers safe. We need the regulator better able to carry out proactive inspections, and take the enforcement action necessary to compel employers to manage risk effectively. Our concern is that the HSE remains so under-funded it is not capable of meeting this requirement.

Other parties responding to this inquiry may lay emphasis on the need to remove only the "most" dangerous types of asbestos, and recommend equipment to be used for doing so. Our view remains that there is no such thing as safe asbestos, or safe level of exposure to asbestos; and rather than bringing new tools *into* the workplace, we need to take the asbestos *out*.

Other responses may also suggest the HSE takes a *less* active role in asbestos management. This would be the wrong approach. An effective regime requires tougher regulation, and more power to the Executive, with the ability to carry out a more wide-reaching inspection and enforcement programme.

The ongoing asbestos crisis will not be solved by simply measuring asbestos levels. It can only be solved by a commitment to eradicate asbestos from public buildings and remove the risk of exposure for millions of people.

Asbestos removal should be incorporated into government plans to refurbish domestic and non-domestic premises. In Britain[12] and in Europe[13] there are plans to renovate buildings for 'greening' purposes. The UK government also plans a large-scale programme of removal of flammable cladding[14]. These are welcome processes, and ones which should also incorporate asbestos removal, to avoid inevitable future work to remove the dangerous substance in the future, and the ill-health consequences. While billions of public money, and hours of construction work, is spent on these projects, we urge for these public health

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[12] https://www.gov.uk/government/news/government-boosts-energy-efficiency-spending-to-13-billion-with-extra-funding-for-green-homes

[13] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0662

[14] https://www.gov.uk/government/news/government-to-bring-an-end-to-unsafe-cladding-with-multi-billion-pound-intervention

priorities to be merged in a national effort to minimise asbestos risk, fire hazards and climate catastrophe. These works will inevitably risk disturbance of, and exposure to, asbestos fibres. As the European Federation of Building and Woodworkers (EFBWW) has warned: "Practically, a renovation wave implies that millions of old buildings will be refurbished – concrete walls dismantled, floors replaced, ceilings removed, roofs renewed, pipes replaced, isolation restored. A terrifying fact: All these materials may contain highly dangerous asbestos fibres. Inhaling those fibres causes terrible diseases, leading to painful suffering and death."[15] The EFBWW is calling on the Commission to make a proposal for a targeted amendment to Article 7 of Directive 2010/31/EU in the context of the "Building Renovation Wave", introducing a requirement for the mandatory screening and subsequent removal of asbestos and other dangerous substances before renovation works can start.[16]

The current policy of management-in-situ is not a sustainable way forward. To protect everyone's health, Britain must implement a plan for asbestos removal, with a clear timeline. More than 90,000 people have died in the UK from mesothelioma as a result of asbestos exposure, several tens of thousands more have died from lung cancer or other asbestos-related diseases. Tens of thousands more will die because of exposure that they have already had. How many more will die over and above that will depend on what happens next: the status quo is not an option.

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[15] https://www.efbww.eu/stream/c989d29f-f4c2-4f02-8276-e4098c343f5c
[16] https://www.efbww.eu/stream/c989d29f-f4c2-4f02-8276-e4098c343f5c