

## AiS response to the HSE Triennial Review

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1. This is the Asbestos in School Group's (AiS) response to the HSE triennial review. It therefore covers the aspects relevant to asbestos in schools.
2. The overall aim of AiS is to make schools safe from the dangers of asbestos. AiS is non-party political. The group's expertise covers all aspects of asbestos in schools. Amongst the group's members and supporters are MPs, all six of the teaching trade unions, the four school support staff unions, the asbestos consultants association ATaC, experts on risk, solicitors, doctors, the London Boroughs Asbestos Group, the asbestos victims support forum, the health and safety campaigning organisation Hazards, the Independent Schools Bursars Association and individuals including those who have been affected by asbestos exposure in schools.
3. The main section answers the questions. Background information and argument to support the answers are in the annex, as are practical examples. They are fully referenced.

**Question A:** In part one of this review the primary question is; do the functions that HSE performs remain necessary and if so do they need to be done by the HSE?

**Answer to question A.**

4. AiS considers that the HSE has an essential function to play in ensuring workplace health and safety. Those functions remain necessary and, in most workplaces, HSE is the best organisation to achieve it.
5. Although that is the case in most workplaces, AiS questions whether HSE are the best body to secure the health and safety of pupils and staff in schools from exposure to asbestos. HSE acknowledge that they are experts on workplace risks to adults but they have limited expertise on the risks to children,<sup>1</sup> or on the manner in which schools operate. There either has to be a

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<sup>1</sup> Meeting DfE Asbestos Steering Group HSE Head of Services Sector. Lees contemporaneous notes 28 Feb 2011

fundamental change within HSE, or the role of ensuring the safety of the occupants of schools from asbestos has to be performed by another body where that is their main priority and they have the skills and the resources to do the task. (See annex)

6. HSE are experts in regulating high risk workplaces and, given the limits on their resources, it would seem sensible that they concentrate on their core business. Local authorities are presently responsible for inspecting lower risk workplaces, but it is not within the remit of environmental health officers to inspect the standards of asbestos management in schools. This is understandable in the case of local authority controlled schools as it would mean that they would be inspecting their own schools. However in principle there is no reason why they should not inspect schools outside their own control. Independent schools, free schools, voluntary aided, foundation schools and academies could be inspected by local authorities. In England, for instance, as at the 1<sup>st</sup> July there are over 3,000 academies<sup>2</sup> and the aim is for most secondary school to become academies.

7. As part of their inspections of schools OFSTED are mandated to assess the safety of pupils. OFSTED's instructions for school inspections states:

*"In order to make a judgement about the quality of education provided in the school, inspectors **must** first make four key judgements. These are: ...*

- *the behaviour and safety of pupils at the school.*"<sup>3</sup>

As asbestos poses the greatest risk to the safety of pupils in schools it should be part of that assessment. Inspectors need not be experts in asbestos management, but should have sufficient knowledge to make a basic assessment, and if there were concerns then expert advice could be sought. AiS suggested that OFSTED be contacted so that discussions could take place to decide how best they could fulfil their mandated role. DfE contacted OFSTED who informed them that asbestos would not be part of their school inspections.<sup>4</sup> It is suggested that this avenue is pursued further.

8. Local authorities provide a level of expertise on asbestos so that they are able to advise the schools under their control what measures are necessary to manage their asbestos. They also provide training. The standards between local authorities do vary but the best provide the necessary resources so that schools can achieve satisfactory standards. There needs to be a system to ensure that all LAs achieve the standards of the best. HSE are the body to ensure they do.

9. Although it is not directly within the remit of the AiS, there is a concern about the safety of children and adults in their homes from the dangers of asbestos. HSE are responsible for workplaces and therefore their remit covers trades people carrying out work in homes, but their remit does not extend to the occupants on other occasion.<sup>5</sup> Landlords should ensure that their

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<sup>2</sup> DfE number of open academies 5 Jul 2013

<sup>3</sup> OFSTED School inspection handbook Handbook for inspecting schools in England under section 5 of the Education Act 2005 (as amended) from September 2012 . April 2013 <http://www.ofsted.gov.uk/resources/school-inspection-handbook>

<sup>4</sup> DfE Asbestos Steering Group Minutes 14 June 2012 AiS note of meeting.

<sup>5</sup> Appendix: Health and Safety (Enforcing Authority) Regulations 1998: A-Z guide to allocation OC 124\_11 (paras 1 and 2)

tenants are informed of the presence of asbestos and the measures that should be taken to avoid disturbing it, but there is significant evidence this does not happen.<sup>6</sup> No official organisation takes the lead in ensuring the safety of people in their homes from asbestos and there is no proper system of informing people of the dangers and measures that should be taken.

10. All asbestos exposures are cumulative and contribute towards the likelihood of mesothelioma developing.<sup>7</sup> Therefore asbestos exposures at home add to the exposures at work, or at school, and increase the chances of people developing the cancer. If the problem of asbestos is to be properly addressed and the numbers of mesotheliomas reduced in Britain, then the exposure of children and adults in homes, as well as workplaces and schools, has to be addressed.
11. HSE do not have the resources to take on this additional task. However if asbestos disease is to be eliminated in Britain there should be some official body that does. The answer to question 9 shows how Australia is taking radical measures to eradicate asbestos disease by preventing exposures, wherever they occur. In order to achieve this they have carried out a review that looked at the whole issue of asbestos and made recommendations. They then established an agency that is responsible for recommending to the Minister measures that will fulfil the aim of totally eradicating asbestos disease.
12. It is therefore proposed that the HSE triennial review considers whether a similar agency should be established in the UK. If it was then HSE would have an important role to play, but a number of the statutory functions presently carried out by them in relation to asbestos would be performed by the agency.

Q1. Do HSE's business aims and objectives as set out in Annex C do the right things to deliver its statutory functions? Has it got the right balance?

### Answer to Q1

13. HSE's mission is *"The prevention of death, injury and ill health at work and those affected by work activities."*

HSE's main statutory functions are to:

- a) *"propose and set necessary standards for health and safety performance, including submitting proposals to the Secretary of state for health and safety regulation.*
- b) *secure compliance with those standards;*
- c) *carrying out research and the publication of the results of research and encouraging research by others;*
- d) *provide an information service and advisory service, ensuring relevant groups are kept informed of and adequately advised on matters related to health and safety.*
- e) *provide a Minister of the Crown on request with information and expert advice."*<sup>8</sup>

<sup>6</sup> As Safe as Houses? Dealing with Asbestos in Social Housing A Report for UCATT Dr Linda Waldman and Heather Williams June 2009

<sup>7</sup> Judgement Jeffrey Burke QC Edgson v Vickers plc (QBD) Expert witness statement Dr Rudd, Dr Hugh Jones, Dr Britton p524 1994

