

Determining the Scale of the Asbestos Problem in System Built Schools.

*Michael Lees
15th November 2009*

Contents

Summary	3
1987. USA carried out comprehensive audit and risk assessment. UK Government refuses	3
Half Schools are System built.....	3
1987. Asbestos fibre release in System schools identified. No warning. No action.....	4
2004. HSE campaign to improve asbestos management in schools.....	4
2005. Campaign dropped by HSE. Assessment of standards of compliance dropped.	4
2006. Asbestos fibre release in System schools “re-discovered”	4
2006. First questionnaire. Superficial. Misleading conclusion.....	5
April 2007. Second questionnaire. Improvement notices.	5
December 2007 . ITN investigation . Dangerous levels of asbestos fibres. Non-existent asbestos management. HSE guidance ignored. Improvement notices.	6
April 2008. DCSF claim that schools are managing asbestos responsibly.	6
28 th January 2009. BBC investigation reveals failure to manage asbestos in school.....	6
29 th January 2009. Third questionnaire issued. Similar to previous ones.	6
April 2009. Deadline for responses 88% fail to reply.....	7
April 2009. Minister refuses audit.	7
May 2009. Prime Minister acknowledges a serious asbestos problem in schools. Meeting with Minister	8
July 2009. Chief Executive of BSC states unacceptable not to undertake audit and risk assessment.....	8
July 2009. New deadline 69% failed to respond.....	9
September 2009. HSE: Responses “ <i>very robust and on top of problem.</i> ”	9
October 2009. Minister again refuses audit.	9
October 2009. Minister admits response low from Diocese	10
November 2009. Meeting with Minister. 56% of local authorities and diocese failed to reply or unsatisfactory. No response from independent sector. No assessment in Scotland and Wales.....	10
Comment on response to questionnaire	11
Conclusion.....	14
Annex:	16

Timescale of successive Governments' failure to assess the scale of the asbestos problem in system built schools.

Summary

This paper gives a chronological timescale of when the asbestos problem with System built schools was identified and what measures have been taken to assess the scale of the problem. The main conclusions are that throughout the twenty years since the problem was first identified inadequate steps have been taken both to assess the scale of the problem and to implement effective remedial actions to make the schools safe. As a direct result asbestos incidents have continued unabated causing widespread contamination of schools and the exposure of the occupants. The assessments have been superficial and have failed to identify the true scale of the problem, failed to identify flaws in the guidance and failed to identify the number of schools that have inadequate systems of asbestos management. Throughout this period successive Governments have refused to carry out a comprehensive audit of asbestos in the nation's schools, claiming that it is not their responsibility but that of the local authorities and school governors. The responses, and the lack of responses, from the latest questionnaire adds to the overwhelming evidence that a significant proportion of local authorities, diocese and schools have an inadequate awareness of asbestos matters and inadequate systems of asbestos management. Because of Government policies staff and pupils remain at a significant risk from asbestos in schools.

1987. USA carried out comprehensive audit and risk assessment. UK Government refuses

In the early 1980's the USA carried out a comprehensive audit of all friable asbestos in their schools and made an assessment of the risks to staff and children. Because of the particular vulnerability of children they took the decision to treat schools as a special place. Laws were introduced so that schools can maintain an effective system of asbestos management, and a system of monitoring was devised to ensure that they do. Training and guidance is given and regularly updated, funding was allocated. A policy of openness ensures that parents and teachers are aware of the standards of management in their own schools. Because the Federal Government assessed the scale of the problem they were able to allocate proportionate resources to the schools so that they are able to effectively manage their asbestos.¹

In comparison over the last twenty five years MPs the teaching and support unions and others have asked successive UK Governments to carry out an audit, and on all occasions the requests have been refused.²

Half Schools are System built

There are about 33,600 schools in the UK and about half are system built, most of which were constructed during the period that the use of asbestos was at its height and therefore normally contain large amounts of asbestos materials in their structure. Scape³ state:

"About half the school buildings in the UK are constructed using a building System. Most of the System built schools were constructed in the 60's and 70's."⁴

¹ EPA Technical Support Program (TAP) 1979 .Support Document for Proposed Rule on Friable Asbestos-Coating Materials in school Buildings: Health effects and Magnitude of Exposure. EPA Report 560/12-80-003 Oct 80. ¹ EPA Mandatory School Asbestos Control Programme/ Asbestos in schools identification and notification rule (ASINR) 1982. EPA press release EPA Announces Rule Requiring Schools to Test for Asbestos 24 May 82 ¹ EPA Evaluation of the Asbestos-in-schools Identification and notification Rule EPA Report 560/5-84-005 Oct 84 ¹ Asbestos School Hazard Abatement Act 1984 US General Accounting Office Report RCED-85-91B-20367 School District Officials Face Problems in Dealing with Asbestos in Their Schools 19 Mar 85. US Government Asbestos Hazard Emergency Response Act 1986 (AHERA) H.R. 5073. Environmental Protection Regulations Asbestos- Containing Materials in Schools Regulation (Federal) 40 CFR 763.84, 763.85

² Follow this link to see extracts from FOI documents showing why the Government have refused an [Audit](#)

³ Scape System Build Limited is a Local Authority Controlled Company. It started business in April 2006 and is the trading company for the CLASP Consortium, For more detail consult the Scape web site www.scapebuild.co.uk and the CLASP web site www.clasp.gov.uk.

