

Addendum:

Note: This paper was submitted to the Department for Education in December 2013. It outlines the problem and asks how future asbestos related claims from former pupils would be met.

We are pleased to say that, as a direct result, in September 2014 the Government introduced the Risk Protection Agreement (RPA). The RPA provides a central fund that will meet any future asbestos claims from staff and pupils in academies and free schools. The scheme is to be applauded and academies and free school encouraged to join.

[See: Details of the RPA](#)

In General Asbestos Risk Insurance is Not Available for School Children

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Michael Lees
4th December 2013

In general asbestos risk insurance is not available for school children

In general school pupils in academies and free schools are not insured against asbestos risks. In March 2012 the Schools Minister confirmed in a Parliamentary written answer that "*there is a general asbestos exclusion for public liability insurance.*"¹

The risk to children from asbestos in schools is brought into stark relief when insurance companies consider that the risks are so great that they are uninsurable.

However, in the absence of commercial insurance, future claims can still be met in local authority schools as they self insure. But most academies and free schools do not have the resources to do so.

At the DfE Asbestos Steering Group meeting of 9th February 2012 DfE officials were asked how academies and free schools could meet any future asbestos related claims from former pupils or non-employees.² Since then the matter has been raised in subsequent meetings and a series of Parliamentary questions have been tabled, however as at 3rd December 2013 no satisfactory answers have been given. It is therefore apparent that in general there are no viable means in place to meet future asbestos related claims from former pupils of academies and free schools.

Legal and financial responsibility rests on governors in free schools and academies

The legal responsibility for the safety of pupils and non-employees in academies rests on the academy trust whilst, in free schools, it is the governing body. The trust and the governing body are therefore legally liable for any claim that may be made. The government has been asked who will pay any compensation awarded against an academy or free school that does not have insurance cover. There has been no satisfactory answer.

In May 2012 in answer to a Parliamentary question the Schools Minister implied that in the absence of public liability insurance the governors' liability insurance will meet any future claims.³ Experts have advised that this is incorrect as governors' liability insurance is not meant to be a catch-all insurance and will not normally provide cover for other uninsurable risks.

The Minister explained that the liability would fall on the academy trust rather than individual members of the trust "*An academy trust is a corporate body so its members should not be held personally liable provided they act reasonably and in good faith*"⁴ However it must be questioned whether it would be considered that the trust had acted reasonably and in good faith if they failed to have a contingency fund when they were unable to obtain insurance cover - and that question can only be resolved by the courts. If they considered that they had not acted reasonably and in good faith, then it must be presumed that the individual members of the trust would be personally liable to settle any claim.

The academy trust members are school governors. Most governors are not trained in asbestos awareness and will not be aware of the very real potential that any failure in asbestos management could expose pupils to asbestos, with the possibility that any one of them might subsequently develop mesothelioma. Inevitably they will also not realise the personal implications for themselves and the financial burden on the academy if a future claim is made when there is no insurance cover.

¹ Parliamentary written answer Schools asbestos. Ian Lavery MP/ Minister of State Nick Gibb MP 21 Mar 2012 see Annex 1.

² DfE Asbestos Steering Group AiS note of meeting 9 Feb 2012

³ Parliamentary written answer Schools asbestos. Annette Brooke MP/ Minister of State Nick Gibb MP 22 May 2012 see Annex1.

⁴ Parliamentary written answer Schools asbestos. Annette Brooke MP/ Minister of State Nick Gibb MP 22 May 2012 see Annex1.

Government will not meet future claims

In a subsequent Parliamentary answer in June 2012 the Minister made the legal position clear *“The Secretary of State for Education...is not legally responsible for any compensation awarded, and nor is he bound by the terms of the funding agreement to compensate an academy for any such liability.”*⁵

It is implicit in the answer that the academy would be expected to meet any claim from its insurance cover, and if that was unavailable then the claim would have to be met from its own resources.

DfE has a duty to ensure education and therefore the Minister gave the assurance that if an academy had to settle a claim from its own resources then *“The Department for Education would work with any affected academy or free school to ensure that it remained financially secure and the education of its pupils was not compromised”*⁶

DfE however added the caveat that *“Academies are meant to have insurance and therefore if an award was made that brought the financial viability of the school into question this would be done on a case by case basis, taking into account a range of factors which would include, for example, the financial viability of the school and its overall performance.”*⁷

The caveat puts into question the credibility of the assurances, because the unresolved question has to be what would happen if the academy or free school was not financially viable or had a poor performance?

The fact that the Government has no measures in place to meet future claims and intends to wait and see what happens is flawed. It is contrary to the concept and principle of risk insurance which provides the financial certainty that any claims can be met.

DfE’s statement that decisions will be on a case by case basis avoids addressing the problem now and instead defers decisions and any proper solution until the first claim is made. Because of the long latency of mesothelioma that could be twenty or thirty years from now when the first victims from academies and free schools develop mesothelioma. At which point it is far too late for an academy to be told it should have had a contingency fund and for a former pupil with a terminal illness to discover that their school had been unable to obtain insurance and that no one has properly thought through how to meet their claim.