<sup>8</sup> DWP / HSE Framework document Jul 2009

14. Most of the business aims and objectives are reasonable and in “high risk” workplaces will contribute positively towards HSE delivering its statutory functions. However, as far as asbestos in schools is concerned, a number of them do not deliver the HSE statutory functions. That is because the objectives target *“the sectors that give rise to the most serious risks.”* In addition HSE is told to *“Use evidence and knowledge to prioritise our own actions and guide the actions of others.”*
15. HSE’s priorities are based on their interpretation of the evidence. That interpretation is that pupils and staff are at a “very low” risk from asbestos in schools,<sup>9</sup> even though that runs contrary to the evidence. The result is that HSE works within its business aims and objectives by prioritising workplaces that pose the most serious risk. But it is at the expense of schools. As HSE is responsible for regulating health and safety in schools, the result is that if HSE decides not to secure compliance within schools, then nobody else will - as they are not allowed to.
16. In all but one of the business aims it states that HSE should *“Lead others to improve health and safety in the workplace.”* The presumption that HSE has the lead on all matters to do with health and safety allowed the DfE to abdicate responsibility to the HSE for asbestos in schools. HSE do not have the resources or necessary knowledge to “lead” in schools, therefore this resulted in the whole issue drifting with no one in command. It was only when DfE took the lead and established the DfE Asbestos Steering Group that the many problems are now being addressed. (See annex)
17. The balance of the HSE’s aims and objectives are wrong. HSE should advise, regulate, inspect and enforce and allow others, who have the expertise in the particular field, to lead.
18. An HSE business objective is to *“Use evidence and knowledge to prioritise our own actions and guide the actions of others.”* This is a valid objective so long as it is based on the best evidence. In addition priorities should be set on achieving safe workplaces and not primarily on political priorities of achieving specified targets.
19. Children are at greater risk from exposure to asbestos than adults, the younger the child the greater the risk.<sup>10</sup> Most schools contain asbestos and many contain considerable amounts of the more dangerous amphiboles. Children spend a long time at school and there is evidence that in some there are frequent low level releases of asbestos fibres. However, contrary to the evidence, DWP and HSE have classed schools as “low” risk and consequently they are treated as a low priority. HSE therefore allocates its limited resources to high risk workplaces at the expense of schools. Until HSE accepts the evidence that children in schools are at a greater risk than adults in many other occupations, the Government will never allocate the necessary resources to make schools safe from the dangers of asbestos. The overall business objective is understandable, but, because of HSE’s interpretation of the evidence and the consequent priorities, their stated mission of preventing death will not be achieved in schools.

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<sup>9</sup> Meeting Minister of State for Schools/ AiS 10 January 2013 contemporaneous notes Lees

<sup>10</sup> Committee on Carcinogenicity statement Relative vulnerability of children to asbestos. 7 June 2013

Q2. How well do you think the HSE fulfils each of its functions at present?

**Answer to Q2**

20. In most workplaces HSE generally performs its function well within the restraints of limited funding. In relation to asbestos in schools, however, the HSE does not adequately fulfil a number of its statutory functions.
21. HSE has to set priorities and allocate its limited funds to the workplaces it considers are a priority. HSE advised the Schools Minister, incorrectly, that the asbestos risks in schools are “very low” and therefore schools are a low priority for the HSE. In addition, because of HSE advice, DfE cannot justify allocating resources on mitigating the effects of asbestos when they are assured by HSE that there is not a problem.<sup>11</sup> The result of this is that no one has taken the radical measures that are necessary to address what is in reality a very serious problem.
22. The following is a summary that looks at each of the statutory functions in turn and assesses whether HSE is fulfilling them:
- a) “Propose and set necessary standards for health and safety performance.”**
23. HSE do not have the necessary expertise on either children or schools. They therefore apply standards for workplaces on schools without taking into consideration either the increased risk from asbestos to children or their curiosity and boisterous behaviour. For instance HSE guidance set the workplace Action Level as a threshold for an insignificant risk. This led to unsafe practice and the failure of schools to report incidents or to inform people who had been exposed to asbestos. The level was withdrawn only after an AiS proposal. (See annex) However the workplace clearance indicator remains as the threshold of allowing rooms to be re-occupied – despite HSE being aware it is unsafe.
24. The HSE report on the investigation into the asbestos incident at Cwmcarn High School sends a dangerous message to other schools on the standards of asbestos management and the level of risk that the HSE considers are acceptable.<sup>12</sup> HSE have treated the school as any other workplace and have not considered the behaviour of children or their increased risk from asbestos exposure. The HSE and HSL reports of their investigations show a lack of understanding of schools and children amongst HSE officials. There is widespread asbestos contamination, evidence that the heaters are emitting amosite fibres and evidence that asbestos wall panels are frequently disturbed. Despite this HSE declared the school was perfectly safe to reoccupy. Two firms of asbestos consultants, the Council, an independent assessor and common sense considers the school is unsafe. The extent of the Council’s concern is demonstrated by the fact that they are spending £1 million in removing and remediating asbestos to make the school safe.
25. If the HSE advice had been followed staff and pupils would have returned to an unsafe school, but for the Council’s insistence they did not. However it is inevitable that other schools and LA’s

<sup>11</sup> Meeting Minister of State for Schools/ AiS 10 January 2013 contemporaneous notes Lees

<sup>12</sup> See: JUAC open letter to Schools Minister 8 May 2013

<http://www.asbestosexposureschools.co.uk/pdfnewslinks/JUAC%20%20General%20Secretaries%20signed%20letter%20to%20David%20Laws%20MP%2008%20May13.pdf>

will think that as the HSE are the regulators then they must be right. In this case the HSE failed to deliver their statutory function of setting necessary standards for health and safety, as their standards would potentially have caused harm to children and school staff. Not only did they fail to fulfil their statutory function, HSE's serious lack of judgment has set a dreadful example for other schools, led to confusion and has undermined their authority.

**“...including submitting proposals to the Secretary of State for health and safety regulation.”**

26. The regulations and the supporting ACOPs are written for people who work on asbestos but, other than Regulation 4 the duty to manage, are not written for the occupants of buildings. Consequently in some aspects it is unclear what the law requires. For instance, because the regulations are drafted in a manner that is ambiguous over training, it is a matter of interpretation whether there is a legal requirement for headteacher, governors and members of staff to be trained in asbestos awareness.
27. The Regulations also fail to specify a “safe” asbestos fibre level for staff and pupils to reoccupy classrooms after an asbestos incident, instead it leaves it open to interpretation. The result being that local authorities and schools allow pupils and staff to return to classrooms when the airborne asbestos fibre level is just below the clearance indicator, even though HSE acknowledge the level is unsafe.
28. The problem of ambiguity and uncertainty when workplace asbestos regulations are applied to schools was resolved in the USA. In 1986 they introduced asbestos regulations specifically for schools that provide clarity.<sup>13</sup> Specific asbestos regulations should therefore be considered for schools in the UK.

