

## LÖFSTEDT REVIEW – A CALL FOR EVIDENCE

### RESPONSE BY THE JOINT UNION ASBESTOS COMMITTEE

This response is filed on behalf of the Joint Union Asbestos Committee (JUAC). The Committee is made up of the six main teaching unions (ASCL, ATL, NASUWT, NUT, NAHT, Voice) and the main support staff unions (GMB, UCATT, UNISON, UNITE). JUAC submits this response on behalf of nearly a million members.

JUAC supports the aim of the Asbestos in Schools Group (AiS).

The aim of the AiS Group is to make United Kingdom schools safe from the dangers of asbestos both for staff and pupils.

See end of response for an Executive Summary.

#### **Q1. Are there any particular health and safety regulations (or ACoPs) that have significantly improved health and safety and should not be changed?**

A1. JUAC believes that the review is an ideal opportunity to highlight why the regulation and control of asbestos came into force, why schools are special work places and why asbestos management should be at the forefront of regulations relating to schools and other workplaces and to demonstrate and submit in as clear as possible terms that at the very least the Control of Asbestos at Work Regulations (together with its ACOP and guidance) 2006 should be not only retained but also more properly enforced and if at all possible improved.

Government estimates are that 70% of school buildings contain asbestos. The Asbestos Testing and Consultants Association (ATAC), in its 2010 report 'Assessment of Asbestos Management in Schools' puts that figure even higher, at 75%. The result is that occupants of schools are dying from the asbestos cancer Mesothelioma. As the asbestos materials deteriorate the number of school teachers dying from Mesothelioma has increased year on year from 15 in the period 1980 to 1985 to 64 in the period 2001 to 2005 with a total of 223 school teachers dying of Mesothelioma since 1980. School caretakers, cleaners, cooks, secretaries and teaching assistants have also died of this cancer. Although reasonably reliable figures are known as to how many teachers have died, because of the long latency period, it is not known how many school children have subsequently died.

One main area of considerable concern centres on the effective enforcement of Regulation 4 of the Control of Asbestos at Work Regulations 2006. This provides that the duty holder has a duty to manage asbestos in non-domestic premises including schools.

One essential issue in schools is clearly shown by the JUAC Asbestos in Schools Survey (appended at annex 1) which shows that “ownership” of the asbestos problem is far from adequate. Only two thirds of respondees knew who had responsibility for managing asbestos in their schools but even in those who knew where the duty lay in approximately one half of those cases this duty had been delegated or passed on to a site manager or caretaker.

Another clear area of ongoing and very worrying inadequacy centres on the question of asbestos awareness, training and information. Asbestos registers must be kept up to date. Asbestos must be clearly marked (if it is not to be removed), asbestos awareness training must be given.

All that is being asked is that this deadly substance be identified, that those who have to work in the vicinity of it be told its whereabouts, that its condition be closely monitored and that properly funded training be given to head teachers, school managers, teaching staff, support staff, governors and local authorities.

Asbestos regulation was a long time coming. It remains inadequately enforced in many meaningful ways. Thousands upon thousands of needless and agonising deaths have occurred.

There is no case for relaxing controls in the field of asbestos and every possible reason to enforce and tighten the same.

**Q2. Are there any particular health and safety regulations (or ACoPs) which need to be simplified?**

A2. JUAC is concerned that simplification will come to mean relaxation of protection. The desired result is maintenance of or an improvement of standards concerning the severe health risks of asbestos.

**Q3. Are there any particular health and safety regulations (or ACoPs) which it would help to merge together and why?**

A3. JUAC believes that asbestos is such a significant problem that it must have a regulatory regime of its own, titled individually.

**Q4. Are there any particular health and safety regulations (or ACoPs) that could be abolished without any negative effect on the health and safety of individuals?**

A4. JUAC supposes that the question postulates that there are in existence regulations which have no purpose. We do not believe that to be true and certainly not in the case of asbestos. In JUAC's view, ACoPs are as important as the regulations themselves.

**Q5. Are there any particular health and safety regulations that have created significant additional burdens or business but that have had limited impact on health or safety?**

A5. JUAC will limit its response to saying that this is certainly not true in the field of asbestos.

**Q6. To what extent does the concept of 'reasonably practicable' help manage the burden of health and safety regulation?**

A6. The phrase "reasonably practicable" appears in a number of regulations including for example Regulation 11 of the Control of Asbestos at Work Regulations 2006.

The phrase is one peculiar to English law. However, the question as posed, presupposes that taking reasonable care of workers is a burden.

JUAC believes that given the cost to schools and indeed society of training the skilled workers involved, keeping such workers safe from foreseeable harm is not a burden.

**Q7. Are there any examples where health and safety regulations have led to unreasonable outcomes, or to inappropriate litigation and compensation?**

A7. JUAC believes that death through exposure to asbestos is an unreasonable outcome for a worker. JUAC believes that a worker has the right to go to work and come home again unharmed.

