

Written evidence from the Institution of Occupational Safety and Health (IOSH) (ASB0040)

1. Introduction

On 15 December 2021, the Institution of Occupational Safety and Health (IOSH) presented as a witness to the Work and Pensions Committee at the House of Commons. This paper provides written evidence (as detailed in Section 3) to support and to provide complimentary evidence to our oral submission on that day, as part of the examination of witnesses (second panel) into the 'Health and Safety Executive's approach to asbestos management' inquiry.

IOSH is honoured to have been invited as a witness and to be able to contribute to this important inquiry. This paper includes contributions from employees at IOSH (with thanks to all colleagues at IOSH who contributed to this submission from the Policy and Regulatory Team, Advice and Practice Team, Health and Safety Team and Communication Teams).

2. About the Institution of Occupational Safety and Health (IOSH)

The Institution of Occupational Safety and Health (IOSH), the Chartered body for occupational safety and health professionals, with approximately 48,000 members in more than 130 countries, has a vision of '*a safe and healthy world of work*'.

As an international non-profit organisation, IOSH influences important decisions that affect the safety, health and wellbeing of people at work worldwide. We collaborate with governments, advise policymakers, commission research, set standards, and engage with a variety of organisations and run high-profile campaigns to promote awareness of occupational safety and health (OSH) issues. One such campaign is 'No Time to Lose'¹ (NTTL), which raises awareness and calls for action on occupational cancer. Our campaign identifies asbestos as 'the best-known carcinogen – and the biggest killer. Today, asbestos claims well over 100,000 lives a year worldwide. It's estimated that 10 million people across the world will have died as a result of asbestos exposure before it's been fully controlled'. Asbestos therefore features within our NTTL campaign, which includes presentations, resources, and guidance materials. It includes pledges for organisations to commit to tackling occupational cancers in their workplace and detail how they will action those commitments.

The IOSH Policy and Regulatory Engagement function provides a strong foundation for key policy responses and public policy initiatives that focus on the crucial role of OSH. IOSH has a policy position on asbestos² which promotes urgent action on tackling the global toll from work-related exposure to asbestos, recognising that it's a

¹ IOSH, No Time To Lose, <https://www.notimetolose.org.uk/>, webpage

² IOSH, IOSH Asbestos Policy Position, <https://iosh.com/more/our-influence/iosh-asbestos-policy-position/>, webpage

challenge to both occupational and public health which needs addressing through improved public policy and OSH management.

Other examples of IOSH's activity relating to the prevention and awareness of asbestos includes, but is not limited to:

- IOSH partnering with the Asbestos Disease Awareness Organization (ADAO) for Global Asbestos Awareness Week in 2020³.
- IOSH commissioned research, one of which is a review of the independent study 'Occupational safety and health considerations of returning to work after cancer'⁴.
- IOSH awareness raising and advocacy through articles⁵, policy position and consultations.
- IOSH helpline available to our members as part of our charitable objects.

3. Written evidence

3.1 Under the Control of Asbestos Regulations 2012, we have what is often described as management in situ of asbestos. What do you think the strengths and weaknesses of that current approach are and do you think that HSE does enough to make it effective?

3.1.1 Control of Asbestos Regulations 2012 and 'in situ'

The Control of Asbestos Regulations 2012 (CAR) requires duty holders to take action to prevent exposure to asbestos at work. CAR covers all work involving asbestos and asbestos-containing materials (ACMs).

The regulations apply to the self-employed as they apply to an employer (Regulation 3(1)). In addition, the people who could be affected by the work must also be taken into account (Regulation 3(3) and the Health and Safety at Work etc Act 1974). This includes employees of other employers, people occupying buildings and members of the public. The identification of asbestos may also be required as part of planned construction work.