**b) “Secure compliance with those standards;”**

29. The HSE system of assessing whether schools have an effective and safe system of asbestos management is inadequate and not fit for purpose. HSE withdrew pro-active inspections in LA schools and their present system is unworkable. In LA schools, therefore, the aim of securing compliance with the law has not been achieved. An HSE project is looking at the standards in 150 schools outside LA control. But this is less than 0.5% of the total school stock and is therefore a token exercise that cannot be considered a viable means of securing standards in Britain's 33,700 schools.
30. However, because HSE has classed schools as “low risk,” they are able to claim that they have fulfilled their business objective of targeting the more serious risks. Again HSE's priorities are not for schools. Because of the lack of inspection it is inevitable that unsafe practice will pass undetected in schools which will inevitably result in the asbestos exposure and subsequent deaths of staff and pupils. This is contrary to HSE's stated mission of the prevention of death. The aims and objective in this case do not help HSE to achieve its statutory duty. (See annex)

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<sup>13</sup> US Asbestos Hazard Emergency Response act (AHERA) 1986. EPA Asbestos in schools Rule (40 CFR Part 763 subpart E)

**c) “Carrying out research and the publication of the results of research and encouraging research by others;”**

31. HSE are part of the DfE Asbestos Steering Group who recommended to the Minister that an assessment should be made of the relative vulnerability of children to asbestos. The publication of the CoC statement was the result of that. In this case the HSE contributed towards achieving its statutory function.
32. However in 2009 HSE commissioned a school leader to review senior health and safety management in schools. His conclusion was that mandatory training was essential if health and safety was to be treated as a priority in schools.<sup>14</sup> The conclusions are highly relevant for forming future policy, and yet HSE has never published the report and any copies have been supplied in confidence so that open discussions about the findings are impossible. AiS consider that mandatory asbestos awareness or management training is essential for governors, headteachers, teachers and support staff, with the training tailored to their role. However HSE has argued against that by stating that the Regulations that require mandatory asbestos training do not apply to school staff who might be incidentally exposed to asbestos.<sup>15</sup> In this case as HSE have not followed their own aims and objectives they have failed to deliver their statutory function.

**d) “Provide an information service and advisory service, ensuring relevant groups are kept informed of and adequately advised on matters related to health and safety.”**

33. HSE is part of the DfE Asbestos Steering Group who drafted and published basic on-line asbestos awareness training for governors, headteachers and school business managers. HSE also published asbestos FAQs for schools. In general HSE’s web-site is an excellent resource. HSE statistics are also an excellent resource. In this aspect HSE’s business aims and objectives contribute positively towards their statutory duties.

**e) “Provide a Minister of the Crown on request with information and expert advice.”**

34. Asbestos policy for schools is based on HSE advice. As has been seen they have advised the Minister that the risks from asbestos in schools are very low. Because of it the Minister cannot justify taking measures to mitigate the effects of asbestos. That advice is contrary to other expert opinion, however the HSE advice is given greater weight.
35. Another example is that HSE advise that: *“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.”*<sup>16</sup>
36. Because successive governments have had the same policy most of the asbestos remains in situ and it will do indefinitely unless the policy is changed. Because of the HSE advice DfE can justify their policy to leave asbestos in place during refurbishments, unless it will be directly disturbed during the work.<sup>17</sup>

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<sup>14</sup> Leadership of health and safety in schools. draft findings July 2010. HSE note December 2010.

<sup>15</sup> DfE Asbestos Steering Group meeting. AiS Note 9 Jun 2011

<sup>16</sup> Parliamentary Written Answer Minister of State for Schools 8th February 2011

<sup>17</sup> Parliamentary written answer Minister of State for Schools Nick Gibb MP/ John Cryer MP 8 Dec 2010

<http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101208/text/101208w0004.htm#10120883001750>

37. Government policy relies on schools having rigorous and effective systems of asbestos management with the necessary resources available and all members of staff trained in asbestos awareness or asbestos management. However the evidence is that the policy has failed over a prolonged period of time.
38. Members of the asbestos consultants association visit thousands of schools throughout the country and they conclude: *“The evidence is that the system of asbestos management in many schools is not of an adequate standard, in some it is ineffective, in others it is almost non-existent, and in some it is at times dangerous... These are not minor problems that have crept in over recent years; rather they are fundamental problems that are endemic in schools in the UK...”*<sup>18</sup>
39. The HSE should advise Ministers on the best evidence and where there is a difference in expert opinion, they should give the various options to the Minister so that they can make the decision. However that has not happened as, until recently, DfE has abdicated all matters to do with asbestos in schools to the HSE. Consequently asbestos policy on schools has been dictated by HSE.  
The situation needed to change, and there are signs that it is. The formation of the DfE Asbestos Steering Group has allowed views other than HSE’s to be heard. Consequently improvements have been made that in all probability would not have been made otherwise. In addition DfE will be reviewing government policy over asbestos in schools. It will take evidence from HSE but also from a wide range of other organisations and individuals with an expert knowledge of the issue.
40. HSE’s role it is not to dictate policy for government departments. It is instead to advise, provide the best and balanced evidence and to give all the options. The Ministers job is to take decisions and formulate policy.

Q3. Is there a need for a body to carry out each of these areas of work? If so is HSE the right body to do this work, in the light of what it is doing now?

### Answer Q3

41. There is a need for a body to carry out each of these areas of work. In most workplaces the HSE is the right body. However in relation to asbestos in schools, unless HSE’s priorities, opinions and resources radically change they are not the right body to ensure the safety of children and staff from asbestos in schools. This aspect is covered in the answers to questions A, 1, 2 and the annex

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<sup>18</sup> Assessment of asbestos management in schools Asbestos Testing and Consultancy Association 24 Jan 2010  
[http://www.asbestosexposureschools.co.uk/pdfnewslinks/ASSESSMENT%20OF%20ASBESTOS%20MANAGEMENT%20IN%20SCHOOLS%20ATAC.%2022%20FEB%202010.pdf?zoom\\_highlight=atac#search="atac"](http://www.asbestosexposureschools.co.uk/pdfnewslinks/ASSESSMENT%20OF%20ASBESTOS%20MANAGEMENT%20IN%20SCHOOLS%20ATAC.%2022%20FEB%202010.pdf?zoom_highlight=atac#search=)

Q4. HSE's functions include policy development, including negotiating on behalf of the UK Government on European Legislation – are they the right people to do this?