⁴ Scape System Build Ltd School Guides, School building Overview, Building Systems. www.scapebuild.co.uk

1987. Asbestos fibre release in System schools identified. No warning. No action

In 1987 the particular problem of asbestos in UK system built schools was discovered when air tests showed that significant levels of amosite fibres were released when doors were slammed and walls hit.⁵ However the scale of the problem in the thousands of other system built schools in the country was not assessed. No warnings were issued to other schools and no actions were taken to prevent the release of asbestos fibres.

2004. HSE campaign to improve asbestos management in schools.

In 2004 there were a series of serious asbestos incidents in schools which caused widespread contamination and exposure of the occupants. As the incidents had been caused by failures in asbestos management HSE implemented a campaign to improve the asbestos management in schools so that such incidents could be prevented in the future. They stated:

"HSE intends to launch an initiative to highlight the issues of asbestos in schools ...HSE has set up a project team, which will prepare a series of initiatives designed to promote the effective management of asbestos in schools..."

The project will be aiming to reduce exposures dramatically over the next few years."

HSE acknowledged that :

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...

*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."*⁶

2005. Campaign dropped by HSE. Assessment of standards of compliance dropped.

In August 2005 HSE dropped the campaign and disbanded the stakeholder group before the first meeting had taken place. A confidential HSE e-mail sent to the DfES shows this was so that the resources could be re-focussed on projects that are more likely to achieve Public Service Agreement (PSA) targets. HSE stated:

"Much of HSE's promotional and enforcement activities have been refocused on achieving PSA targets. This has meant that the Education initiative no longer forms part of our present programme of work.... In view of this the initiative has been removed from the Disease Reduction Programme..."

An Exit strategy: ...The potential for unwelcome reaction to HSE's withdrawal is high and could prove very time consuming to address.." ⁷

Consequently the series of initiatives designed to promote the effective management of asbestos in schools, never happened and the important task of establishing compliance levels was not carried out. The asbestos incidents continued and for many schools the standards of asbestos management remained ineffective.

2006. Asbestos fibre release in System schools "re-discovered"

In July 2006 the particular problem of asbestos in system built schools was "rediscovered."⁸

⁵ ILEA report LSS/AP/52 (1987) Investigation into fibre release from low level asbestos panels - Ernest Bevin school May 1987. 1983-1988 Five years progress by the ILEA's asbestos joint working party. Report of the staff side co-ordinator 28 Jan 1988

⁶ HSE paper LA/04 Asbestos management in schools 23 Nov 2004

⁷ E-mail HSE Asbestos Campaign Manager. Disease Reduction _Programme. Trevette/ DfES 1124 23 Aug 2005

⁸ [Asbestos Survey closes 8 Buildings](#)

In October 2006 guidance was issued by HSE, DfES and the Local Government employers, LGE, to local authorities, diocese and independent schools.⁹ The guidance advised that immediate action should be taken to prevent the exposure of staff and children and instructed that inspections to assess the scale of the problem should be completed by the end of the half term, which was two weeks away.

2006. First questionnaire. Superficial. Misleading conclusion.

In December 2006 HSE/LGE conducted an assessment of local authorities to determine compliance with the HSE/DfES/LGE guidance on the remedial actions that should have been carried out in system built schools. The assessment was in the form of a telephone questionnaire which asked the local authorities if they were obeying the guidance. Not surprisingly of the 65 who were contacted, the 33 who replied said that they were, and as a consequence HSE reported that the replies “revealed positive action”.¹⁰ This was a superficial attempt to determine the level of compliance and inevitably gave a misleading picture.

April 2007. Second questionnaire. Improvement notices.

In April 2007 an instruction was issued by HSE to its inspectors informing them to undertake actions to determine the standards of compliance with HSE guidance on system built schools. HSE inspectors wrote to local authorities, diocese, governing bodies of foundation and independent schools. The HSE letter asked for the number of system built schools, a written record of buildings containing asbestos, location of gaps in columns, a record of remedial work, and action taken to inform staff and others of the dangers. The HSE inspectors were instructed to carry out a limited number of inspections to confirm compliance.¹¹

By October 2007 the HSE Heads of Operations were asked to provide an overall summary of the completed work of inspection, the level of compliance and any necessary enforcement action their inspectors had undertaken.¹²

Between September and December 2007 on the ground inspections were carried out by HSE, 120 schools were inspected altogether, however even in this relatively small number 20 Improvement notices were issued for failures in asbestos management and failure to comply with the asbestos guidance for CLASP buildings.¹³ Only 1% of schools were inspected, and yet a significant proportion of those, 17%, were found to be failing to manage their asbestos safely to the extent that they warranted Improvement notices. As about half the 33,000 schools in the UK are system built,¹⁴ this would equate to more than 2,800 schools failing to manage their asbestos safely, which is a significant number. However a very different picture was given by HSE about the standards of compliance and asbestos management. They summarised the inspections and the responses to their questionnaire and stated:

“Full and detailed replies were received from the majority of the duty holders contacted. These indicated that the standard of compliance and strength of asbestos management arrangements