**Q8. Are there any lessons that can be learned from the way other EU countries have approached the regulation of health and safety, in terms of (a) their overall approach and (b) regulating for particular risks or hazards?**

A8. The 2006 Control of Asbestos at Work Regulations follow the "risk assessment model" which is widely understood across the whole European Union and which JUAC believes has had significant positive impact.

JUAC believes that every person in this country carries out a risk assessment every day in the simplest of tasks whilst for example crossing a road (judging the speed of the traffic perhaps), cooking a meal (how hot is the handle of that pan) and that the concept of risk assessment is an appropriate cornerstone for health and safety regulation.

In the area of asbestos careful and thorough risk assessment is absolutely essential.

**Q9. Can you provide evidence that the requirements of the EU Directives have or have not been unnecessarily enhanced ('gold-plated') when incorporated into UK health and safety regulation?**

A9. No.

The JUAC believes the phrase "gold-plating" is an unhelpful distraction from the real issues as to how best to incorporate European Union Directives into UK law. The use of regulations made under the Health and Safety at Work Act has been and remains a thoroughly effective method.

Far from gold-plating in the area of asbestos, the government has now accepted that the UK has not fully implemented Article 3 of the Directives 2003/18/EC on the protection of workers from asbestos.

The 16<sup>th</sup> February 2011 press release from the European Commission stated

"The European Commission has asked the UK to change provisions in its legislation of exempt some maintenance and repair activities from the application of the EU Directive on protection of workers from asbestos. UK authorities do not comply with three clear obligations, undermining the protection foreseen by EU law for workers exposed to asbestos. The request takes the form of a reasoned opinion under EU infringement procedures. The UK now has 2 months to bring its legislation into line with the EU law. Otherwise the commission may decide to refer the UK to the EU's Court of Justice."

**Q10. Does health and safety law suitably place responsibility in an appropriate way on those that create risk? If not what changes would be required?**

A10. The response to the general question asked is yes.

However in the field of duties relating to management and control of asbestos, the question serves to highlight again the need for identification of duty holders and their training.

## **Any Other Comments/Evidence**

In all of the myths that surround health and safety, the fact of it is that the Health and Safety at Work Act 1974 and the Regulations made under it have been a considerable success story.

It may not make for tabloid headlines but the force of law is required. Notwithstanding what one might perceive to be “general knowledge” about asbestos, examples of widespread disregard of even the most basic regulation are easy to find. See for example [www.thisisnorthdevon.co.uk/woolworths-find-exposing-staff-asbestos-bideford/story-11828395-detail/story.html](http://www.thisisnorthdevon.co.uk/woolworths-find-exposing-staff-asbestos-bideford/story-11828395-detail/story.html) to take but one example from a highly unlikely source.

Set that against the fact that asbestos is known to exist in 75% of schools, and the horrendous risks health risks involved, and it is easy to see why JUAC submits in the strongest possible terms that the government agenda in this area should be driven not by dogma but by effective regulation and just as importantly effective enforcement.

## **Executive Summary**

There is growing concern about the problem of asbestos in schools and how it is not being adequately addressed. The known facts are that asbestos kills, that it is present in around three quarters of all schools and that the occupants of schools are dying of mesothelioma in increasing numbers. Because of the long latency period before the development of asbestos-related disease, it is not known how many school children have died as adults because of exposure at school, nor how many will die in the future.

Because of this unacceptable death toll, there is absolutely no case for relaxing regulatory controls in relation to asbestos management, and every possible reason to retain the current regulations, supported by ACoPs and guidance, and improve their enforcement.

The cost to society of keeping the occupants of schools free from foreseeable harm should never be seen as a burden.

## Appendix 1

### **JUAC Asbestos in Schools Survey – Analysis March 2011.**

#### **Introduction**

The Education sector trade unions, under the Umbrella of JUAC (Joint Union Asbestos Campaign), conducted a survey of health & safety representatives in the Autumn of 2010, with the survey finishing on 1st December 2010. The survey was designed to establish the workforce knowledge on asbestos in schools and how it might be managed. This was designed to build on an earlier survey by Voice<sup>1</sup> conducted in spring 2010 which had focused on the asbestos survey, management and training, and the NASUWT “Safe to Teach” survey<sup>2</sup>.

#### **The Response**

Over 600 safety representatives responded from a variety of schools, predominantly secondary and primary schools in the community sector. They were asked a series of specific questions on the following-

Asbestos Management Plans – only 51% had ever asked to see their school’s management plan, and of these nearly 90% had received a copy. However one in five were either not confident that the plan was being acted on or just didn’t know.