#### Answer Q4

42. The present policy of asbestos in schools has been based entirely on advice from the HSE. AiS considers that a number of the policies are flawed. It is because of HSE advice that certain fundamental measures to protect the pupils and staff in schools have never been taken.
43. DfE has accepted HSE's advice unquestionably despite others telling them that in certain aspects HSE are wrong. HSE should have a role of advising on policy development but that advice has to be considered alongside the advice from other organisations and individuals who have as great, if not greater, expertise on the matter of asbestos in schools.
44. In 2010 DfE established the Asbestos in Schools Steering Group the members include the HSE and organisations and individuals who have expertise in asbestos in schools. The Steering Group reports to the Minister. Their aim is to improve the asbestos management in schools. HSE's views are considered with the views of the other members and, because all views are considered and a consensus agreed, a number of constructive measures have been taken towards achieving the aim.
45. **Review of Policy.** The Minister has instructed that a review will take place of the Government's policy towards asbestos in schools. DfE will lead. HSE will have an input along with all other stakeholders who will be asked to provide evidence. DfE will collate the evidence and their review of the evidence will be considered by the Steering Group who will assist in making recommendations to the Minister.
46. HSE should therefore advise on the development of policy, but they must not have a monopoly, as other expert advice and evidence must be considered alongside that of HSE's.
47. **Europe.** On 14th March the European Parliament voted by a large majority (558 votes in favour - 51 against) for the resolution "Asbestos related occupational health threats and prospects for abolishing all existing asbestos."<sup>19</sup> This is an important bill that proposes radical policies that would address the European wide asbestos problem. Britain has the worst asbestos problem in Europe, the worst asbestos problem in schools and leads the world on the incidence of mesothelioma. The UK therefore has to be central to the negotiations on future EU legislation.
48. However, many of the proposed measures in the EU Bill run contrary to the advice HSE have given Education Ministers. As this Bill progresses through the EU system HSE will have a role to play, but they should not be the sole people who negotiate on behalf of the UK Government. If they are, then it is reasonable to assume they will argue strongly against many of the measures that have been proposed to eradicate asbestos disease in Europe.

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<sup>19</sup> EU Bill texts adopted "Asbestos related occupational health threats and prospects for abolishing all existing asbestos (2012/2065(INI)"<sup>14</sup> March 2013

Q5. HSE also carries out research, technical development, provides advice, carries out investigations and enforces health and safety legislation. Are any of these functions no longer required?

#### Answer Q5

49. All the functions are important and are required.

Q6. Are there parts of HSE's work that could be better done elsewhere in the public, private or not-for-profit sectors?

#### Answer Q6

50. Yes. HSE has limited resources and therefore it should direct them at the high risk occupations it understands best. As has been discussed in previous answers local authorities could take over a number of the tasks that are presently within HSE's remit, but they do not have the resources or expertise to fulfil satisfactorily. Presently the best LAs offer advice on asbestos management to schools and training for governors, headteachers and school staff. That role could be widened and other LAs encouraged to follow the practices of the best. Also, as has been discussed earlier, LA's could take on the role of inspection and enforcement in schools outside LA control.

51. Asbestos consultants visit the majority of schools in the country to carry out asbestos surveys and to advise on asbestos management. In addition many of the consultancy firms offer asbestos training. They therefore have the qualifications, expertise and experience to play a greater part in a number of HSE's present functions. The HSE triennial review could consider the greater involvement of asbestos consultancy firms .

Q7. HSE currently regulates health and safety jointly with Local Authorities – is this division of responsibilities between the HSE and Local Authorities correct?

#### Answer Q7

52. Because HSE have limited resources they are unable to fulfil their statutory function of inspecting schools to assess the standards of asbestos management. Local authorities could have a greater role to play in the regulation of schools outside LA control. See the answer to question A.

Q8. Are there functions carried out by other bodies that you consider would be better done by HSE?

#### Answer Q8

53. No. The HSE is overcommitted at the moment and therefore cannot adequately fulfil its present functions. They should therefore not take on any more commitments.

Q9. Are there any lessons to be learnt from other countries about how best to deliver the work that HSE does and how similar bodies in those countries manage their work? Are there any constraints on applying such models in Great Britain?

## Answer Q9

54. There are lessons to be learnt from other countries on how to address the problem of asbestos. Some examples are the USA, Australia, Southern Ireland, the Netherlands and Poland. There are no practicable reasons why the measures taken in these countries cannot be adopted in Britain. There are, however, some constraints in applying the models in Britain. One would be political. Another is that over the years HSE has advised the UK Government against most of the measures that have been, or will, be adopted in other countries. There would therefore have to be a radical change in HSE mind set if any of the measures were to be introduced.
55. The Australian Government carried out a review of asbestos policies which made far reaching recommendations, and in 2013 the Government formed an agency to implement the measures. In the 1980s the EPA, HSE's equivalent, advised the US Government that children are at a significantly greater risk from asbestos than adults. The US Government therefore carried out a risk assessment, audited the extent of friable asbestos in schools and implemented stringent asbestos regulations specifically for schools. In 2000 Eire recognised the particular vulnerability of children to asbestos and introduced a policy of removing asbestos from schools when it would otherwise not be considered necessary.<sup>20</sup> The Netherlands have a policy of removing AIB from locations in schools where they are vulnerable to damage from children. They will also in 2014 introduce an "environmental" asbestos fibre control level of 0.000003f/ml, some 3,000 times less than their present occupational level.<sup>21</sup> In Poland they have adopted a policy of removing all asbestos from buildings by 2032.<sup>22</sup>
56. Britain has the worst mesothelioma incidence in the world at 38.6 per million per annum, and it is rising.<sup>23</sup> The USA incidence is 14 per million per annum and it has stabilised since 1999.<sup>24</sup> Australia has an incidence of 29 per million per annum<sup>25</sup>, The Netherlands 30,<sup>26</sup> and Poland 4<sup>27</sup>. Other countries are addressing the problem. It would seem sensible that Britain learns from their example, heeds the lessons and adopts similar policies.

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<sup>20</sup> Houses of the Oireachtas. Seanad debate Asbestos in Education Buildings Minister of State at the Department of Education and Science Mr Treacy 24 Feb 2000. Office of Public Works Eire European agency for safety and health at work . Asbestos Ireland 11 Apr 2005

<sup>21</sup> Asbestos Risks of environmental and occupational exposure Health Council of the Netherlands 3 June 2010 para 8.2 P83. Letter The Minister of Social Affairs and Employment L.F. Asscher Ref 2013Z05228 10 Apr 2013 . Professor Burdorf/Lees personal correspondence 10 Jun 2013

<sup>22</sup> [Conference: Europe's Asbestos Catastrophe](#) IBAS 8 Nov2012

<sup>23</sup> HSE table MESO04 Number of mesothelioma deaths and average annual rates per million by age and sex in three year periods 1969-2010

<sup>24</sup> Malignant Mesothelioma Mortality --- United States, 1999—2005. **Reported by:** KM Bang, PhD, JM Mazurek, MD, E Storey, MD, MD Attfield, PhD, PL Schleiff, MS, JM Wood, MS, Div of Respiratory Disease Studies, JT Wassell, PhD, Div of Safety Research, National Institute for Occupational Safety and Health, CDC.