⁹ A Joint Message from the HSE/LGE/DFES Asbestos- Potential for exposure in "clasp" school buildings. Undated, October 2006 Scape formal Notice Release of asbestos fibres in CLASP buildings Potential for asbestos fibre release in CLASP buildings. 12 Oct 2006 . HSL Summary of fibre concentrations in CLASP construction schools containing asbestos. HSL/2007/22 10 Apr 2007 [Release of Asbestos Fibres in System built schools \(Part 1\)](#) [Release of Asbestos Fibres in System built schools \(Part 2\)](#)

¹⁰ HSE Education sector briefing 13th December 2006. HSE [SIM 07/2007/04 - Asbestos in CLASP and other System Buildings](#) Para 19 iv

¹¹ HSE [SIM 07/2007/04 - Asbestos in CLASP and other System Buildings](#) Annex 2 p10

¹² HSE [SIM 07/2007/04 - Asbestos in CLASP and other System Buildings](#) para 27 p8

¹³ <http://www.hse.gov.uk/services/education/claspasbestos-annex1.pdf>
http://www.hse.gov.uk/notices/notices/notice_list.asp?ST=N&SN=F&EO=%3D&SF=RID&SV=1279942

¹⁴ Scape System Build Ltd School Guides, School building Overview, Building Systems. www.scapebuild.co.uk

were generally good and that action had been/was being taken in response to HSE advice on system buildings."¹⁵

December 2007 . ITN investigation . Dangerous levels of asbestos fibres. Non-existent asbestos management. HSE guidance ignored. Improvement notices.

In December 2007 ITN were researching a report into the asbestos problem in System built schools. They selected a school at random that happened to be a CLASP school, and found that no action had been taken to follow HSE guidance.¹⁶ They carried out air tests which determined that cumulatively dangerous levels of amosite fibres were being ejected into the classrooms. It was also apparent that the system of asbestos management was non-existent and dangerous. A further two Improvement notices were issued by HSE as a direct result, one was because of a failure to manage asbestos in the particular school and the other was because of a failure to manage the asbestos in schools throughout the local authority.

April 2008. DCSF claim that schools are managing asbestos responsibly.

In April 2008 DCSF denied that schools were not managing their asbestos, despite mounting evidence to the contrary. They stated:

" We do not agree with you that asbestos is not well managed in schools. On the contrary we believe that the evidence is that the majority of school employers and particularly Local Authorities are managing their asbestos responsibly..."¹⁷

28th January 2009. BBC investigation reveals failure to manage asbestos in school

On 28th January 2009 a BBC Inside Out report highlighted failures of asbestos management in a system built school.¹⁸ The school had been selected at random and yet bad practice and failures in asbestos management had damaged AIB releasing asbestos debris and fibres. As a result HSE issued an Improvement notice.

29th January 2009. Third questionnaire issued. Similar to previous ones.

On 29th January 2009 DCSF issued an on line questionnaire to all local authorities and dioceses in England. It was intended that it would establish the number and type of system built schools, their standards of asbestos management and their level of compliance with the HSE guidance for asbestos management in system schools. DCSF published a notice on the web instructing local authorities, dioceses and school governors to complete the questionnaire.¹⁹ In DCSF's words:

"The survey is designed to provide DCSF and HSE with a comprehensive picture of how asbestos risks are managed within these buildings and provide assurance that asbestos is being managed correctly. It will also allow us to judge the effectiveness of HSE's guidance issued on asbestos management."²⁰

The timing was not coincidental coming the day after the BBC Inside Out report, for it was to counter the inevitable adverse criticism by claiming that action was being taken. Regrettably the questionnaire never could obtain a comprehensive, or true, picture of the standards of management

¹⁵ HSE Inspection of asbestos management in clasp and other system buildings 2007/2008 Summary report of findings

¹⁶ 15 February 2008 [ITN News report](#)

¹⁷ Letter DCSF Schools Capital Division (Assets- School Design) / R.Lees 24 Apr 2008

¹⁸ BBC 1 "Inside Out" [report can be seen at this link.](#)

¹⁹ <http://www.hse.gov.uk/foi/internalops/sectors/public/070906.htm>

http://www.surveymonkey.com/s.aspx?sm=CmHlvaOgAijhgdDK4t0JQ_3d_3d

<http://www.dcsf.gov.uk/everychildmatters/publications/documents/laesurveyofasbestosmanagementinschools/>

²⁰ <http://www.dcsf.gov.uk/everychildmatters/news-and-communications/la-weekly-email/laemail28may2009/> DCSF Asbestos in system built schools. 29 Jan 2009

and compliance with the guidance. In the main it is a tick box questionnaire which by its very nature would inevitably tend to elicit positive replies, for if you ask someone if they are complying with the law it is unlikely they will tick the box that says no²¹. Returns were required by 3rd April 2009.²²

The questionnaire asked many of the same questions that had been asked by HSE inspectors in April 2007.

Even if it had elicited responses that showed total compliance with the HSE guidance for system built schools it could not be construed that the schools were safe, for the guidance is seriously flawed and the recommended measures can only be considered as a sticky plaster solution and not a long term, or even safe, remedy.²³

April 2009. Deadline for responses 88% fail to reply.

