

## **Asbestos Steering Group for Schools.**

### **Lessons learnt in England are relevant to Wales**

This paper is about the establishment of a Department for Education Steering Group to improve the asbestos management in schools. It shows why it is important for the Department to accept that the protection of pupils and staff from the dangers of asbestos in schools is their ultimate responsibility.

The lessons learnt in England are directly transferable to Wales.

#### **In 2009 DfE in England accepted they have overall responsibility**

Until 2009 DfE in England allowed HSE to lead on asbestos policy in schools. Following a meeting with the Prime Minister in 2009 DfE accepted that asbestos in schools is their ultimate responsibility. Since DfE has taken the lead a Steering Group has been established in England to improve the asbestos management in schools.

HSE have a role to play in regulating standards of asbestos management and advising the Departments for Education in England and Wales and the Directorate in Scotland. However they do not have the ultimate responsibility for asbestos policy in schools. In addition HSE have limited resources and their priorities are for high risk occupations and not for schools. The Department for Work and Pensions classified schools as low risk<sup>1</sup> and therefore they are a low priority for HSE. An example is the withdrawal of proactive HSE safety inspections to assess the standards of asbestos management in local authority schools.<sup>2</sup>

Schools are not HSE's priority, whereas in comparison, the provision of fit for purpose school buildings and the wellbeing of staff and pupils are the primary role of a Department for Education, alongside its responsibility for the education of pupils.

In 2004 following a series of serious asbestos incidents in schools HSE set up a campaign to improve the asbestos management in schools, but it was scrapped before the first meeting took place. DfE were asked, but declined, to take the lead and continue the campaign. Their reason was that they did not accept that they were ultimately responsible for the safety of staff and pupils from the dangers of asbestos. As neither DfE nor HSE took the lead schools were treated as any other workplace despite there being an increased risk to children. The result was a lack of asbestos awareness and inadequate asbestos management in schools, so asbestos incidents continued. This lack of leadership was recognised by the Asbestos in Schools Group (AiS) and by MPs in the All Party Parliamentary Group on Health and Safety (APPG).

The APPG and AiS lobbied the Government for the reinstatement of the campaign to improve asbestos management in schools and argued that DfE should accept that they are ultimately responsible and therefore should take the lead. The proposals were refused until AiS attended a

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<sup>1</sup> DWP Good Health and Safety, Good for Everyone 21 Mar 2011 . Meeting Minister of State for Schools /AiS contemporaneous notes Lees 10 Jan 2013. Lord Young review of health and safety , Common Sense, Common Safety Oct 2010 [http://www.number10.gov.uk/wp-content/uploads/402906\\_CommonSense\\_acc.pdf](http://www.number10.gov.uk/wp-content/uploads/402906_CommonSense_acc.pdf)

<sup>2</sup> DWP Good Health and Safety, Good for Everyone 21 Mar 2011

meeting with the Prime Minister in 2009. Within a few months DfE tacitly accepted that they are responsible, they reinstated the campaign and took the lead.

### **Progress made because of DfE Steering Group and pressure from APPG**

The DfE Asbestos Steering Group subsequently had its first meeting in April 2010. Its overall aim is to improve the asbestos management in schools. Its members are from organisations and individuals who have an interest in the issue. Their wide range of expertise contributes towards discussions and recommendations. Although the Group does not have executive powers it reports directly to the Minister.

Since its formation a number of constructive improvements have been made, amongst which are the publishing of on-line asbestos awareness guidance, the assessment by the Committee of Carcinogenicity of the relative vulnerability of children to asbestos, the withdrawal of the unsafe workplace Action control level and an imminent review of government policy towards asbestos in schools. Without doubt this progress would not have been achieved without the presence of the Steering Group.

This progress has also been achieved because the APPG has persistently raised the asbestos in schools issue with the Government. This has resulted in the issue having a greater prominence on the political agenda and has opened doors that have enabled meetings with the Prime Minister and Ministers. The establishment of the DfE Asbestos Steering Group was in part because of pressure from the APPG and its members. In February 2012 the APPG published a booklet for MPs on asbestos in schools<sup>3</sup> which made a number of recommendations that DfE have recommended should form the basis for the Government's review of asbestos policy for schools. The APPG also proposed that the Education Select Committee should hold a hearing on asbestos in schools. The hearing took place on 13<sup>th</sup> March 2013.