<sup>25</sup> Safe Work Australia. Mesothelioma in Australia. Incidence 1982 to 2008. Deaths 1997 to 2007 Aug 2012

<sup>26</sup> , An International Comparative Approach to the Global Asbestos Epidemic Takahashi 23 Nov 2007

<sup>27</sup> Malignant Mesothelioma: Global Incidence and Relationship with Asbestos Claudio BIANCHI\* and Tommaso BIANCHI Industrial Health 2007, 45, 379–387

**In 2013 Australia introduced an agency to eliminate asbestos disease.**

57. On 3rd June 2013 the Australian Federal Parliament passed legislation for the Asbestos Safety and Eradication Bill. This is precisely the fundamental strategic thinking that is urgently required in Britain. It underlines the Australian Government's commitment to solve their asbestos problem once and for all.
58. The Asbestos Safety and Eradication Agency began operations on 1<sup>st</sup> July 2013 and will implement the National Strategic Plan for Asbestos Awareness and Management. The national agency is dedicated to working with jurisdictions and stakeholders to create a nationally consistent approach to the eradication, handling and awareness of asbestos. Australia is the first nation to progress towards the ultimate elimination of asbestos-related diseases.<sup>28</sup>
59. The national plan aims to prevent exposure to asbestos fibres in order to eliminate asbestos related disease in Australia. It will achieve this by:
- a. increasing public awareness of the dangers posed by working with or being exposed to asbestos;
  - b. developing the implementation of a prioritised removal program across Australia;
  - c. develop nationally consistent better practice in asbestos handling and management;
  - d. coordinate national research to minimise the risk of exposure to asbestos for the Australian community; and
  - e. play a leadership role in a global campaign for a worldwide asbestos ban.
60. In introducing the Bill the Minister, Bill Shorten, said the government would work to "*ultimately remove asbestos from the Australian built environment.....*". and he agreed in principle that removal of asbestos from schools will be prioritised, adding "*Obviously, exposure to children is particularly repugnant...*"
61. Australia has adopted a strategic policy to eradicate asbestos and asbestos disease. The need in Britain is as great, if not greater for a body that can concentrate entirely on asbestos. If Britain is to eradicate the legacy of asbestos from schools then similar strategic thinking and radical action is needed.
62. HSE remit is widespread as it is responsible for workplace health and safety for every occupation and from whatever cause. Although it acknowledges that "*Asbestos is the single greatest cause of work-related deaths in the UK*"<sup>29</sup> HSE is under resourced and consequently is unable to fulfil its responsibilities. It also denies there is a problem in schools. The result is that schools have been given a low priority and therefore too few resources to adequately address the problem. In addition HSE has advised that when schools are refurbished it is better to leave asbestos in place and manage it for the remaining life of the building, than it is removing it. Because of this policy the problem will remain indefinitely.

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<sup>28</sup> Asbestos Safety and Eradication Bill 2013 1 Jul 2013 [http://www.austlii.edu.au/au/legis/cth/bill\\_em/asaeab2013346/memo\\_0.html](http://www.austlii.edu.au/au/legis/cth/bill_em/asaeab2013346/memo_0.html)

<sup>29</sup> HSE web-site Asbestos health and safety.

63. In comparison the Australian Agency's remit is purely for asbestos. The agency is also tasked to recommend a finite date for the prioritised removal of asbestos from public and commercial buildings. Schools are considered a priority.
64. The Government's review of asbestos policy in schools should consider the Australian example, as should the HSE triennial review.

### **Since 1986 USA has had specific asbestos laws for schools**

65. The EPA is the US equivalent of the HSE. In 1980 an EPA report was compiled for the US Congress that examined the likely extent of friable asbestos in schools, the likely exposure of the occupants and the resultant risks. The report stressed the increased risk to children because of their longer life expectancy.<sup>30</sup>
66. The report to Congress estimated how many staff and children could be expected to subsequently die from their asbestos exposure at school. They concluded that over a thirty year period *"The most reasonable estimate is approximately 1,000 premature deaths. About 90% of these deaths are expected to occur among persons exposed as school children."*<sup>31</sup> So that the scale of the problem could be accurately determined, and financial forecasts made, an audit was carried out of the friable asbestos in the nation's schools.
67. In 1986 stringent laws were introduced in the USA specifically for schools, for it was acknowledged that, because of the increased vulnerability of children, schools had to be treated with special care. Resources were allocated, people were trained and systems introduced so that the asbestos could be rigorously managed, staff and parents were kept informed of the asbestos in their schools and the system of management. A system of inspection was introduced to ensure schools were achieving safe standards.<sup>32</sup> In contrast in the UK no such laws existed until the 2004 CAWR duty to manage. An audit of asbestos in schools has not been carried out, rather it was specifically excluded from the audit of the condition of school buildings.<sup>33</sup> The particular vulnerability of children has so far not been taken into account. Instead HSE considers that the risks from asbestos in schools are "very low" and because of this treats schools as any other workplace.
68. The USA recognised the particular risks to children in schools and took radical measures to address the problem. The asbestos problem in UK schools is however significantly greater as, unlike the USA<sup>34</sup> our schools contain large amounts of the amphiboles, and in particular amosite, in places vulnerable to damage by the children. It is therefore a reasonable assumption that proportionately the number of deaths among staff and children in UK schools will be higher than

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<sup>30</sup> EPA Support document for the proposed rule on friable asbestos-containing materials in school buildings EPA report 560/12-80-003 p 52 and 55

<sup>31</sup> American Academy of Pediatrics Asbestos Exposure in schools Pediatrics vol 79, no 2 Feb 1987 p301- 305 Reaffirmed May 1994 . EPA Support document for the proposed rule on friable asbestos-containing materials in school buildings EPA report 560/12-80-003 p92

<sup>32</sup> AHERA US code: title 15,2643. EPA regulations Chapter 53. EPA Fact sheet AHERA 1986 Statement EPA Administrator 23 Oct 1986

<sup>33</sup> Property data survey programme memorandum of supplementary information 17 Oct 2011 p8

<sup>34</sup> Toxicological profile for asbestos . US Department of Health and Human Services. Potential for human exposure. Sep 2001 para 6.4.1 p 163

in the USA. This is borne out by Professor Peto's estimates that in Britain 300 people could die a year from their asbestos exposure as children at school.<sup>35</sup>

69. More than thirty years ago the EPA and US Government acknowledged that there was a problem of asbestos in schools. They assessed the scale of the problem and the risks, then passed stringent laws that provided the resources so that schools really could manage their asbestos. In the UK no such measures have been taken. That is because Government policies have been based on advice from HSE that assures them that the risks are very low. Because of this the Government is unable to justify devoting resources in solving a problem that HSE assures them does not exist. The HSE advice that justifies Government asbestos policy for schools runs contrary to the evidence and the expert advice given by their counterparts to the governments of other countries. Until there is a fundamental change in HSE thinking, then another thirty years will pass without action being taken to properly address the asbestos problem in UK schools.

**Q10.** Would another delivery model offer a more efficient and effective way of delivering HSE's functions? Some alternative delivery options are outlined at annex D, but you do not need to restrict your suggestions to the options listed.

#### **Answer Q10**

70. In general no. However consideration should be given to an executive agency to address the problem of asbestos, and HSE should have a role to play in it. The present delivery model has its flaws which have been examined in previous answers. They should be addressed. The role of HSE is essential and it would have a detrimental effect on the health and safety of people if it was abolished. There should not be more political control of HSE, there should be less. HSE should be allowed the freedom to make decisions, and give advice, in the interests of safety and not political targets. The HSE should remain an NDPB.

**Question B:** If you consider that an NDPB is the right way to deliver HSE's functions are the current control and governance arrangements the right ones?