By the deadline of April 3rd 2009 only 30 responses had been received from the approximate 250 questionnaires sent out to local authorities, diocese and independent schools.²⁴ 88% had failed to reply and yet this information should have been immediately available to the authorities, not only as it is vital information required by them to effectively manage their asbestos, but also because according to HSE their replies from the previous questionnaire a year and a half previously had been *“full and detailed with a generally good level of compliance.”* This ambiguity over the response begs serious questions about previous statements made by HSE. It puts into question the efficacy of the previous HSE assessment and their positive statements about their questionnaire and the responses they received.

A two month extension was given and then the deadline was further extended to 16th July.

April 2009. Minister refuses audit.

On 30th April 2009 the Schools Minister made his position clear that an audit would not be carried out, this was despite the poor response to the questionnaires, and the obvious failure of most Dioceses and LA's to know the extent of their asbestos problem:

*“We do not think that a national audit of the extent and condition of asbestos in schools would be useful..... There is no evidence to suggest that the introduction of a register would bring any further benefit to those at risk..... We believe that the cost of a register would be disproportionate to the benefit....”*²⁵

The Minister perhaps touched on the real reason for their refusal, for Freedom of Information documents show that the overriding concern of the Government in 1993 was that:

*“A national audit could lead to a panic reaction....a national audit would also have significant cost implications.”*²⁶

*“In any case a nationwide DFE organised audit would be bound to lead to further demands for additional public expenditure on school buildings, at a time of increased resource squeeze.”*²⁷

²¹ <http://www.hse.gov.uk/foi/internalops/sectors/public/070906.htm>

http://www.surveymonkey.com/s.aspx?sm=CmHlyaOgAijhgdoDK4t0JQ_3d_3d

²² <http://www.dcsf.gov.uk/everychildmatters/publications/documents/laesurveyofasbestosmanagementinschools/>

²³ [Release of Asbestos Fibres in System built schools \(Part 1\)](#) [Release of Asbestos Fibres in System built schools \(Part 2\)](#)

²⁴ DCSF/Lees 3 April 2009

²⁵ Letter Minister of State for Schools Rt Hon Jim Knight MP 30 Apr 2009

²⁶ DfEE memo Asbestos in schools briefing for Parliamentary debate Wilson/ DESNET Chipperfield 14 Feb 94

²⁷ Letter DFE Hedger/ PS Mr Forth Ministerial briefing Asbestos in Schools. 12 November 1993

Although those statements were made some sixteen years ago, nothing has changed and all the evidence points towards the fact that the Government's policy remains the same, as do their finances. It is known that the present Government are concerned that if they carried out an audit or a risk assessment then it would be opening a Pandora's box. Without doubt that is why the requests for an audit are turned down and why the present Government have refused to carry out a proper assessment of the scale of the problem.

May 2009. Prime Minister acknowledges a serious asbestos problem in schools. Meeting with Minister

On 13th May 2009 representatives from the Asbestos in schools group met the Prime Minister where four key points were requested,²⁸ one of them asked for a comprehensive audit of the extent, type and condition of asbestos in schools, and the standards of management. The Prime Minister acknowledged that there was a serious problem of asbestos in schools and one that his Government had to address. He asked his Minister to arrange a meeting to address the issues.

On 3rd June 2009 a meeting was held between the asbestos in schools group and the Schools Minister Sarah McCarthy-Fry MP. DCSF informed the meeting that those authorities who had replied to the latest questionnaire have given positive results.

DCSF also stated that inspections will be carried out in those dioceses and authorities where the returns indicate an unsatisfactory standard of asbestos management and where necessary, enforcement action will be taken. When questioned DCSF were equally adamant that nil returns will be treated in a similar manner to unsatisfactory returns. The request from the asbestos in schools group to have sight of the returns as they came in was refused and instead they were told that they would be informed of the conclusions at a further meeting with the Minister in September. This meeting finally took place on 11th November.

The asbestos in schools group request for ATaC inspectors to carry out on the ground inspections was also turned down, as was the request to trial comprehensive air sampling in schools.

By 30th June 2009 a total of just 69 responses had been received.²⁹ (72% had not)

July 2009. Chief Executive of BSC states unacceptable not to undertake audit and risk assessment.

On 3rd July 2009 the necessity for an audit and a risk assessment was strongly reinforced by the Chief Executive of the British Safety Council. He gave a presentation at a conference "*Directors' duties, corporate manslaughter and health and safety enforcement*" organised by the Centre for Corporate Accountability. The British Safety Council press release stated:

"Brian Nimick, Chief Executive of the British Safety Council, today called on the government to take urgent action to implement a programme for the management and removal of asbestos in schools.

In calling for a national comprehensive register of asbestos in schools he said "It is unacceptable that the UK, in 2009, has not yet undertaken a national audit of asbestos in schools; has not comprehensively assessed the risks that teachers and pupils in each and every school face; and has not allocated resources to take urgent remedial actions.

²⁸ [The complete text presented to the Prime Minister is at this link.](#)

²⁹ DCSF/Rowen 30 Jun 2009

Without these actions the tragedy of asbestos in schools will be left to fester and continue to kill the lifeblood of our society. Teachers and pupils continue to live with the deadly legacy of having once worked or studied in a school containing asbestos.

In the short term school heads and chairs of Governors may want to ask themselves this question: "Would you allow members of your family to attend a school or college where the asbestos risk had not been assessed?"³⁰

July 2009. New deadline 69% failed to respond.