### **HSE advises and regulates whereas the Department for Education should make policy**

In effect the DfE Steering Group is the reinstatement of the defunct 2004 HSE asbestos in schools campaign. Its aims are basically the same, as are most of the committee members. However representatives from Wales and Scotland were included in the original HSE campaign but were not included in the DfE Steering Group. Although the plan is that a representative from DfES Wales will attend future meetings.

The DfE Asbestos Steering Group is chaired by a senior civil servant from DfE and reports to the Minister in the Westminster Government who holds the relevant portfolio. As Education is devolved this means that DfE is responsible only for schools in England, with the Welsh and Scottish governments being responsible for their own schools. However asbestos problems are common throughout Britain.

HSE's remit on the other hand applies in England, Scotland and Wales. They are a Non-Departmental Public Body within the UK Government's Department for Work and Pensions. The main statutory duties of the HSE are to propose and set necessary standards for health and safety performance,

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<sup>3</sup> APPG booklet Asbestos in Schools the need for action 2 Feb 2012  
[http://www.asbestosexposureschools.co.uk/pdfnewslinks/APPG%20report%202012.pdf?zoom\\_highlight=appg#search="appg"](http://www.asbestosexposureschools.co.uk/pdfnewslinks/APPG%20report%202012.pdf?zoom_highlight=appg#search=)

secure compliance with those standards, carry out research and provide Ministers with information and expert advice.<sup>4</sup>

HSE are therefore advisers, and although the Departments for Education in England, Wales and Scotland should be guided by HSE advice when forming asbestos policy for schools, they should not be dictated by that advice. Neither should Departments for Education be governed by Public Service Agreement (PSA) targets that HSE are told to achieve. Various HSE statements and policy documents have underlined they have greater priorities than schools and therefore their limited resources are allocated elsewhere. If schools are to be made safe from the dangers of asbestos then HSE are not the organisation to achieve that. In 2009 DfE in England accepted that they had the overall responsibility, took the lead and established the Asbestos Steering Group.

### **DfES in Wales needs to accept they have overall responsibility if progress is to be made**

DfES in Wales presently holds the same stance as DfE in England did until 2009, in as much as they do not accept that they are ultimately responsible for the safety of staff and children from the dangers of asbestos in schools, but instead they abdicate responsibility for policy and all other aspects of asbestos in schools to the HSE. This was clearly spelt out in a letter from DfES Wales to the Chair of the Joint Union Asbestos Committee (JUAC). They stated:

*“As the Minister of Education and Skills has responsibility for all educational matters in Wales, he recognises the health and safety issues regarding asbestos in schools. However, as you are aware asbestos is a non-devolved matter and responsibility for the subject lies with the Health and Safety Executive and not with Welsh Government.”<sup>5</sup>*

As has been shown this was the situation in England until 2009. In Wales the matter is further complicated because of devolution, however the same principles apply. DfES Wales abdicates responsibility to the HSE, and the HSE have other, greater priorities than schools. Neither will take the lead, neither will accept the responsibility. The result is that the whole issue of asbestos in schools is drifting with no-one in command.

Because of persistent pressure from the APPG in England progress has been made. The same is beginning to happen in Wales as the Cross Party Group (CPG) on Asbestos have taken up the issue of asbestos in schools. They have led debates, asked parliamentary questions, written to Ministers and arranged seminars. If the problems of asbestos in schools are to be properly addressed then the CPG need to keep the pressure on to persuade DfES Wales to accept responsibility and take the lead.

The DfE Asbestos Steering Group in England has made constructive progress in improving asbestos management in schools. DfES Wales will be represented on the Group at future meetings.<sup>6</sup> This is a positive step in the right direction as they will be able to contribute their expertise to discussions and also gain from the expertise of other members. However the DfE Group reports to the Minister in the Westminster Parliament and not to the Minister in Cardiff. It would therefore seem sensible to set up a similar steering group in Wales that reports to the Welsh Minister. As many aspects overlap

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<sup>4</sup> DWP/HSE Framework 25 Jun 2009 <http://www.hse.gov.uk/aboutus/howwework/management/dwphse.pdf>

<sup>5</sup> Letter DfES Wales/Chair JUAC 17 May 2013

<sup>6</sup> Meeting DfES Wales/ Right to Know campaign , Ais 22 May 2013

it would seem equally sensible that representatives from DfES Wales continue to attend the DfE England meetings and that a representative from that committee attends meetings of the Welsh Steering Group.