Governors not aware of responsibilities. DfE has not issued guidance

It needs to be confirmed whether academies are aware of their legal and financial liabilities or aware that they may need a contingency fund to meet any potential claims. It is reasonable to assume that they are not aware as the Department for Education has not informed them. This was confirmed by the Minister in March 2012 in a Parliamentary written answer that stated *“No guidance has been issued to local authorities, academies or free schools in respect of insurance cover for asbestos exposure risks.”*⁸

It is of considerable concern that people are taking on responsibilities as governors without being made aware of the potential legal and financial implications. The matter has been raised at each meeting of the DfE Asbestos Steering Group since February 2012 and yet in almost two years since then DfE has offered no solutions and has not issued guidance to governors or prospective governors.

⁵ Parliamentary written answer Schools mesothelioma. Annette Brooke MP/ Minister of State Nick Gibb MP 12 Jun 2012 see Annex1.

⁶ Parliamentary written answer Schools mesothelioma. Annette Brooke MP/ Minister of State Nick Gibb MP 12 Jun 2012 see Annex 1

⁷ Minutes DfE Asbestos Steering Group 14 Jun 2012. AiS note of DfE Asbestos Steering Group 14 Jun 2012.

⁸ Parliamentary written answer Schools asbestos. Ian Lavery MP/ Minister of State Nick Gibb MP 21 Mar 2012 see Annex1.

A further Parliamentary question was therefore asked on 8th October 2013 to determine if the Secretary of State would issue guidance for governors informing them of the financial and legal implications if they were unable to obtain public liability asbestos risk insurance. The Minister avoided answering the question and instead his reply adds to the confusion. He emphasised the importance of having public liability insurance, then acknowledged that he could not advise schools to obtain such insurance as it was not available:

“The Department for Education already issues guidance to all schools, including academies and free schools, which emphasises the importance of having public liability insurance...”

It is the responsibility of academies and free schools to obtain appropriate insurance. Given the general asbestos exclusion and general exclusions for contamination in public liability insurance, it is not possible to advise schools to obtain insurance that explicitly covers such risks.”⁹

The Minister’s answer referred to DfE guidance on insurance. The guidance was updated in March 2013, but it does not inform governors of the financial and legal implications, and, whilst stressing that public liability insurance is ‘essential in practice,’ it fails to add that in the case of asbestos it is generally unobtainable. The guidance states:

“The risks that are likely to affect schools are....liability risks, for example the legal obligation to compensate a pupil, teacher or member of the public who is injured as a result of negligence on the part of someone representing the school....”

Public liability insurance and professional liability insurances (officials’ indemnity, governors’ liability) are not compulsory but are essential in practice.”

Minister’s assumption on scale of problem at odds with expert opinion

On 13th March 2013 the Education Select Committee took evidence on asbestos in schools. The Minister was asked: *“If schools are unable to meet the claims against them, is there a risk that central Government will have to pick up the bill for this?”*

The Minister responded: *“All I would say on that is that our judgment of the potential financial risk is that it is not a huge one, even if it fell back on the Government; I think I am right in saying that, so far, there has only been one successful case in this area. We would expect the first line of accountability to be the duty holder. Given the fact that there has only been one successful case, it also does not look like a very large contingent liability for the Government.”¹⁰*

That is not a viable policy to meet future asbestos related claims and would not be considered acceptable if a school could not obtain employers liability asbestos risk insurance or if they were unable to obtain insurance for the school bus. And yet the implications and potential financial liabilities are similar.

The Minister dismissed the potential financial risk as there had only been one successful case of a former pupil obtaining compensation from a school for causing their death from asbestos exposure.¹¹ The Minister is wrong as another case of a former pupil suffering from mesothelioma had recently been settled out of court,¹² and there are others proceeding through the legal system.

⁹ Parliamentary written answer Academies Insurance. Annette Brooke MP/ Mr Timpson MP 8 Oct 2013 see Annex1.

¹⁰ Education Select Committee hearing Asbestos in schools. 13 Mar 13 See Annex 2

¹¹ Dianne Willmore v Knowsley Metropolitan Borough Council Supreme Court Judgment 9 Mar 2011

¹² Personal communication Lees 6 Dec 12.

Evidence was also given at the Select Committee hearing from a leading epidemiologist that it is reasonable to assume that up to three hundred people will die a year from their asbestos exposure suffered as a child at school.¹³ Since then the Government's advisory committee on cancer has concluded that children are at a greater risk from asbestos exposure than adults, the younger the child the greater the risk. The lifetime risk of developing mesothelioma for a five year old child is about five times greater than an adult aged thirty.¹⁴

The potential financial liabilities could therefore be significantly greater than the Minister assumes. The refusal by the insurance industry to underwrite asbestos risk insurance for school children demonstrates that they do not support his assumption. But instead they have assessed the potential financial liabilities as significant and unsupportable by the industry.

Exclusion clauses can be misleading.