On 14th July 2009 with two days to go to the new deadline 77 responses had been received to the questionnaire.³¹ 173 had not.

September 2009. HSE: Responses "very robust and on top of problem."

On 3rd September 2009 some five months after the returns should have been completed, a meeting was held where HSE stated that 110 of the 150 local authorities had replied. They were less clear about the response from the diocese and other schools not under local authority control.³²

The meeting was between senior HSE officials and the asbestos in schools group. HSE expressed their satisfaction that 85% of the responses that had been received had described their compliance with the regulations and adherence with the guidance as "very robust and on top of the problem." In answer to a question HSE stated that it would be wrong to say that a significant number were not compliant, although they acknowledged that there was a "mixed picture" from schools outside local authority control. They stated that they were working with DCSF on how to raise asbestos awareness among these schools. They acknowledged that 12-15% of the responses that had been received so far were also incomplete or unclear and therefore required a further response. Once again the asbestos in schools group requested sight of the returns, but the request was again refused.³³

October 2009. Minister again refuses audit.

On 12th October 2009 a Parliamentary question was asked by the Shadow Schools Minister asking whether the Government would commission a national audit to determine the extent, type and condition of asbestos in schools and the standards of asbestos management. The Schools Minister replied:

"In January 2009 DCSF sent out a questionnaire about the management of asbestos in system-built schools to local authorities to confirm that the school duty holders were managing asbestos correctly. DCSF and HSE are evaluating the responses to identify local authorities that are managing the risks, so that HSE inspections can be targeted at those that are not.

We do not intend to extend this to a national audit to determine the extent, type and condition of asbestos in school buildings. The Control of Asbestos Regulation 2006 places duties on those responsible for the maintenance and repair of non-domestic buildings, including schools, to take reasonable steps to identify the location and condition of asbestos containing materials. The duty holder must then use this information to make a written record and management plan to ensure that

³⁰ British Safety Council press release Government failing to tackle asbestos in schools. 3 Jul 2009
www.britsafe.org/feedcontents.aspx?id=100261

³¹ DCSF/Rowen 14 Jul 2009

³² Meeting HSE Director of Disease Reduction Programme, Head of Service Sector, Head of Asbestos Policy/ asbestos in schools Group 3rd Sep 2009. Bryant Public Services Sector – Government, Defence and Education

³³ Meeting HSE Director of Disease Reduction Programme, Head of Service Sector, Head of Asbestos Policy/ asbestos in schools Group 3rd Sep 2009.

the risks of exposure to asbestos are properly managed. A national audit would duplicate these arrangements, and have little or no effect in reducing the health risks associated with asbestos."³⁴

October 2009. Minister admits response low from Diocese

On 21st October 2009 an answer was given to a follow up Parliamentary question about when the evaluation of the questionnaire would be complete. The Minister replied:

"Initial evaluation of the responses is complete. It has highlighted the need for further investigation and follow-up action. Health and Safety Executive (HSE) officials will discuss with my Department in November how to take this forward.

The response rate from Diocese and voluntary aided schools was low. With HSE we are now considering how to get information on asbestos from the voluntary aided sector."³⁵

This admission by the Schools Minister that there had been a poor response was almost two years after the response to a very similar questionnaire had been declared by HSE as being *"full and detailed."*

November 2009. Meeting with Minister. 56% of local authorities and diocese failed to reply or unsatisfactory. No response from independent sector. No assessment in Scotland and Wales.

On 11th November 2009 the asbestos in schools group had a meeting with the Schools Minister, Diana Johnson MP. The main content of the meeting was based around the responses to the DCSF questionnaire. At the meeting with HSE in September they had confidently stated that *"85% of responses from organisations have described very robust management systems and that they are on top of the problem."* It was patently clear from the final responses on 11th November, and lack of responses, that a significant number of organisations do not have robust systems of asbestos management, and are not on top of the problem.

The questionnaire is mainly designed to assess compliance with guidance that concentrates on just one particular asbestos problem in one type of school – system buildings, and this has been done almost to the exclusion of all the other problems of asbestos fibre release in system schools. In addition because of its very limited remit it totally ignores every other school in the country. It is therefore a very long way from obtaining the comprehensive picture of standards of asbestos management and compliance with the guidance that DCSF predicted.

The following are extracts from the HSE summary of responses. The complete document is at the annex:

Further verification is needed where:

- *the response did not demonstrate the provision of information, instruction and training to the school workforce on identifying the presence and management of asbestos;*
- *there was no reference to proactive monitoring by the LA to ensure compliance with policies and procedures;*

³⁴ Hansard column Parliamentary written answers 12 Oct 2009 : Column 234W, Questions[289818] [289819] Nick Gibb MP/ Vernon Coaker MP Schools asbestos 12 Oct 2009.

<http://www.publications.parliament.uk/pa/cm200809/cmhansrd/cm091012/text/91012w0054.htm#09101322005189>

³⁵ Hansard column 1561W Question 294157, Nick Gibb MP/ Diana Johnson MP Schools asbestos 21 Oct 2009.