The ongoing asbestos incident at Cwmcarn High School has underlined the need for a Steering Group to improve asbestos management in schools in Wales. David Evans, the then Vice President (now President) of the Wales TUC, summed up the situation in his presentation at a seminar at the Senedd when he called upon Welsh Government to accept that it had a moral duty to ensure schools in Wales were safe places for both staff and children.<sup>7</sup>

The Welsh Government and Department for Education do not take overall responsibility for policy on asbestos in schools. This is in contrast to their counterparts in England where the issues were resolved, and, as a consequence, the English Department for Education has overall responsibility for asbestos policy for schools. It is important for the safety of staff and children in schools in Wales that the issues are similarly resolved in the Welsh Government.

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*18<sup>th</sup> July 2013*

*AL1 23<sup>rd</sup> September 2013*

Annex: Key points in the introduction of a Steering Group in England.

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<sup>7</sup> Right to know Seminar National Assembly of Wales 30 Apr 2013

## **Annex: Key points in the introduction of a Steering Group in England.**

The following lists the key points that led to the introduction of a DfE Asbestos Steering Group in England to improve asbestos management in schools.

- In 2004 there were a series of serious asbestos incidents in schools. They had been caused by a lack of asbestos awareness and poor, or non-existent, systems of asbestos management. HSE recognised that there was a problem and for a limited period of time took the lead. They set up a campaign to improve the asbestos management in schools and to “dramatically” reduce the asbestos exposure of staff and pupils.<sup>8</sup> The campaign was for the whole of Britain as it was planned to have representatives from England, Wales and Scotland on the committee.<sup>9</sup>
- The HSE briefing paper shows why a campaign was essential to reduce the asbestos exposure of pupils and staff in schools :

*“A number of factors exist which have led HSE to regard education as a priority:*

*In recent years there have been a number of high profile incidents where maintenance activities carried out in schools has resulted in widespread exposure to asbestos. Local authorities and school managers have been subject to serious criticism in the media, and in many cases education activities have been significantly disrupted.*

*Whilst the main risks of exposure to asbestos in schools will be to building and maintenance workers, there will always be the possibility of pupils being put at risk. Due to their physical immaturity they are at greater risk of suffering from asbestos related disease than adults, and will live long enough for any disease to develop.*

*Parents often have a heightened sense of awareness of the risks of asbestos exposure, and any failure to manage risks properly could result in the authority losing the confidence of their local communities. It can also lead to pressure on governing bodies to remove asbestos unnecessarily, leading to increased risks of exposure.*

*Whilst many authorities have been managing asbestos risks effectively for many years, HSE believes a significant minority have still not established complete control of asbestos on their premises. Therefore, HSE intends to launch an initiative to highlight the issue of asbestos in schools and to encourage LAs and others to manage these risks correctly.*

### **Next steps**

*HSE has set up a project team, which will prepare a series of initiatives designed to promote the effective management of asbestos in schools. Although the project will be aiming to reduce exposure dramatically over the next few years, initially we will be concentrating on achieving a 20% reduction in current exposure levels.*

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<sup>8</sup> HSE paper LAFORUM04 Asbestos management in schools 23 Nov 2004

<sup>9</sup> Minutes HSE Asbestos in Schools meeting 18 Nov 2004. E-mail Exit strategy HSE Asbestos Campaign Manager Disease Reduction Programme /DCSF 23 Aug 2005

*A stakeholder group will be set up, involving a number of key interest groups. The intention is for this group to be more than simply a consultation forum, but that it will propose, and more importantly take forward, many of the initiatives, anticipated in the project.*

*One important early task of the project team will be to establish the extent of current compliance levels, to see where the weaknesses lie, and what barriers there are to compliance.*

**Recommendation:**

*That the forum notes this important new project and gives its backing to a stakeholder group being set up to co-ordinate initiatives to promote the effective management in schools.<sup>10</sup>*

At a meeting in November 2004 HSE expanded on the role of the campaign, the minutes record:

*“A working group would be set up to drive the campaign forward in schools, which would be a priority, and care would be taken to ensure that the right stakeholders are engaged.... Draft Terms of Reference (TOR) had been agreed; the aim of the group would be to reduce exposure to asbestos of teachers, pupils and maintenance workers in schools. The group would be prompted to produce ideas and solutions, encourage the provision of proportionate resources for the management of asbestos, provide accurate information and intelligence and promote good practice.”<sup>11</sup>*

- In 2005 HSE dropped the schools campaign before the first meeting had taken place as government priorities had changed. They reallocated the resources to achieve public service agreement (PSA) targets. Instead of a campaign to reduce the asbestos exposures of pupils and staff, HSE put the resources into a campaign to reduce the exposure of building maintenance workers.
- An e-mail from the HSE Head of the Disease Reduction Programme underlined that HSE have greater priorities than schools:

