

Improvement Notice issued to South Gloucestershire Council

The HSE carried out enforcement action on Gloucester County Council by issuing an Improvement Notice on 5th May 2010 which stated:

“Improvement notice served - Measures identified in the Council’s written plan for managing the risk from asbestos in system built school buildings, ie. Sealing gaps in joints in the casing around the columns, and between such columns and skirting boards and wall, had not been carried out.”¹

The breaches found were:

001 Health and Safety at Work Act 1974/2/
002 Health and Safety at Work Act 1974/3/
003 The Control of Asbestos Regulations 2006/4/10

The sections state:

HSWA 1974/2/ states: 2(1)*It shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees....* (The staff)

HSWA 1974/3/ states: 3(1)*It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety².* (The children, parents and visitors)

The CAR2006/4/10 states: 4(10) *The dutyholder shall ensure that—*
(a)the plan is reviewed and revised at regular intervals, and forthwith if—
(i)there is reason to suspect that the plan is no longer valid, or
(ii)there has been a significant change in the premises to which the plan relates;
(b)the measures specified in the plan are implemented; and
(c)the measures taken to implement the plan are recorded.³

According to an article in the Evening Post *“The council said it strongly refuted the claim that its schools were failing to protect staff and children from the dangers of asbestos.”⁴*

The HSE took enforcement action because the Council had not followed the measures specified in their own written plan for sealing gaps in casings, and between columns, walls and skirtings in system built schools. The HSE guidance to seal the gaps in system built schools had been issued *“to ensure that children, teachers and others are not exposed to asbestos fibres.”* As the Council had failed to follow the guidance, it must be assumed that there was a potential for asbestos fibre release, and therefore the enforcement action was taken because the council had infringed the Health and Safety at Work Act by not ensuring the safety of its employees and other occupants of its schools. If the council statement is quoted correctly then one must question why they refute that

¹ HSE notice 302597103 served against South Gloucestershire Council on 07/05/2010

² HSWA 1974 http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1974/cukpga_19740037_en_2#pt1-pb2-1g2

³ CAR 2006 Regulation 4/10

⁴ Council told to improve on asbestos <http://www.thisisbristol.co.uk/news/Council-told-improve-asbestos/article-2438342-detail/article.html>

they were failing to protect staff and children, when it would appear that their statement is incorrect.

The article also quoted the Council as stating:

*"It said initial guidance published in 2006 by the HSE related specifically to a certain type of system building which the council did not have."*⁵

If the statement is correct then the council are being misleading, for although pedantically the initial guidance issued in 2006 did specify CLASP buildings, it was amended in March 2007 to include *"all types of "system built" buildings,"* which was further reinforced in an update in September 2008. Therefore it would appear that almost three and a half years after they were instructed to check all their system built schools and to seal gaps, the Council had failed to follow the guidance or their own written plan for managing asbestos risks in system built schools.

The sequence of guidance is as follows:

The initial guidance was issued by Scape on 12th October 2006 following test in a number of schools in the Rhondda Cynon Taff that had shown significant levels of amosite fibres (brown asbestos) could be ejected into the classrooms, halls and corridors by the simple act of hitting a wall or column, slamming a door or even sitting on a windowsill. The guidance warned all owners of CLASP buildings of the potential of asbestos fibre release from cracks in columns, walls, ceilings and skirtings, and specified actions that should be taken to prevent the release in all CLASP buildings, but in particular CLASP Mk4 and 4B.⁶

It was followed by similar guidance from HSE, the LGE and DfES in October 2006 and distributed to all local authorities and independent schools which specified actions to prevent the release of asbestos fibres. They expressed the urgency of the situation and stated:

*"A potential problem for exposure to asbestos fibres has come to light in certain types of CLASP constructed schools, specifically type 4 and 4b....
This is an opportunity for you to take appropriate action to ensure that children, teachers and others are not exposed to asbestos fibres.
Clearly the sooner the issue is dealt with the better. The upcoming half term (as well as out of school hours) should provide you with the opportunity to assess the situation in your schools."⁷
(Half-term in the Autumn of 2006 was 23 Oct-27 Oct)*

The guidance gave actions that should be taken:

*.....All gaps to column cladding, skirtings, and walls to be sealed to enclose the AIB dust and debris.
....Use expanded foam to fill tops of the columns and cavity walls where they are open to the ceiling void above the suspended ceilings.....*

⁵ Council told to improve on asbestos <http://www.thisisbristol.co.uk/news/Council-told-improve-asbestos/article-2438342-detail/article.html>

⁶ Scape formal Notice Release of asbestos fibres in CLASP buildings Potential for asbestos fibre release in CLASP buildings 12 Oct 2006

⁷ A Joint Message from the HSE/LGE/DFES Asbestos- Potential for exposure in "clasp" school buildings. Undated, October 2006

It was then realised that other system built schools with a similar construction have a similar problem of asbestos fibre release, so that further guidance was issued in March 2007 to all local authorities, diocese and independent schools informing them that the problem is far wider than just CLASP buildings and that all system buildings of a similar construction should be inspected and remedial actions taken. The guidance stated:

*“This guidance gives information about potential asbestos fibre release in CLASP buildings built between 1945-1980. However, it should be noted that the same issues are faced in **all types of “system built” buildings** constructed during the same period.”⁸*

The guidance was updated in September 2008 and reinforced the fact that the guidance refers to all system buildings of a similar construction. It instructs that;

*“Identify **all system buildings** from the period 1945 and 1980 in their control and particularly CLASP and SCOLA (pre 1980) as a priority.*

*Priority for sealing gaps should be given to: All buildings constructed prior to 1980 for CLASP and SCOLA and up to 1985 **for other system buildings**, unless knowledge of asbestos use in the design is available....”*

Because of the enforcement action the Council are only now undertaking the work that they should have done years ago to seal the gaps in the cladding and between the walls, columns and skirting. According to the article *“An improvement notice has been served on South Gloucestershire council to ensure that it carries out work to prevent the release of asbestos in 15 of its schools.”* If so that is a considerable number of schools containing many hundreds of staff and pupils. As urgency had been expressed in 2006 to seal the gaps it must be questioned why it had to take enforcement action in 2010 for South Gloucestershire Council to ensure that *“children, teachers and others are not exposed to asbestos fibres.”*

A detailed examination of the problems of asbestos fibre release in system built schools is at the link in the footnote.⁹

*Michael Lees
5th September 2010*

Note:

This is not the first time that South Gloucestershire council have failed to protect the occupants of a school from the dangers of asbestos. In December 2005 the Council were prosecuted and fined £25,000 for failing to manage asbestos removal operations in a school. The Council were prosecuted under section 2 and 3 of the 1974 Health and Safety Act for failing to ensure the safety of their staff

⁸ HSE Asbestos in CLASP and other system buildings. March 2007

⁹ 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>

Part 2:

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

and other people not employed by them.¹⁰ A non licensed contractor removed asbestos insulating board ceiling tiles without the proper measures in place which contaminated the school and exposed council staff and the contractors to asbestos. Furniture had to be removed and an environmental clean undertaken. It was reported that the clean-up operation cost £300,000. According to the report *“Since the incident, management procedures within the council have been tightened to prevent any repetition”*.¹¹ The Council did not learn their lesson, for they failed to tighten their management procedures and by doing so allowed these further breaches of health and safety law to occur.

¹⁰ HSE prosecutions. South Gloucestershire Case 203 2595
http://www.hse.gov.uk/prosecutions/case/case_details.asp?SF=CN&SV=2032595

¹¹ East Sussex Health [Circular 055/2006: Health and Safety Bulletin](#)