HTTP://WWW.PUBLICATIONS.PARLIAMENT.UK/PA/CM200809/CMHANSRD/CM091021/TEXT/91021W0027.HTM#COLUMN_1561W

- *there appeared to be shortfalls in the maintenance and inspection programmes;*
- *the response failed to provide sufficient information to provide assurance that the risk from asbestos in school buildings is being managed.....*

Emerging issues from questionnaire

The majority of local authorities provided evidence that demonstrated effective arrangements were in place to manage asbestos in system built schools.

In a number of the responses the evaluation has identified areas where management arrangements could be further strengthened. Many of these are issues that warrant further investigation as part of the development of enhanced training for school leaders and the work on sensible risk management in schools. These include:

- *Clarification of who is the duty holder, and who takes responsibility for the management of asbestos;*
- *Evidence of a lack of knowledge/ awareness of the range of system buildings within some authorities property portfolios;*
- *Evidence that some knowledge about property portfolios has been lost in the process of local government re-organisation;*
- *The importance of proactive management – instructions often issued, but not clear how formal monitoring of compliance and implementation takes place at school level.*
- *Asbestos registers – differing views with regard to what constitutes a register, who maintains and updates it.*

HSE Interventions – following up questionnaire responses

Details of local authorities where further investigation is necessary were sent to HSE’s Field Operations Division on Friday 2nd October. The breakdown of number of visits requested is as follows:

<i>Division London</i>	<i>6</i>
<i>East South East</i>	<i>8</i>
<i>North West</i>	<i>5</i>
<i>Midlands</i>	<i>6</i>
<i>South West</i>	<i>2</i>
<i>Yorks & North East</i>	<i>7</i>

In some cases Local Authorities provided partial or interim responses and therefore further evaluation of a number of responses by HSE is proposed. Once evaluation of these interim questionnaire responses have been peer reviewed, it is anticipated a small number of additional local authorities will be identified for a follow up visit.”³⁶

Comment on response to questionnaire

Perhaps HSE is correct that the majority of local authorities demonstrated that effective arrangements were in place to manage asbestos, but a significant proportion did not. Their findings reflect all the other evidence that the occupants of a significant number of schools are at risk because the authorities do not have control of the situation.

³⁶ Asbestos Management in Schools – summary of HSE evaluation of on-line survey responses submitted from local authorities on asbestos management in system built schools 6 November 2009

The lack of knowledge and asbestos awareness shown in the questionnaire again highlights a lack of effective training at all levels, from Government Ministers, the DCSF, HSE, local authorities, school authorities, school governors, head teachers, teachers and support staff. The result is that they are not aware of the dangers and do not give asbestos the priority it merits, consequently bad, unworkable policies have been implemented, inadequate guidance issued and the occupants of schools put at risk because they have failed to implement effective, workable systems of asbestos management.

This has then passed unnoticed as local authorities are in effect expected to regulate their own standards and that of their schools. The questionnaire highlighted the need for proactive management for it is evident that some authorities were unaware of what was going on in their schools for they were issuing guidance and instructions but had no system to determine whether the schools were complying with the guidance, and this is compounded as it is rare that HSE carry out an inspection. These problems have been identified in the local authorities however the evidence is that the system of regulation is even worse in schools outside local authority control, with this being confirmed by the failure of the majority of Diocese to answer the most basic questions about their schools and whether or not they were complying with the guidance.

Serious asbestos incidents have occurred because of confusion over who is responsible for asbestos management. The particular issue in VA schools came to the fore in the 1990's as neither the Church of England Buildings Trust nor the Department for Education were sure where the responsibilities lie.³⁷ It is therefore unacceptable that clear, unambiguous lines of responsibility were not laid down long ago. That confusion extends down as far as the schools where there is confusion not only over what constitutes an asbestos register but also who maintains it and who updates it. Such confusion explains why a significant number of local authorities, diocese and schools do not have a firm control over their asbestos management as no one is aware where that responsibility lies.

The problems of asbestos fibre release in System built schools has been known about for more than twenty years, and therefore it is unacceptable that some authorities have a lack of awareness and knowledge of what System built schools they own. It is a sad reflection on the conduct and professionalism of HSE and DCSF who over the years have failed to issue competent guidance clearly identifying which buildings are System buildings, what asbestos they contain, how the fibres are released and what measures have to be taken to prevent the release. The confusion has been fuelled by HSE, DCSF and their CLASP Working Group initially focussing almost entirely on one particular problem in just one sort of System built school – CLASP. It is known that because of this some authorities thought that the problem was restricted to just this type of building and it took two years for HSE to clearly state that it applies to other types of System buildings. One must question how many of the seventeen nil returns are either unaware of what constitutes a System building, or are still under the illusion that the problem is restricted to CLASP.

The fact that some knowledge of property portfolios has been lost in the process of local government re-organisation, is just fundamentally bad management. It is also but further evidence of some local authorities having no proper control over their property portfolio, and the asbestos in their buildings.

Although serious questions were raised about the effectiveness of asbestos management in some local authorities, by the very nature of the questionnaire it is inevitable that the replies have given a more positive picture than it actually is. Despite that 34 authority's responses (22%) were such that they indicate problems that warrant further investigation by HSE inspectors. 16 authorities (10%)

³⁷ Letter DfEE School Premises Policy Team Walker/ DfEE Crathorne 16 Mar 1998. Letter Church of England Buildings and Trusts Officer Franklin/ Mr Richens solicitors 9 Mar 1998

had given partial or no response at all and it would appear that they are in addition to the 34. This failure to respond is unacceptable as it is now over seven months after the original deadline for returns. This means that about a third of all local authorities have either failed to respond or have given a response that shows flaws in their systems of asbestos management.