*“The development of the Disease Reduction Programme from 2005/06 and beyond aims to realign the focus and resource of the Division to achieve those activities that relate directly to the meeting of relevant PSA targets... In reviewing the portfolio of current campaign projects it is evident that a number of the initiatives would generate very limited results in terms of contributing towards the PSA targets associated with reducing exposures to asbestos, the key target for the Asbestos Programme; this includes the 'Education Sector' project. In view of this the initiative has been removed from the Disease Reduction Programme.”<sup>12</sup>*

- DfE were asked by HSE to take on the schools campaign. They refused. One reason was staffing,<sup>13</sup> another was that DfE would not accept that they have primary responsibility for the safety of staff and pupils in schools.

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<sup>10</sup> HSE paper LAFORUM04 Asbestos management in schools 23 Nov 2004

<sup>11</sup> HSE Asbestos –Duty to manage campaign. Minutes of meeting held in Bristol 18<sup>th</sup> November 2004.

<sup>12</sup> E-mail Exit strategy HSE Asbestos Campaign Manager Disease Reduction Programme /DCSF 23 Aug 2005

<sup>13</sup> E-mail Exit strategy HSE Asbestos Campaign Manager Disease Reduction Programme /DCSF 23 Aug 2005

- The campaign to improve asbestos management in schools therefore dropped down a hole in the middle with no one accepting overall responsibility. No government department took the lead in ensuring measures were in place to protect pupils and staff from the dangers of asbestos.
- Asbestos incidents continued as did the inadequate, and at times dangerous, management of asbestos in many schools. Staff and pupils continued to be exposed to asbestos. The need for a campaign to improve the asbestos management in schools remained an urgent requirement.
- In 2006 a serious problem was identified in a number of CLASP system built schools in Wales where air sampling confirmed that significant levels of amosite fibres could be released into the classrooms from common classroom activities.<sup>14</sup> Consequently the HSE established the CLASP Working Group. The problem is prevalent in thousands of similarly constructed schools throughout Britain, therefore England, Wales and Scotland were represented on the committee.<sup>15</sup>
- The CLASP Working Group examined one specific problem in one type of school building and not the wider aspects of asbestos in schools in general. By 2008 guidance had been issued by the Working Group that temporarily mitigated the problem and the committee was dissolved. However the underlying problem remained, as did every other problem associated with asbestos in schools.
- In 2007 teachers, supports staff, their unions, asbestos consultants, MPs, experts on risk, the medical profession, solicitors, coroners, and others were so concerned that DfE and HSE were failing to take measures to address the problem that the Asbestos in Schools Group was formed. The overall aim is to make schools safe from the dangers of asbestos. The chairman of the APPG asked that AiS come under the auspices of the parliamentary group when lobbying the Westminster Government.
- The APPG considered that DCSF have responsibility for the safety of the occupants of schools and in March 2008 the chairman, Michael Clapham MP, wrote to the Schools Minister asking him to reinstate the campaign.<sup>16</sup> He refused.<sup>17</sup> As had the HSE Chief Executive who stated *“HSE has a duty to protect **all workers** and that is what we are focussing on. For this reason we will not have an ‘asbestos in schools’ campaign...”*<sup>18</sup>

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<sup>14</sup> Release of asbestos fibres in system built schools. Part 1

<http://www.asbestosexposureschools.co.uk/RELEASE%20OF%20ASBESTOS%20FIBRES%20IN%20SYSTEM%20BUILT%20SCHOOLS.%20PART%201.%20AL%204.15%20JUN%2008.pdf> and Part 2 ;

<http://www.asbestosexposureschools.co.uk/RELEASE%20OF%20ASBESTOS%20FIBRES%20IN%20SYSTEM%20BUILT%20SCHOOLS.%20PART%202.%20AL%203.14%20JUN%2008.pdf>

<sup>15</sup> HSE Asbestos in Schools Stakeholder Group TORs Membership 8 Nov 2006

<sup>16</sup> Letter APPG chairman Michael Clapham MP/ Secretary of State for Education Ed Balls MP 3 Mar 2008.

<sup>17</sup> Letter Schools Minister Jim Knight MP/ Michael Clapham MP 31 Mar 2008.