Focusing on the 'management in situ'. There are key requirements within CAR, such as the duty to manage, but principally the approach to asbestos management is a risk-based one, which is a consistent approach within UK health and safety legislation. Firstly, duty holders must presume that materials within the building are asbestos unless there is strong evidence to prove otherwise. If materials are ACMs

³ IOSH, IOSH partners with ADAO for Global Asbestos Awareness Week 2020, <https://iosh.com/more/news-listing/iosh-partners-with-adao-for-global-asbestos-awareness-week-2020/>, webpage

⁴ IOSH, Return to Work after Cancer, <https://iosh.com/resources-and-research/resources/return-to-work-after-cancer/>, webpage

⁵ IOSH, Asbestos exposure putting lives at risk 20 years since ban, <https://iosh.com/more/news-listing/asbestos-exposure-putting-lives-at-risk-20-years-since-ban/>, webpage.

or presumed ACMs, the duty holder then needs to consider the condition and likelihood of disturbance and damage to the asbestos/presumed asbestos. We know that the risk from asbestos comes when the asbestos fibres are released into the air where they can be inhaled. Therefore, if the presumed or confirmed ACM is in good condition, not being or going to be disturbed or damaged, then it is left 'in situ' and monitored and managed (please note, other controls may also be taken, such as encapsulation, and so on, as part of the assessment at this stage). To get to this point, duty holders have already taken risk-based decisions, and even if it is currently in a good condition, not damaged or likely to be disturbed, the responsibility does not end there. Monitoring and management of the asbestos, informing those who could disturb it, and so on, are still requirements to be undertaken.

We would also like to highlight practical examples of where ACMs would not be left in situ even if in a good condition. For example, the ACM might be in good condition, but you wouldn't keep ACMs in areas where it could be disturbed, an example being along corridor walls or on corners where they can be struck and damaged by trolleys or other items traversing down them. Therefore, the likelihood of damage and disturbance is one to consider regarding building use, building users, activities, contractor activities, and so on. To conclude on this point, even before the decision is made to keep it 'in situ', the decision is based on risk, and not just about leaving ACMs 'in situ' in all locations within the building, even if it is in good condition at that time. The HSE website⁶ states *'don't remove asbestos unnecessarily - removing it can be more dangerous than leaving it in place and managing it'*. In relation to removal, it will introduce risks to those removing it and to others unless the correct controls are put in place. This therefore needs to be taken into consideration.

The assessment around condition and likely disturbance/damage is an important step and must be undertaken, and that persons likely to disturb it are aware of its presence (so that they can put in place appropriate controls while the work is being done). For example, depending on the material type/ condition/ likelihood of disturbance, ACMs in flooring and ceilings could remain within their locations and be monitored and managed.

In addition, when considering this question, we also note that some public buildings have asbestos everywhere. Public buildings like schools and hospitals in particular, those built pre-2000, are full of asbestos. In some instances, the removal might mean the entire building would be impacted and thus 'removed', leaving very little left. The considerations for the management and removal of asbestos must remain risk based to inform the control strategies to be taken. From the OSH perspective, there are hazards and risks associated with both 'in situ' and removal and disposal. Therefore, any options, planning and decision stages should consider all hazards and risks. So, if asbestos were to be removed, what are the risks of this removal, i.e., to those workers undertaking the task and to others and their precautions? Where does the asbestos go, i.e., packaging, transportation, final disposal, if it is being removed from hospitals and schools? And what is the impact on the care provision and schooling, and so on?

⁶ HSE, Asbestos, <https://www.hse.gov.uk/toolbox/harmful/asbestos.htm>, webpage

3.1.2 Strengths, weaknesses and effectiveness

We recognise that it is a challenging situation at the moment, with asbestos related diseases resulting now, many decades after past exposure, and the fact that a large number of buildings still contain asbestos. Without the necessary awareness and with uncertainty to manage it safely, it can create risks. We particularly have concern for small and medium sized enterprises (SMEs) for this reason.

With this in mind, when considering the overall effectiveness of CAR, it is worth highlighting that the regulations have been around for some time and the HSE provides information on asbestos, the regulations, management of, and so on. Document examples include:

- HSE guidance on the HSE internet webpages
- Approved Code of Practice L143⁷
- HSG 248⁸ for analysts
- HSG 247⁹ for licensed contractors
- Specific guidance e.g. schools
- The Asbestos Essentials¹⁰.

Generally, in our opinion, guidance and navigation of the HSE website has improved over the years, so users can find relevant information relating to who they are. For example, in the instance of asbestos risk management, this is targeted at tradespeople, building owners, licenced contractors, members of the public, etc. where specific information is available and accessible to the target audience.