A further 17 local authorities (11%) claimed that they had no system built schools or if they do then they contained no asbestos. One must question the validity of such a claim as it is most unlikely that a local authority would not have any system built buildings in their schools, which includes temporary classrooms, and it is equally unlikely that if they do then none of them contain asbestos. These replies and the positive replies raise questions over the validity and indeed honesty of some of the responses.

The summary of responses only mentions the 155 local authorities and makes no mention of the 95 replies DCFS expected from diocese and schools outside local authority control. On questioning, DCSF admitted that they had only received a handful of responses from this group and were trying to work out how to obtain responses from the remainder. They acknowledged that the handful is about five. It would therefore appear that nine months after being asked the most basic questions about asbestos in their schools, the vast majority of diocese have no idea which of their schools are system built, which have the particular asbestos problem and which are following, or failing to follow, the guidance.

If one accepts the honesty and validity of the positive and nil responses, then the questionnaire indicates that a total 56% of local authorities and diocese in England have failed to show that they are following the guidance on the management of asbestos in their system built schools. When independent schools are included then the total number of schools at risk is even greater.

The questionnaire did not obtain information on the 2,400 independent schools in England.³⁸ (10% of all schools). DCSF acknowledged that they were still considering how to obtain the information from these schools. This is despite the fact that in 2004 HSE acknowledged that there is a particular problem in independent schools.³⁹

There are about 2,700,000 pupils in a total of 7,600 Voluntary Aided schools, independent schools and in schools not directly under local authority control in England. That amounts to just under a third of all schools.⁴⁰ The HSE and DCSF had gained no information on independent schools, and on top of that 95% of diocese, who are in the main the owners of the Voluntary Aided Schools, failed to reply.

One must question how many of the three million occupants of independent, faith schools and schools outside direct local authority control are at risk because in effect they have been, and remain, outside a workable system of regulation. In 2004 the HSE asbestos in schools campaign had identified the independent sector as being of particular concern as they acknowledged that the standards of asbestos management were frequently not acceptable, and yet passed uncorrected purely because they were outside local authority control. However when the campaign was dropped

³⁸ National Statistics Education and Training Statistics for the United Kingdom: 2008 Reference ID: V01/2008 Published on 27th November 2008 Table 1.1

³⁹ HSE Asbestos-duty to manage campaign. Meeting HSE Head of Asbestos Policy /Lees 18 Nov 2004

⁴⁰ <http://www.dcsf.gov.uk/rsgateway/DB/SBU/b000796/TheCompositionOfSchoolsInEnglandFinal.pdf> DCSF National Statistics. The Composition of schools in England June 2008. Tables 2.2 p 11. 2.3 p12. 2.4 p13. 2.5 p14 A3.10 p144. A3.11 p145 National statistics Education and training statistics for the United Kingdom 2008 Table 1.2, 1.3, 1.5 table No statistics available for support staff in the independent sector. In maintained schools there 326,000 and the ratio of teachers to support staff is about 3:4, therefore a similar ratio has been presumed for independent schools. National statistics school workforce England. 29 Apr 2009.

by the HSE they seemed to forget about their concerns and consequently they failed to address the very real problems. It is only now because of the poor level of response that HSE and the DCSF have to once again acknowledge that there are serious weaknesses in asbestos awareness in faith schools and the independent sector.

Five years have passed with staff and children remaining at risk in these schools when these weaknesses would have been identified had the HSE asbestos in schools campaign not been scrapped. For the sake of the staff and children it is essential that this time these schools are not forgotten, and that the extent of asbestos and their standards of asbestos management are assessed and brought up to the standards of the best, so that the staff and children are safe.

At the time of issuing the questionnaires it was indicated that a similar exercise would take place in Scotland and Wales. On being questioned HSE stated that the Scottish Parliament did not want to issue a questionnaire and instead have sent a letter to all local authorities about asbestos and radon. In Wales HSE are in direct discussion with the local authorities but have not established how many system built schools there are or their standard of compliance with the guidance. It is therefore not known how many or what type of system built schools there are in Scotland and Wales, and neither is it known whether or not they are complying with the guidance.

The HSE document on the responses to the questionnaire was copied to the asbestos in schools group the day before their meeting with the Minister, and was purported to summarise the complete response to the questionnaire and the situation in all system built schools in the country. It is therefore misleading of the HSE to issue a document that fails to mention the total lack of information in independent schools in England and the almost complete failure of Diocese to respond to the questionnaire. Given that the HSE and DCSF failed to obtain information from more than half the school authorities in England, and none in Scotland and Wales, the HSE statement that *"The majority of local authorities provided evidence that demonstrated effective arrangements were in place to manage asbestos in system built schools"* is equally misleading.

The asbestos in schools group request to have sight of the responses was again turned down by HSE on "legal grounds," as investigations are in progress.

Conclusion

Throughout the twenty two years since the problem of asbestos fibre release in System built schools was first identified inadequate steps have been taken both to assess the scale of the problem and to implement effective remedial actions to make schools safe. As a direct result asbestos incidents have continued unabated causing contamination of schools and the exposure of the occupants.