<sup>18</sup> Letter HSE Chief Executive G. Podger/Lees 3 Apr 2006

- In November 2008 the junior minister Sarah McCarthy-Fry MP also refused to reinstate the campaign in her response to the General Secretary of the NUT Christine Blower. The Minister's reply gave a different reason for refusal: *"Neither DCSF nor HSE feel that a campaign on asbestos in schools is appropriate, indeed we feel that it may alarm people unnecessarily."*<sup>19</sup> It seems remarkable to find "inappropriate" a campaign that just four years earlier HSE had considered a priority with an overall aim of "dramatically" reducing asbestos exposures of staff and pupils. The Minister's worry about causing alarm also seems odd. It leaves people in ignorance of the dangers and the remediation measures that they should be taking. It runs contrary to successive governments' claim that they believe in transparency.
- The APPG would not accept the reasons given by Ministers for refusing to reinstate the campaign and the chairman, Michael Clapham MP, again wrote to the Minister,<sup>20</sup> Jim Knight MP. He replied in November 2008. He expressed his satisfaction with the measures DfE and HSE had in place and made it clear that he did not accept that he was ultimately responsible for asbestos matters in the nation's schools. He emphasised that DfE did not lead on asbestos policy for schools, rather they abdicated that responsibility to HSE. He stated *"As you may know we take our lead from the HSE in matters concerning asbestos in schools."*

He dismissed the request to reinstate the campaign: *"DCSF are committed to do what is necessary to keep staff and pupils safe, by promoting and taking appropriate actions to prevent asbestos exposure in schools. However neither DCSF nor HSE feel that a campaign on asbestos in schools is appropriate..."*

The Minister's answer made it clear that DfE were willing to be governed by HSE policies and targets that prioritise high risk occupations rather than schools. What he did not take into consideration was that children are at a greater risk from asbestos exposure than adults, or that HSE's priority is for trades people whilst his primary responsibility is for the safety and well being of pupils and staff in schools. He emphasised *"It is also important that we do not divert attention away from HSE's current efforts to target trades people who are at much greater risk from asbestos than those working in schools."*<sup>21</sup>

- In March 2009 the profile of asbestos in schools was raised further when Paul Rowen MP, the chairman of the AiS and an APPG member, led a Westminster Hall debate on Asbestos in Schools. He reiterated the request to reinstate the schools campaign.
- In May 2009 the AiS had a meeting with the Prime Minister. A number of key points were proposed by AiS, one of which was the reinstatement of the schools campaign and another was that DfE accepts responsibility for asbestos in schools. The Prime Minister acknowledged that asbestos in schools is a serious problem and that his government would address the issues.<sup>22</sup> Discussions with Ministers took place. Diana Johnson MP replaced Sarah McCarthy-Fry MP as the Minister.

<sup>19</sup> Letter Sarah McCarthy Fry /Christine Blower 9 Nov 2008

<sup>20</sup> Letter APPG chairman Michael Clapham MP/ Minister of State for Schools Jim Knight MP 21 Sep 2008.

<sup>21</sup> Letter Schools Minister Jim Knight MP/ Michael Clapham MP 21 Nov 2008.

<sup>22</sup> Meeting Prime Minister/AiS. Lees contemporaneous notes 13 May 2013



- In November 2009 at a meeting with AiS the Minister stated that DCSF would be establishing a Steering Group to improve the asbestos management in schools.<sup>23</sup> The first meeting took place on 26<sup>th</sup> April 2010. The overall aim is to improve the asbestos management in schools.

Since its formation constructive improvements have been made, amongst which are the publishing of on-line asbestos awareness guidance, the assessment by the Committee of Carcinogenicity of the relative vulnerability of children to asbestos, the withdrawal of the workplace asbestos Action control level and the alerting of DfE to the fact that schools in general are unable to obtain asbestos risk insurance for their pupils. People can be informed and measures can now be taken to provide cover. In addition a review of government policy towards asbestos in schools is imminent. It will be led by DfE and the Steering Group will play an integral part. This progress would not have been achieved without the Steering Group.

These are all positive steps forward in improving asbestos management in schools, but much more needs to be done. The Steering Group will therefore continue their work discussing ways forward and making recommendations to the Minister so that measures can be implemented to make schools safe from the dangers from asbestos.

This has been achieved because DfE in England accepted responsibility. It is important that DfES Wales accepts that they have the overall responsibility for asbestos policy for schools in Wales. Once they have taken the lead then an Asbestos Steering Group can be set up to ensure the safety of staff and children from the dangers of asbestos in schools in Wales.

*Michael Lees*  
*17<sup>th</sup> July 2013*

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<sup>23</sup> Minutes Asbestos in Schools Meeting Schools Minister Diana Johnson 11 Nov 2009. And 24 Feb 2010