HSE enforcement action shows a failure of schools to safely manage their asbestos

HSE has completed the inspection of 158 schools outside local authority control to assess their standards of asbestos management.[1] The schools included Academies, Faith Schools, private schools and schools owned by limited companies. The results show an appalling failure amongst a significant proportion of them to safely manage their asbestos.

Enforcement action was taken against thirty schools outside local authority control for failures in asbestos management and further action was taken against two local authority schools. In one there was the potential for disturbance of asbestos and in the other asbestos debris was still present after refurbishment work had been carried out. In total forty nine Improvement Notices were issued.[2]

There were seventy breaches of the Health and Safety at Work Act as the school authorities had failed to ensure the health and safety of their staff and pupils.

There were seventy four breaches of the Control of Asbestos Regulations for failing to manage their asbestos as required by law.

Sixteen of the schools had failed to train their staff in asbestos awareness or management so they were unable to supervise the members of staff who might damage the asbestos. Those staff put themselves and the pupils at risk as they were unaware of the risks and precautions that are necessary when working with asbestos. Seven of the schools had failed to identify their asbestos or carry out an asbestos survey. There were twelve breaches of the regulations as the schools had failed to record the risks from the asbestos, record the location of the asbestos or specify measures to manage it. There were ten breaches for a failure to monitor the condition of the asbestos, properly maintain or remove it or inform the people who might disturb it. All of these failures, and others, put the occupants of the schools at risk.

In 1986 all schools were specifically told to identify their asbestos by extent, type and condition and assess the risks to the staff and pupils. They were told to draft and implement a plan to manage the asbestos and train people in the precautions that are necessary to avoid damaging it.[3] It is therefore disgraceful that twenty five years later these schools have failed to do so.

Government policy encourages schools to become Academies or Free Schools, consequently there are increasing numbers of schools outside local authority control. About three million staff and pupils are presently in independent, faith schools and schools not directly under local authority control.[4] It is the owners, governors and headteachers of these schools who are responsible under

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[1] DfE Asbestos Steering Group. HSE briefing 9 Jun 2011

[2] HSE Enforcement data base http://www.hse.gov.uk/notices/notices/notice_list.asp?PN=2&rdoNType=&NT=&SN=F&x=23&EO=LIKE&SF=SICD&SV=education&ST=N&y=10&SO=DNIS

[3] Department of the Environment Asbestos materials in buildings 1983. 1986. Department of Education and science AM3 of 86 The Use of asbestos in Educational Establishments 15 Aug 1986

[4] 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. Statistics Faith schools Numbers of schools, teachers and pupils. 2001

law to safely manage their asbestos and ensure the safety of their staff and pupils, but this round of inspections adds to the evidence that many of them are not equipped to do so.

Many of these schools have been established for many years and therefore should have had the necessary skills, yet they had failed to obey the law and follow the guidance. They presumably thought that they were safely managing their asbestos, but because of a lack of asbestos awareness they were potentially putting people's lives at risk. The situation could be worse in Free Schools and some Academies as most parents and governors do not have the training and experience to manage asbestos but are taking on the legal and practical responsibilities to do just that. Unless training is made mandatory for governors, headteachers and all staff it is inevitable that this problem will worsen over the coming years.

Of 158 schools outside local authority control that were inspected 30 warranted enforcement action, which is about 19%. That is a high proportion when compared to similar exercises. For instance HSE carried out a similar round of inspections to assess the standards of asbestos management and targeted businesses with particular emphasis on hotels, restaurants, public houses and manufacturing sites. 400 inspections took place and 24 businesses had enforcement action taken[5], which is just 6%. Enforcement action in the round of inspections of schools was three times greater than in the inspections of other businesses. If this is representative of the whole country it indicates that the standard of asbestos management in schools outside local authority control is significantly worse than in other sectors of business.

In 2004 the HSE were warned that the standards of asbestos management in many schools was poor or non-existent, and that standards in independent and faith schools were particularly bad. As a consequence the HSE and the Department for Education established a campaign to improve the asbestos management in schools with the overall aim to "*dramatically reduce the exposures*" of teachers, support staff and children. However before the first meeting took place the campaign was scrapped so that targets could be achieved in reducing the asbestos exposures of plumbers, electricians, carpenters and decorators. One of the first tasks of the 2004 schools campaign was to be an assessment of the standards of asbestos management in schools outside local authority control, but when the campaign was dropped the assessment never took place. Seven years have therefore passed, and it is only now that it has been determined that these schools have been putting their occupants at risk because they failed to safely manage their asbestos.

This round of inspections was triggered by an almost total failure of dioceses to respond to a HSE and Department for Education questionnaire that was issued in January 2009 to determine the standards of compliance with asbestos guidance for system built schools.[6] Although the information requested in the questionnaire should have been at the authorities' finger tips, it was clear from the dioceses lack of response that they were unaware of the extent of asbestos in their schools. HSE conducted two rounds of inspections of local authorities to determine compliance. In the first round twenty improvement notices were issued[7] and in the second a further eighteen were issued with a

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[5] Suffolk – Asbestos Duty to Manage Project A report by the HSE's Partnership Team – East of England Region 18 – 27 September 2007. HSE Lacors Your council,s involvement in health and safety regulation. Councilors handbook Jul 2008

[6] Meeting Schools Minister Diana Johnson MP 11 Nov 2009. Contemporaneous notes Lees.

[7] HSE Inspection of asbestos management in clasp and other system buildings 2007/2008 Summary report of findings.

quarter of the local authorities that were targeted warranting enforcement action.[8] It is likely that other local authorities were failing to achieve acceptable standards but HSE only inspected those local authorities who had not responded satisfactorily to the questionnaire, and accepted the veracity of the answers from the others. The local authorities criticised the questionnaire as its design would inevitably elicit a more positive picture than actually exists.

A few years ago HSE rarely inspected the standards of asbestos management in schools, and it is only in recent years that they have started doing so. The failures in asbestos management in these schools were only uncovered because of pro-active inspections, and it must be hoped that because of them standards will improve. The Coalition Government have recently announced that HSE will no longer carry out pro-active health and safety inspections in local authority schools, although they will be continued in schools outside local authority control. That is a retrograde step and will mean that in future local authority schools that fail to manage their asbestos will pass unnoticed, with the inevitable result that the occupants will be put at risk.

If the Government expects schools to manage their asbestos then they have to assess the scale of the problem and the risks and allocate the proportionate resources so that they can achieve that. They also have to have a proper system of regulation to identify those schools who are not effectively managing their asbestos so that they can be brought up to the standards of the best. Government policy of asbestos management rather than removal is not a cheap option and it has to be properly resourced, but over the years successive Governments have failed to do that.

For more than thirty years Government policy for schools has been "*Asbestos which is in good condition and unlikely to be disturbed or damaged is better left in place and managed until the end of the life of the building as this presents less risk of exposure to the occupants than the process of removing it.*"[9] The enforcement action in these schools shows that the policy of managing asbestos has failed and as a direct result thousands of teachers, support staff and children's lives have been put at risk.

Michael Lees
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[8] HSE Inspection Findings: Asbestos management in Local Authority school system buildings 2009/10
[9] 08 February 2011 Parliamentary Written Answers *Education Schools: Asbestos John Mann MP/ Secretary of State for Schools Nick Gibb MP* http://services.parliament.uk/hansard/Commons/bydate/20110208/writtenanswers/part015.html