We are also aware of HSE targeted activity in the 2000s which involved liaison with local authorities to inspect school CLASP buildings, and the management thereof (our knowledge is aligned to the West Midlands area). This was now some time ago, and we are aware of the reduction in resource available to the HSE and the diverse remit of regulations and workplace risks that they cover. Although we are not aware of other directly related asbestos activity, akin to the CLASP inspections, we are aware that priority areas include construction and other occupational health related matters, for which asbestos risks can be identified. We are also aware of the HSE's 'hidden killer campaign', although we do not have the statistics on HSE activity and impact of interventions.

When considering weaknesses of CAR, we reflect upon our own individual experiences within the OSH profession, and some examples include:

- In organisations, particularly larger organisations, there is a need to provide clarity on who is responsible as the duty holder and who is delegated tasks to support with implementation as the hierarchy has many layers. For example, with previous work experience in local authorities it was clear we needed to provide clarity around who was the duty holder in relation to our local authority building stock, which included the schools where the local authority was the employer, and down our hierarchy with delegated tasks from the Chief

⁷ HSE, Managing and working with asbestos: Control of asbestos regulations 2012 Approved Code of Practice and guidance, L143, <https://www.hse.gov.uk/pubns/priced/l143.pdf>

⁸ HSE, The Analysts' Guide, HSG248, <https://www.hse.gov.uk/pubns/priced/hsg248.pdf>

⁹ HSE, Asbestos: The licensed contractor's guide, <https://www.hse.gov.uk/pubns/books/hsg247.htm>

¹⁰ HSE, Asbestos Essentials, <https://www.hse.gov.uk/asbestos/essentials/index.htm>.

Executive, to Head of Facilities (with budget control), down to facilities and building management and to local persons on site at the building, such as the Head teacher. The clarity in roles and responsibilities therefore rely on a large number of post holders from the local authority who have responsibility for the building and commissioning the contractors, Head teachers, facilities management colleagues, caretaker/site supervisors, and so on. There is also a requirement to ensure training. Although, in this particular instance, there were training matrices in place and provided. Thinking about other larger organisations and their buildings, we question if there is a gap in information cascading down to workers and others on site who may disturb ACMs.

- We acknowledge another weak point is simply not knowing there is asbestos there in the first place. Within our work experience we have experience of two major exposures which both led from a licensed contractor using a non-licensed subcontractor who was not included in the client's control procedures. Exposure amongst people who know what they're doing is less common. But using people in an ACM area who have no knowledge or understanding of ACM control is a significant issue. Often, they aren't there to work on the ACM, but disturb it during their preparatory activities, such as erecting scaffolding. So again, how are we ensuring those who need the information and awareness are getting it?
- We also recognise that the larger employers are more likely to have professional health and safety employees/ contractors who can assist them with their health and safety responsibilities and will be aware of CAR. In micro – SMEs this may not be the case. A concern for IOSH is how these smaller businesses know and undertake their compliance requirements, like asbestos management.

To summarise these points, given the regulations have been around for a good length of time, it makes you question 'why' they are not being followed in some instances. Is it because some employers don't know about the regulations? Are they being badly advised? Are they SMEs with resource and competency/awareness gaps or barriers? Is it a case of 'getting the job done' to avoid cost and time pressures? Is there also an element of it being associated with workers working on domestic premises? It may be all of these matters to varying degrees, but without any oversight of all buildings, the associated risks from asbestos, and assurances, it is hard to quantify and identify the areas of weakness.

We would however like to bring to your attention and share some data from IOSH which will be useful in the consideration around effectiveness. In 2018, IOSH commissioned an Opinion survey of 500 UK construction workers on asbestos awareness, regarding what they know about the hazard. It found, that while the majority are familiar about the risks posed, a third of survey respondents had never checked the asbestos register before starting work on a new site – with nearly half of those not even knowing there is a register. Almost one in five respondents said if they discovered asbestos, they wouldn't be clear about what to do¹¹.