#### **Answer QB**

71. The present controls and governance have their flaws. There is undue political influence over the HSE so that decisions are not necessarily made in the best interests of health and safety. For example the decision to reduce regulation was a political one, and it was not made in the interests of improving health and safety. Because of it schools are not inspected, so that those that have unsafe systems of asbestos management will inevitably pass undetected. If the Government expects schools to manage their asbestos then there has to be a system in place to

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<sup>35</sup> Education Select Committee hearing Asbestos in Schools. 13 Mar 2013. Q13  
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/c1056-i/c105601.htm> . Personal correspondence Professor Peto/Lees 3 May 2013

ensure that they do. Decisions such as this should be made in the interests of health and safety and should not be political.

72. The HSE board members should be appointed because of their expertise rather than as politically influenced appointments. However it is apparent that does not necessarily happen.
73. The Health and Safety Commission provided another layer of control that in theory was independent from HSE. By abolishing it a buffer between politicians and the HSE was removed. The present system has allowed undue political influence which has adversely affected the safety of people in Britain.

*Asbestos in Schools Group*  
25<sup>th</sup> July 2013

## **Annex.**

### **Background information. Supporting arguments. Examples**

#### **Asbestos in schools is a major problem**

74. There is a major problem of asbestos in schools, and yet it is treated by HSE as a low priority. This should not be the case. Everyone attends school, and at any one time there are more than nine million pupils in the 33,700 schools in the United Kingdom. <sup>36</sup> More than three quarters of schools contain asbestos and many thousands of schools contain the more dangerous types of asbestos. In particular there are large amounts of asbestos insulating board (AIB) in places vulnerable to damage from children. <sup>37</sup>
75. The Committee on Carcinogenicity (COC) was asked by the DfE to examine the relative vulnerability of children to asbestos. After two years of deliberation in June 2013 they confirmed children are more vulnerable to asbestos exposure than adults, the younger the child the greater the risk. <sup>38</sup> The Minister has confirmed that DfE will now review its policy on managing asbestos in schools.
76. The occupants of schools are also at greater risk from asbestos exposure than, for example, the occupants of a shop or an office. That is because during their more than twelve year school career children spend long periods of time in school buildings. In addition they are more boisterous and more curious than adults, consequently any asbestos material in a place accessible to children is likely to be disturbed.

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<sup>36</sup> Education and training statistics for the United Kingdom 2008 Edition. DCSF. (DIUS) (WAG) (SG) (DENI)(DELNI) NB: 434,900 full time equivalent teachers and 326,400 support staff.

<sup>37</sup> Fibrous Materials in the Environment Medical Research Council. Building Research Establishment. P72 and p75 . 1997 HSE Paper Number: LAFORUM/04 Forum Asbestos management in schools. 23 Nov 2004 . See: Asbestos in Schools the scale of the problem and the implications 30 Oct 2011 <http://www.iacoc.org.uk/papers/documents/AiSreportonASBESTOSINSCHOOLS.pdf>

<sup>38</sup> Committee on Carcinogenicity statement Relative vulnerability of children to asbestos. 7 June 2013

77. A Medical Research Council (MRC) report examined the extent, type and location of asbestos in schools and concluded: *“It is not unreasonable to assume, therefore, that the entire school population has been exposed to asbestos in school buildings.”* They estimated that a child would inhale 3,000,000 asbestos fibres at school.<sup>39</sup> However, this estimate was made on asbestos being in good condition. This is no longer the case. In addition there is extensive evidence of asbestos incidents in schools that have resulted in pupils and staff being exposed to asbestos. In some case this occurs over many years.<sup>40</sup>
78. The asbestos materials used in schools are an integral part of the fabric of the buildings. The Asbestos Consultants’ Association stated *“Over the years the school stock has not been well maintained so that as the fabric of the buildings has deteriorated then so has the asbestos.”*<sup>41</sup> According to the CEO of Partnership for Schools, the body that was responsible for refurbishing and replacing the schools stock, *“80% of our schools are beyond their shelf life.”*<sup>42</sup> The school estate has been underfunded for decades so that it is becoming increasingly dilapidated. The Schools Capital Review examined the school estate in England and concluded that *“Significant parts of the school estate were and are in an unacceptable state.”* The review also expressed concern about the particular vulnerability of children in schools by stating *“Clearly, taking into account the potential vulnerability of young people, there needs to be good scrutiny and control over buildings in which they will spend much of their day.”*<sup>43</sup> In relation to asbestos, the advice of the review has not been followed.
79. People are dying because of their asbestos exposure at school. More than 267 school teachers have died from mesothelioma since 1980 . School caretakers, cleaners, cooks, teaching assistants, school secretaries<sup>44</sup> and former pupils have also died of the cancer. At the Select Committee hearing in March Professor Peto, a member of the CoC, gave evidence about the number of former pupils he estimates could die from their asbestos exposure at school. He estimated that between 100 and 150 females could die each year because of their asbestos exposure as a child at school.<sup>45</sup> He also considered that similar numbers of males could die.<sup>46</sup> Therefore between 200 and 300 people could die a year of mesothelioma because of their asbestos exposure as children at school. Based on these estimates, it also a reasonable assumption that considerably more than 3,000 mesothelioma deaths could occur because of asbestos exposure as a child at school.

<sup>39</sup> Fibrous Materials in the Environment Institute for Environment and Health. P72 and p75 . 1997

<sup>40</sup> See Asbestos incidents and articles about asbestos in schools. <http://www.asbestosexposureschools.co.uk/npaper%20articles.htm>

<sup>41</sup> Assessment of asbestos management in schools Asbestos Testing and Consultancy Association 24 Jan 2010

<sup>42</sup> Tim Byles, Chief Executive, Partnership for Schools Radio 4 Today Programme 1 April 2010

<sup>43</sup> Review of Education Capital Sebastian James 8 Apr 11 [http://www.publicservice.co.uk/news\\_story.asp?id=16031](http://www.publicservice.co.uk/news_story.asp?id=16031)

<sup>44</sup> HSE Mesothelioma occupational statistics: Male and female deaths aged 16-74 1980-2000 Table 3,4 Southampton Occupation Group. 5 year time period 1980-2000 excluding 1981. E-mail HSE Statistics Unit/Lees 15 Jul 2008. Mesothelioma deaths in the education sector for males and females 2001-2005. HSE Mesothelioma mortality in Great Britain: Analyses by Geographical area and occupation 2005 Tables 11, 13 (2002-2005). HSE Epidemiology Unit CSAG, table 0977/Lees 2 Mar 2011 HSE Epidemiology Unit, table 0925./Lees 25 Feb 2011. E-mail HSE Statistics Unit/Lees 21 Nov 2012 . Mesothelioma deaths in the education sector for males and females 2001-2010. House of Lords written answer. Health: Mesothelioma Lord Wigley /Lord Wallace of Saltire .[HL5165] 6 Feb 2013 : Column WA68. HSE Mesothelioma Occupation Statistics Male and female deaths aged 16-74 in Great Britain 2002-2010

<sup>45</sup> Education Select Committee hearing Asbestos in Schools. 13 Mar 2013. Q13

<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/c1056-i/c105601.htm>

<sup>46</sup> Personal correspondence Professor Peto/Lees 3 May 2013

80. The appalling death toll puts into perspective the dangers posed by asbestos in our schools, and yet HSE advise the Government that the risks from asbestos in schools are very low. Most people would consider that the risks are unacceptable and that urgent action should be taken by the Government to make schools safe so that further deaths can be prevented. However HSE's assessment of the risks is used as the basis for asbestos policy in schools.