Since 2006 several questionnaires have been used to assess compliance. The questionnaires have concentrated on one particular problem in one type of school –System buildings, to the exclusion of all other schools. In principle all questionnaires suffer from the same failings as the latest one, but also have a more basic flaw. That flaw is that the guidance recommends temporary "sticky plaster" measures rather than a long term solution, so consequently even total compliance would not necessarily mean that the schools were safe.

The assessments have been superficial and have failed to identify the true scale of the problem. They have failed to identify flaws in the guidance and failed to identify the number of schools that have inadequate systems of asbestos management. The latest questionnaire is similarly flawed. However the responses, and the lack of responses, add to the overwhelming evidence that a significant proportion of local authorities, diocese and schools have an inadequate awareness of asbestos matters and inadequate systems of asbestos management. Some have no real idea which of their schools are system built, what type they are, what asbestos they contain or whether their

systems of asbestos management are effectively preventing asbestos fibres being released, indeed some do not even know what an asbestos management plan is. This but confirms all the other evidence that shows that there is a huge variation in standards of management and awareness which range from good to non-existent.

For the last twenty five years successive Governments have refused requests for a national audit of asbestos in schools as they claim that it is not their responsibility, rather it is that of the local authorities, diocese and school governors. The Minister states that *"a national audit would duplicate these arrangements"*, however it is clear that many do not have adequate or even workable "arrangements." A significant number of them have failed to show that they are in control of the situation and are safely managing their asbestos. This clearly underlines the necessity for a comprehensive national audit of asbestos in schools so that those authorities and schools that are failing can be identified and measures taken to bring them up to the standards of the best.

The latest questionnaire is an unprofessional attempt to assess the situation that has further delayed a proper assessment. A proper audit must be carried out without any further delay for the safety, and indeed very lives, of our teachers, support staff and children depend on it.

Michael Lees
15th November 2009



Asbestos Management in Schools – summary of HSE evaluation of on-line survey responses submitted from local authorities on asbestos management in system built schools

6 November 2009

Survey Evaluation

Questionnaire responses have been evaluated to assess each authority's level of compliance with the duty to manage asbestos. The on line responses received from Local Authorities (LA) have been collated centrally and involved peer review of the evaluation conclusions. On the basis of the information provided LA's have been identified for follow up where they have either not responded to the questionnaire or the response indicates the need for further verification to check their management arrangements.

Further verification is needed where:

- the response did not demonstrate the provision of information, instruction and training to the school workforce on identifying the presence and management of asbestos;
- there was no reference to proactive monitoring by the LA to ensure compliance with policies and procedures;
- there appeared to be shortfalls in the maintenance and inspection programmes;
- the response failed to provide sufficient information to provide assurance that the risk from asbestos in school buildings is being managed.

Summary of Survey responses:

Total number of education LA's	155
Full response to questionnaire	139
Interim/partial responses	9
No response received	7

Note - Of the 139 responses received, 17 LA's have indicated a nil return i.e. that they no longer have system built schools within their property portfolio, or the system buildings that they do have do not contain asbestos.

Emerging issues from questionnaires

The majority of local authorities provided evidence that demonstrated effective arrangements were in place to manage asbestos in system built schools. The questionnaire has raised awareness of the duty to manage asbestos, and has resulted in local authorities checking that their arrangements remain effective for all system build issues – i.e. not simply CLASP buildings.

In a number of the responses the evaluation has identified areas where management arrangements could be further strengthened. Many of these are issues that warrant

further investigation as part of the development of enhanced training for school leaders and the work on sensible risk management in schools. These include:

- Clarification of who is the duty holder, and who takes responsibility for the management of asbestos;
- Evidence of a lack of knowledge/ awareness of the range of system buildings within some authorities property portfolios;
- Evidence that some knowledge about property portfolios has been lost in the process of local government re-organisation;
- The importance of proactive management – instructions often issued, but not clear how formal monitoring of compliance and implementation takes place at school level.
- Asbestos registers – differing views with regard to what constitutes a register, who maintains and updates it.

HSE Interventions – following up questionnaire responses

Details of local authorities where further investigation is necessary were sent to HSE's Field Operations Division on Friday 2nd October. The breakdown of number of visits requested is as follows:

Division	London	6
	East South East	8
	North West	5
	Midlands	6
	South West	2
	Yorks & North East	7

In some cases Local Authorities provided partial or interim responses and therefore further evaluation of a number of responses by HSE is proposed. Once evaluation of these interim questionnaire responses have been peer reviewed, it is anticipated a small number of additional local authorities will be identified for a follow up visit.

The purpose of the proposed inspections is to ensure that the duty to manage requirements of the Control of Asbestos Regulations 2006 are being fully complied with. Inspections will take the form of a central intervention to assess an authority's overall management of asbestos, followed up by sample inspections to a number of system built schools. All visits to education LA's are to be completed by the end of March 2010.

The inspections will assess the management arrangements in place within a Local Authority to ensure that they and other dutyholders under health and safety law have effective arrangements in place to manage the risk from asbestos. This will include a review of policies and procedures, the arrangements for ensuring control, co-operation, communication and competence for those within the management chain, risk assessments and management plans in place, along with the arrangements for ensuring monitoring and review of the procedures.