¹¹ IOSH, "Uncertainty and ignorance" risks more asbestos deaths, <https://iosh.com/more/news-listing/uncertainty-and-ignorance-risks-more-asbestos-deaths/>, webpage

Key findings include:

- 59 per cent had been informed of the asbestos risks and had this reinforced regularly with training; 15 per cent had never been informed
- 23 per cent said they had been exposed to asbestos; with only 27 per cent saying they hadn't been exposed
- 32 per cent had never checked the asbestos register before starting work on a new site, with 15 per cent of these not knowing about the register
- 18 per cent said that if they found asbestos they would either be unsure or have no idea what to do

While the survey was conducted among construction workers, the risks of asbestos exposure are present across many workplaces. We are concerned by these figures, which highlights that the awareness requirements have not been completely successful.

Considering this data, there is obviously a lack of consistency across duty holders, and we are particularly concerned regarding SMEs and occupational health capacity building across businesses.

3.2 Do we know how many owners themselves who are directly the duty complier, the person who has to carry out the responsibility?

The duty holder, depending on the size of the organisation, will have processes in place to detail how they comply with the regulations through assigned roles, responsibilities and accountabilities.

Within larger organisations, the duty holder retains the legal responsibilities. However, they will delegate work down to assist them in compliance with the duties, and the duty holder must ensure that those persons are competent and as such provide suitable and sufficient training, information, instruction and awareness as relevant. As part of this management system, it must include information being passed to others, such as occupants or people who are likely to disturb asbestos. It is a complete system and each chain in that system needs to be fully briefed, informed and aware of the part they play, and the risks involved.

The legislation is clear on the information, instruction, training and competency requirements, but because they are managed locally within that particular organisation, there isn't the overall transparency and oversight outside of that workplace to confirm a) who the duty holder is, and b) how they are complying. There is also no oversight of the competency of the duty holder, whereby competency includes skills, knowledge and experience.

3.3 What do you think could be done to strengthen compliance and to make sure that people are fulfilling their duties properly and that we are not leaving gaps that are creating risk?

We would like to reference again the 2018 IOSH commissioned Opinion survey of 500 UK construction workers (refer to 3.1.2) on asbestos awareness and what they

knew about the hazard. The survey found that while the majority of workers are familiar with the risks posed, a third of those surveyed had never checked the asbestos register before starting work on site, with nearly half of those not even knowing if there was a register. Almost one in five respondents said if they discovered asbestos, they would not be clear about what to do anyway.

We want to highlight awareness and competency which is so important and appears to be lacking in some instances. Although the duty to manage is covered and detailed within the legislation, whereby the duties and risk-based approach is quite straightforward and has been out for a long time, this research demonstrates that full implementation and application is lacking throughout the responsibility chain. Awareness is not reaching down to those who are fulfilling those roles, coming into contact with the hazard and those who are placed at risk. The findings of this survey were obviously a cause of concern for IOSH and raise the fact that awareness requirements are not being successfully cascaded down.

At IOSH we recognise the collective effort is required across policy makers, governments, regulators, employers and worker representatives to provide a strong system of compliance. We would welcome the adoption of stringent measures on inventory and management of asbestos as a means to reaching the highest possible level for an efficient protection of all workers. For example, we would like to see progress in considering tailored strategies and policies for work-related cancer affecting blue-collar workers in low-profile occupational sectors to help raise public perceptions of the problem.

Other options for consideration include:

- When thinking about strengthening compliance it must be across all persons in the value chain. We are aware of the Asbestos Network, as IOSH published a document on behalf of the Network as part of our IOSH NTTL¹ campaign. The network is chaired by the HSE, and it engages with a range of stakeholders and ensures that good / pragmatic guidance is produced. IOSH is represented on that network. We believe more could be done to promote that guidance, by the HSE and by the other key stakeholders who are represented within the network. This network could include looking at a competency matrix for all asbestos stakeholders, the promotion of guides for identifying asbestos in the workplace, the production and provision of articles on gaps in asbestos knowledge (e.g., moss on asbestos roofing).
- One instrument towards compliance is to improve the training of employees in dealing with asbestos. The target groups of these guidelines are employees and employers of companies focusing on the removal of asbestos products as well as other firms that come into random contact with asbestos-containing, mostly building, materials and so on. We also need to consider duty holders. For example, we know of large sites where the asbestos register comprised three lever arch folders packed with survey plans and drawings. For any lay person (duty holder), it was a complex task to interpret and equally so for Contractors going onto site.
- The simplification of requirements about licenced/non-licenced/notifiable asbestos work.