**Contrary to evidence, HSE advise Ministers that the risks are “very low.”**

81. The greater risk to children and the greater likelihood of asbestos being disturbed in schools has not been taken into account by HSE when giving advice to Ministers, in drafting regulations or in making policy. The opposite is the case.

82. In January 2013 AiS had a meeting with the Minister of State for Schools who stated that he had been advised by HSE that the risk from asbestos in schools was “very low.” Because of this, he argued, that spending large amounts of money on measures to mitigate the effects of asbestos cannot be justified.<sup>47</sup>

83. This assessment of the risks was stated in the review of health and safety, “Common Sense Common Safety” which classed schools as a low hazard and low risk workplace.<sup>48</sup> The Government accepted the recommendations and the conclusions of the review. Because HSE consider the risks are very low they treat schools in the same manner as any other workplace in the asbestos regulations, policy and their advice to DfE.<sup>49</sup> DfE asbestos policy for schools is based on HSE's opinion of the risks.

84. Senior HSE officials are responsible for advising Ministers on risks and policy. The HSE Director of the Disease Reduction Programme dismissed the risks to staff and pupils in schools by stating, incorrectly, that *“Even if asbestos dust was released from floor tiles, ceiling tiles, wall panels and other common materials and was inhaled by teachers and pupils, the doses would be too low to cause any problems.”*<sup>50</sup> This is contrary to the evidence and expert opinion which is clear that there is no known threshold exposure to asbestos below which there is no risk.<sup>51</sup>

85. The HSE director also claimed that *“There is also no evidence to suggest asbestos can affect children more than adults”*<sup>52</sup> - despite this being contrary to expert opinion which considers that children are more vulnerable to exposure to asbestos than adults, as confirmed by the CoC.

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<sup>47</sup> Meeting Minister of State for Schools/ AiS 10 January 2013 contemporaneous notes Lees

<sup>48</sup> [Good Health and Safety, Good for Everyone](#), The next steps in the Government's plans for reform of the health and safety system in Britain', Department for Work and Pensions, 21<sup>st</sup> March 2011

<sup>49</sup> Meeting HSE /AiS HSE Head of Services Sector. HSE Head of Asbestos Policy Lees contemporaneous notes 3 Sep 2009

<sup>50</sup> Western Mail The danger of asbestos in the classroom is exaggerated 27 Aug 2009

<http://www.walesonline.co.uk/news/wales-news/2009/08/27/the-danger-of-asbestos-in-classrooms-is-exaggerated-91466-24541973/>

<sup>51</sup> World Health Organisation Elimination of asbestos related diseases. Sep 2006 . WHO environmental Health criteria 203: Chrysotile Asbestos 1998 . Hodgson & Darnton The quantitative risks of mesothelioma and lung cancer in relation to asbestos exposure. Epidemiology and medical statistics unit HSE. Ann Occup Hyg vol 44 p583 Is there a threshold? 2000) Final WATCH Position on asbestos risk assessment: February 2011

<sup>52</sup> Daily Post Interview with HSE Director of Disease Reduction Programme Coldrick. 2 Nov 2009

<http://www.dailypost.co.uk/news/north-wales-news/2009/11/02/asbestos-is-killing-hundreds-in-north-wales-55578-25067463/>

Western Mail The danger of asbestos in the classroom is exaggerated 27 Aug 2009

<http://www.walesonline.co.uk/news/wales-news/2009/08/27/the-danger-of-asbestos-in-classrooms-is-exaggerated-91466-24541973/>

86. HSE's opinion that low level exposures in schools would not cause problems prevails. Advice has been given and policy has been based on this incorrect assumption. It also has allowed HSE to apply workplace asbestos fibre control levels to children and staff in schools. An example is that HSE applied the Action level to schools as a threshold for an insignificant asbestos exposure. They also took the policy decision that if the level was beneath the threshold then staff and parents need not be informed of their, or their children's, asbestos exposure. The level was 48,000,000 fibres in a cubic metre of air, and was designed for asbestos contractors wearing breathing apparatus and protective clothing. It is known that local authorities used the level as a threshold and it is known that parents have not been informed of their children's asbestos exposure because of the HSE guidance. It was only withdrawn in 2012 following pressure from AiS.<sup>53</sup>

### **HSE targets and policy adversely affect safety of schools**

87. Until recently DfE has followed the lead of HSE in all matters to do with asbestos in schools. This was confirmed by the Minister of State for Schools who stated "*As you may know we take our lead from the HSE in matters concerning asbestos in schools.*"<sup>54</sup> As well as abdicating responsibility for the safety of the occupants of schools to HSE, DfE also accepted the political targets and restrictions placed on HSE, even though by doing so they adversely affected the safety of pupils and staff in schools. This was typified by the cancellation of a campaign to improve the asbestos management in schools and also by the withdrawal of pro-active inspection by HSE of the standards of asbestos management in schools.

88. *Campaign dropped.* 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 positively 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. They stated at the time that the campaign was a priority.<sup>55</sup>

89. 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.

90. 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*

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<sup>53</sup> Informing staff and pupils following an asbestos incident in a school. The case for withdrawing HSE guidance.  
<http://www.asbestosexposureschools.co.uk/pdfnewslinks/INFORMING%20following%20an%20asbestos%20incident%20in%20a%20school%2015%20Jul%2011.pdf>

<sup>54</sup> Letter Schools Minister Jim Knight MP/ Michael Clapham MP 21 Nov 2008.

<sup>55</sup> HSE paper LAFORUM04 Asbestos management in schools 23 Nov 2004

*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>56</sup>

91. DfE were asked by HSE<sup>57</sup>, but declined, to take over the lead of the campaign. In answer to a letter from the chairman of the All Party Parliamentary Group on Health and Safety, the Minister made it clear that DfE were willing to be governed by HSE policies and targets that prioritise high risk occupations rather than 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>58</sup>
92. The HSE Chief Executive also refused to reinstate the campaign and emphasised that schools were just one part of their many responsibilities, and by implication not a priority. He 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>59</sup>
93. The fact that priorities had changed was in part because HSE's senior officials considered, incorrectly, that children are at no greater risk from asbestos exposure than adults. Rather than arguing that the school's campaign should remain a priority, the Schools Minister accepted HSE's advice and lead on the matter. He also accepted that DfE is governed by HSE's priorities, despite their priority being trades people and not schools. He did not consider that, as the Schools Minister, his main priority should be for the safety and well being of pupils and staff in schools.
94. This case is an example of how the DfE totally abdicated the lead on asbestos in schools to the HSE. By doing so they not only unquestionably accepted HSE advice, they also were governed by changing HSE policies and targets at the expense of staff and pupils in schools.
95. The All Party Parliamentary Group on Health and Safety and AiS asked the Government to reinstate the campaign and argued that DfE should accept that they are ultimately responsible and therefore should take the lead. The proposals were refused by Education Ministers.<sup>60</sup> However DfE's stand changed following a meeting between AiS and the Prime Minister in 2009. 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>61</sup> Within a few months DfE tacitly accepted that they are responsible, they reinstated the campaign and took the lead.