**JUAC Analysis** – while it is gratifying that almost 90% of those who asked for the plan received it, it is worrying that nearly 50% didn’t ask for the management plan (and why were 10% not given it?). Considering that these reps took the time out to complete the survey it raises concerns on their knowledge of, and training in asbestos issues.

**Asbestos Surveys** - The representatives were asked if an asbestos survey had taken place in their schools over the last five years. Two thirds responded positively stating that a survey had been undertaken, but over a quarter did not know.

Three in five said that their school had asbestos, but a quarter of respondents didn't know if asbestos was present.

**JUAC Analysis** – For more than one in four responses the lack of knowledge on asbestos is frightening both in terms of the existence of a survey and consequently if asbestos was present in their school.

**Responsibility for Managing Asbestos** – Asked if they knew who had responsibility for managing asbestos in schools two thirds replied yes, while one third said no. Where the response had been positive only in one third of schools was it the responsibility of the head teacher or other senior management, with responsibility being given to the site manager /caretaker in over 50% of the time. 13% of the schools did have a health & safety manager with this responsibility.

**JUAC Analysis** – The DfE/HSE plan concentrates on training head teachers on asbestos awareness and their responsibility for managing it. However this response highlights the importance of involving other members of staff in this awareness training, particularly site managers/caretakers.

**Consultation** – Disappointingly only 30% of respondents had been consulted on the issue of asbestos management, with almost 70% answering no to this question.

**JUAC Analysis** – While disappointing this is not surprising. It would appear, even though proper consultation is encouraged by the HSE and is part of the safety representatives rights (under SRSC Regulations) this only happens in a minority of workplaces.

**Asbestos Registers** – Again nearly one third of representatives did not know if an asbestos register existed. On the positive side only 3.5% of respondents said there was no asbestos register.

Those schools with an asbestos register had an almost two thirds positive response on showing the register to contractors before they commenced work. Those who didn't know were again at almost one third but 5% stated that the register was not shown to contractors.

The awareness of all staff to a register was almost a three way split between those who were aware of it, those who weren't (nearly 40%) and those who didn't know.

**JUAC Analysis** – Again a relatively high level of lack of knowledge on the existence of a register focuses on the need for comprehensive asbestos awareness training in schools for ALL staff. This is of added importance for those dealing with contractors.

**Asbestos Awareness** – Only 28% of respondents stated that the presence of asbestos was clearly marked, nearly 40% saying it wasn't and the remainder didn't know. Following up on this revealed that only just over 20% had asbestos awareness training, including preventing exposure to asbestos, with nearly 60% saying that they

did not have training in this. The remainder didn't know ( which implies that it hasn't taken place).

**JUAC Analysis** - It is worrying that there is such a large gap in the marking of the presence of asbestos, as the symbol recognisable to many can be placed discreetly on the ACM and therefore reinforces a contractors knowledge on asbestos, particularly if the school staff have changed since the survey and the new staff are unaware of the presence of asbestos.

The awareness training response again shows a distinct lack of pro- active training.

**Concerns about Asbestos** - over a quarter of representatives had raised concerns about the management of asbestos in their school, but a third of these had not had a satisfactory response.

**JUAC Analysis** – again concern that such a high proportion did not feel as though they had a response to put them at ease on such a serious subject. This could be down to a lack of knowledge or a lack of concern on the subject by the management team.

## **Conclusion**

The responses give a snapshot of the situation regarding the management of asbestos in schools across the UK. It might be assumed that this sample, as they took the time out to respond, are reasonably well informed compared to those who, as they knew little of the subject didn't feel confident enough to respond. It does highlight that a number of key issues, namely the lack of training which is needed for all staff. Then there is the wrong assumption that the head or another senior manager has responsibility for managing asbestos in reality, the lack of proper consultation for the reps and staff, the high proportion who had not seen a management plan for asbestos, and over a quarter of reps not even being aware if their school had asbestos or not.

These findings only serve to reinforce the campaign begun by AiS to raise awareness of asbestos in schools, ensure that there is a management plan, and it is being followed, and to have all staff trained on asbestos awareness to the appropriate level.

Notes 1 Voice survey –can be found at

[http://www.voicetheunion.org.uk/index.cfm/page\\_sections.contentdetail.cfm/cid/1752/navid/570/parenting](http://www.voicetheunion.org.uk/index.cfm/page_sections.contentdetail.cfm/cid/1752/navid/570/parenting)

Summary – 790 questionnaires returned

Only 43% were aware of an asbestos survey in the previous 3 years.

Over 72% did not have information on asbestos management plan

Only 22% had any asbestos awareness training

## 2 NASUWT – “Safe to Teach” survey (2008)

Summary -1,923 responses

33% of safety reps who raised concerns on asbestos management had not received a satisfactory response.

13% said that the asbestos present was in a bad condition

57% did not know if asbestos was in their school or not.

Only 21% who knew that asbestos was present were aware of plans to remove it.