- With the adoption of renewed climate resilience and the transition to net-zero goals by the UK government, it is expected that millions of buildings will be maintained, renovated, or demolished. Consequently, large amounts of asbestos will be disturbed during those renovations. Moving forward, we would therefore recommend that approaches are taken as part of the wider management of buildings within the UK, across the public policy remit which is in addition to local management and HSE oversight. Asbestos is everywhere within buildings and is in a lot of buildings. As mentioned previously, to remove asbestos will also bring about risks and how and when this is done should be identified through risk assessment, which requires a duty to manage and a proportionate risk-based approach.

3.4 How do we get non-licensed work that ends up being notifiable—that is slightly confusing—where the work is not quite sufficiently low-risk?

The definition of licensable work in the ACOP¹² (page 16) is vague and could put non-professional asbestos removal operatives at risk. It states: “In most cases, only those with a licence should carry out work with these materials. However, licensing will not apply to short-duration work where the risk assessment shows the work will only produce sporadic and low intensity exposure and will not exceed the control limit.”

Although we are provided with definitions of “sporadic” and “low intensity” it is quite hard to say what is short-duration work and what is not. We also find that the definition of short-duration work and low-intensity conflicts with the notion that any exposure can potentially lead to somebody getting occupational cancer.

We have experience and knowledge of instances when the risk-based intention of the legislation is not implemented. For example, we know that intended short duration work may overrun for various reasons. There may also be unforeseen challenges/obstacles, and this might introduce human error, and so on. Therefore, in order to prevent the duty holder falling out of scope of the definition, all work is undertaken by licensed contractors. We have a couple of experiences of building owners who genuinely wanted to do the right thing but were finding developing guidelines to follow in this area impossible, and thus concluded that it wouldn't work for them, and the pragmatic answer was to contract even “short duration work” to licensed contractors.

We also have experience that the current definitions do leave themselves open to interpretation, and therefore it is easier to default using licensed contractors, or on the opposite side they are not used at all when they really should have been.

Clarity is certainly required and would be welcomed.

3.5 Is HSE's enforcement of asbestos regulations in line with the level of risk?

¹² [Managing and working with asbestos \(hse.gov.uk\)](https://www.hse.gov.uk/management/working-with-asbestos/)

Protecting and improving the nation's occupational health is essential to support individuals, businesses, and the economy. Within Britain, we do see that more investment is required for occupational health capacity building.

The amount of funding HSE receives has reduced in recent years, which will impact its ability to protect and enhance the health, safety, and wellbeing of the nation's workforce. This is happening at a time when the most recent figures published by HSE in 2020 indicate that there are over 5,000 asbestos-related deaths every year in the UK, making it the single biggest cause of work-related deaths. We do recognise that there will always be a finite amount of resource which needs to be prioritised, and IOSH advocates for the protection of our workers through public policy, government, good occupational health and safety management and investment into sustainable workers, sustainable buildings and sustainable communities.

Regarding the HSE activity, when reviewing HSE guidance¹³ on Fee For Intervention (FFI) it states that licensable work with asbestos by those who hold a licence for work with asbestos under CAR, are currently exempt. However, in practice, asbestos as a health risk and situations in which failures might occur would be deemed likely to result in significant or serious personal injury and ill health would be likely to result in formal written enforcement and therefore FFI would apply e.g. ACM in poor or damaged condition, resulting in the potential release of fibres.

Therefore, HSE can and will take action. However, we are not aware of the data to demonstrate this activity and the outcomes of intervention.

Whilst the asbestos related deaths a year are extremely high, due to the latency period between exposure and onset, it is difficult to identify the number of instances where exposure has happened as a result of non-compliance with CAR, as the onset of symptoms are expected to be some time away. This, coupled with the fact that there is no central register or database that accurately and transparently records which types of asbestos are present in which buildings or in what quantity, has an impact on the visibility of the issue, meaning that the true level of non-compliance cannot be observed. However, the asbestos related disease data does speak for itself and warrants continued action, promotion and enforcement.