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<sup>56</sup> E-mail Exit strategy HSE Asbestos Campaign Manager Disease Reduction Programme /DCSF 23 Aug 2005

<sup>57</sup> E-mail Exit strategy HSE Asbestos Campaign Manager Disease Reduction Programme /DCSF 23 Aug 2005

<sup>58</sup> Letter Schools Minister of State for Schools Jim Knight MP/ Michael Clapham MP 21 Nov 2008.

<sup>59</sup> Letter HSE Chief Executive G. Podger/Lees 3 Apr 2006

<sup>60</sup> Letter Schools Minister Jim Knight MP/ Michael Clapham MP 31 Mar 2008. Letter Sarah McCarthy Fry /Christine Blower 9 Nov 2008. Letter Schools Minister Jim Knight MP/ Michael Clapham MP 21 Nov 2008.

<sup>61</sup> Meeting Prime Minister/AiS. Lees contemporaneous notes 13 May 2013

96. DfE set up the Asbestos Steering Group under their leadership. It had its first meeting in April 2010.<sup>62</sup> It is in effect the reinstatement of the defunct 2004 HSE asbestos in schools campaign. 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 most constructive improvements have been made.<sup>63</sup>
97. HSE does not lead the DfE Steering Group but it is a member and works alongside other members to improve the asbestos management in schools. The Group fulfils one of the main aims of the HSE 2012-2015 Business plan which is *“Where improvements in health and safety are necessary and where HSE can make a distinctive contribution, we will work closely with individual companies, industry bodies, stakeholder groups and others to assist in driving forward sector-led improvements to raise awareness of, create behavioural change and ultimately improve health and safety in the workplace... Work in partnership to raise awareness and create behavioural change: Assess our partnership and joint working arrangements, supporting those that are succeeding to become self-sustaining groups...”*<sup>64</sup>
98. The DfE Steering Group therefore fulfils a useful function as it is improving asbestos management in schools. Its composition and terms of reference are in line with Government policies and the HSE Business plan, as is the fact that HSE works in partnership with the other members of the Group. The Steering Group is succeeding and has proved its capabilities in becoming a self-sustaining group.
99. *HSE is an advisor.* On the matter of asbestos in schools HSE should not be the lead. They are advisers and should work alongside others who have the expertise in the specific field. In addition, although the Department for Education should be guided by HSE advice when forming asbestos policy for schools, they should not be dictated by that advice. Neither should DfE be governed by 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, with their present policies and priorities, are not the organisation to achieve that. Whereas the safety and well being of pupils and staff in schools is DfE’s priority, alongside education. DfE should therefore lead on the matter of asbestos in schools.
100. *Proactive safety inspections withdrawn.* Another example of how the safety of the occupants of schools have been adversely affected by HSE policies, priorities and targets is the withdrawal of pro-active health and safety inspections from local authority schools. This was a political decision made by HSE’s sponsor Department the DWP, and inevitably it will adversely affect the safety of pupils and staff in schools. No doubt, however, it could be justified politically as HSE has advised Ministers, incorrectly, that the risks from asbestos in schools are “very low.”

<sup>62</sup> Minutes Asbestos in Schools Meeting Schools Minister Diana Johnson 11 Nov 2009. And 24 Feb 2010

<sup>63</sup> Paper AiS and JUAC/ Chairman DfE Asbestos Steering Group. Role of DfE Asbestos Steering Group. 10 Jul 2013

<sup>64</sup> HSE’s Business Plan for 2012-15 Jul 2012 p5. <http://www.hse.gov.uk/aboutus/strategiesandplans/businessplans/plan1215.pdf>

101. In 2011 DWP published “Good Health and Safety, Good for Everyone.” Schools were classed as lower risk and HSE were no longer permitted to pro-actively inspect the standards of asbestos management in local authority schools.<sup>65</sup> Instead they will only carry out an inspection after an asbestos incident has occurred or when a member of staff alerts them to a problem.<sup>66</sup> This shows a lack of understanding of schools, and also displays a cavalier attitude to the asbestos exposure of pupils and staff.
102. One reason the policy is flawed is that staff are likely to be reticent in reporting flaws in the system of asbestos management. It is known when “whistle blowing” has occurred that the member of staff has felt intimidated, to the extent in at least one case the pressure was so great that they felt compelled to resign.<sup>67</sup> The policy also puts children and school staff at risk. Incidents could be prevented if pro-active inspections are carried out that identify and correct flaws in asbestos management, whereas the damage has been done if the inspection takes place after the incident.
103. The DWP policy might have been imposed on HSE, however the HSE Chair and Chief Executive readily agreed with the recommendations and strategy as it is reasonable to assume they were formed in consultation with them. In accepting the cuts the HSE executives stressed that “*the health and safety system must focus on the real risks...*”<sup>68</sup> As they consider the risks from asbestos in schools are very low, this excludes schools. A political decision taken by Ministers at DWP, on presumably advice from HSE, therefore adversely affects the safety of the occupants of schools.
104. If HSE will not determine whether schools are safely managing their asbestos, then another system urgently needs to be devised to determine whether they are, so that measures can be taken to bring all schools up to the standards of the best.

## Conclusion

105. The HSE has failed to fulfil its statutory functions to prevent the asbestos exposure of pupils and staff in schools. Many have died and many more will die. If these deaths are to be eliminated then the Government has to acknowledge that schools should be treated as a priority. There then has to be a radical rethink about asbestos policy for schools and the manner in which standards are regulated. The present policies have failed. Therefore maintaining the status-quo is not an option. If schools are to be made safe from the dangers of asbestos then the Government must carry out a fundamental review of their present asbestos policy for schools. They must then introduce strategic policies with the long term aim of totally eliminating the dangers of asbestos in schools.

*Asbestos in Schools Group*  
25<sup>th</sup> July 2013

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<sup>65</sup> Good Health and Safety, Good for Everyone. 21 Mar 2011 <http://www.dwp.gov.uk/docs/good-health-and-safety.pdf> p9

<sup>66</sup> DfE Asbestos Steering Group AiS note of meeting. HSE Head of Government, Defence and Education Unit Public Services Sector Operational Strategy Division. 14 Jun 2012.

<sup>67</sup> Lees personal correspondence. 24 Oct 2008. 14 Jan 2011. 5 Jan 2012.

<sup>68</sup> HSE’s Business Plan for 2012-15 HSE Chair and Chief Executive Foreword Jul 2012 p1