3.6 Should we have a national digital register of asbestos in non-domestic buildings? We have heard evidence from others in the past about the national register of asbestos in schools in Holland. What do you think about whether we should have one here?

IOSH supports a register for transparency and risk oversight to aid the identification of risk, opportunities and improvement for the prevention, management and awareness of those hazards and risks. However, we also recognise there needs to be a clear process in place to ensure consistency, quality of the data, assurances, access/useability and knowledge of the user to aid awareness and understanding of the risks and management thereof. For example, clarity on the number of samples

¹³ HSE, Guidance on the Application of Fee For Intervention (FFI), [hse47.pdf](#), webpage, p.g. 10 and p.g. 25-26.

and locations is required, otherwise information could be based purely on visual/presumption, or on limited physical sample size in comparison to the size of the building and come back as not being asbestos. This is not a representative test for the building etc and wouldn't necessarily mean there isn't any asbestos within the building. There would therefore have to be very rigorous testing and auditing of buildings.

Also, IOSH recognises that the quality and usefulness of any register is dependent on the quality of information placed into it and the capacity (and knowledge) of those reviewing/accessing the information. We have experience of some asbestos surveys providing limited information about the areas surveyed or tested and, in some cases, 'no access' is stated. There is a perception amongst duty holders that when a survey of their building says "no asbestos containing materials found" then there is no asbestos containing materials in the building, while this may not be the case. In addition, not all duty holders will fully understand the structure of their building or the components of their plant (or ACMs) within plant/buildings. Therefore, if this is the case, should it be carried out by a licensed contractor? Is there a body or organisation of asbestos surveyors who would need to be trained and licensed to be able to do the checking like there is a license to be a contractor to remove asbestos?

IOSH also identifies other benefits from the register, which could include:

- Providing enforcing authority inspectors/fire brigade/OSH professionals (consultants) with the knowledge to check status of ACMs before inspecting site
- Providing employers, landlords etc. advance knowledge of what buildings contain prior to purchase or lease

However, we do also recognise that information without the appropriate context and understanding could cause alarm, concern around health and safety, and distress for building users depending on how much/ how the information is shared. In turn, this could impact the provision of the service being offered, which may be a hospital or school (for example, concerned parents having their children within a school with asbestos). Consideration on how the information is used and disseminated needs to therefore be clarified.

Whilst we are in support, providing appropriate arrangements are in place to remedy the above concerns, we do not necessarily see that the register should sit with the HSE, as the information currently belongs to the duty holders and the surveyors and analysts undertaking the surveys. As mentioned previously, is there an opportunity within public policy and building management to explore how this data is captured and utilised and used to inform future use, developments and demolition of buildings.

3.7 Duty holders' responsibilities for routinely monitoring asbestos exposure to building users and employees. What are your thoughts about air sampling versus visual inspection of in situ asbestos?

The other question is about your thoughts on the surveys that are being taken. What do you think about the reliability of the surveys, the standards and the independence of the inspections by analysts?

One question is about quality control and your thoughts around that, then what is your take on visual sampling versus air sampling. I understand that it is HSE's position that it should be visual inspection.

IOSH supports the approach for independence of the analyst.

IOSH recognises that visual inspections are required as they form an important part of the duty to manage and is consistent within health and safety management as we visually inspect building, plant, equipment and appliances, for signs of damage and so on. In the case of ACMs, it is essential that the responsibility for the building and the management of risks therein, remains with the duty holder. We do this for other hazards and risk factors in the workplace.

Air sampling also has its place, for example, in instances where there might have been/suspected a disturbance, or as part of assurance testing to re-enter a place where asbestos has been removed. Both visual and air sampling therefore have their place within the control strategy.

Again, it comes down to competence and good management systems. Duty holders must understand these responsibilities and ensure arrangements are in place, it is also imperative that analysts are quality assured and surveyors are competent. IOSH would be happy to support with the provision of good practice case studies for asbestos management.

January 2022