A further problem is that some academies believe that they have full public liability asbestos risk cover when they do not. Expert brokers have stated that the exclusion clauses in some policies for negligence and long term exposures in effect means that most potential claims will not be covered. It might take thirty years for a claim to be made and only then will the academy realise the profound significance of these exclusions.

Some academies had been assured by their brokers that they have full asbestos exposure risk public liability insurance cover. However it would appear that in certain cases they have not. For example an academy provided their policy as proof of full cover, however the exclusions were identical to those provided by a specialist broker as proof that public liability insurance is not available.

The two clauses that will exclude most claims are "*You have complied with any legal obligations to manage asbestos*" and "*any discovery of asbestos by you is unintentional and accidental.*" If a claim was successful it would mean that the school had been found negligent in causing the asbestos exposure, in which case the exclusion clause would apply as the academy had not complied with legal obligations to manage their asbestos.

The second clause does not exclude claims that are "*sudden and accidental,*" but it does exclude claims where the exposure has occurred over a period of time. That is more often than not what happens in a school as mesothelioma can be caused by low level cumulative exposures, and this clause would exclude any such claims.

Public liability insurance was not included in the Supreme Court Trigger issue judgment

There is an additional problem with the wording of some policies that will inevitably exclude a number of future claims.

In March 2012 the Supreme Court passed judgment on the 'Trigger' issue which concerned employers liability insurance policies. The issue was whether asbestos injury occurred at the time of exposure or at the onset of malignancy. The date depended on the manner in which the policy was written. The judgment in effect returned to the status quo that for insurance purposes the injury occurred when the person was exposed to asbestos and not at the onset of malignancy.¹⁵

¹³ Education Select Committee hearing Asbestos in schools Professor J Peto oral evidence. 13 Mar 2013. Personal communication Lees/Peto 1 May 2013

¹⁴ Committee on Carcinogenicity Statement on The relative vulnerability of children to asbestos compared to adults. 7 Jun 2013

¹⁵ Judgment from the Supreme Court. Employers Liability Insurance Trigger Litigation [2012] UKSC 14
On appeal from: [2010] EWCA Civ 1096 28 March 2012

However the ruling only applied to employers' liability insurance, whereas public liability policies are still governed by the Appeal Court ruling on Bolton, in that, depending on the manner the policy is written, the injury can occur at the onset of malignancy.

One of the barristers summarised the judgment by highlighting that public liability insurance (PL) was not part of the Supreme Court ruling: *"Thus, so far as PL mesothelioma cases are concerned the law remains as set out by the Court of Appeal in Bolton...."*¹⁶

Consequently schools that have, or had, public liability insurance for asbestos risks then the Bolton ruling still applies. Therefore if a former pupil or non-employee (which might for instance include a teacher or teaching assistant supplied by an agency) makes a claim it depends on the wording of the policy whether for insurance purposes the injury occurred at the time of exposure or at the onset of malignancy.

This is particularly relevant for schools outside local authority control who have been able to obtain public liability asbestos risk insurance. If the wording of the policy is such that the injury occurred at the time of the onset of malignancy then that is the date of the claim against the policy. If a former pupil develops mesothelioma the onset of malignancy might be thirty years or more after exposure took place. If the school has closed during that period then no policy will exist and there will be no means of settling a claim.

This serious anomaly was settled in the 'Trigger' issue judgment for employers' liability insurance, but it remains unresolved in the case of public liability insurance. This means that there is yet another hurdle that a former pupil will have to cross before they can successfully make a claim against a school that negligently caused their mesothelioma. For their sakes it is important that the law on public liability asbestos risk insurance is brought in line with the law for employers' liability insurance.

Insurance is not available from former local authority

DfE insurance guidance also makes it clear that an academy cannot obtain the insurance through its former local authority arrangements as there must be an 'insurable interest.' The guidance states:

"Who and what should be covered by insurance?"

*This question is covered by the principle of insurable interest. Put simply, this means those covered by the insurance must stand to lose financially if the insured property is lost or damaged, for example property insurance should cover the interest of the organisation or body of people that owns the property or has financial responsibility for it. The same principles apply to liability insurance..."*¹⁷

Mesothelioma Compensation Bill does not include claims from former pupils.

The Mesothelioma Compensation Bill will provide compensation for employees if they were negligently exposed to asbestos but their former employer's insurance policy cannot be traced. However the Bill does not include former school pupils, as they are not employees.

In a Parliamentary debate on the Bill on 2nd December 2013 the potential problem of the lack of public liability asbestos risk insurance for pupils of academies and free schools was not raised.

¹⁶ EL Trigger litigation All well that ends well Alison McCormick 28th Mar 2012

<http://www.outertemple.com/userfiles/Documents/TriggerJudgment28March2012.pdf>

¹⁷ Department for Education Guidance on Insurance Updated: 06 March 2013 See annex 3

<http://www.education.gov.uk/schools/adminandfinance/emergencyplanning/a0010634/guidanceoninsurance>

Although Tracey Crouch MP did highlight the insurance industry's concerns about former pupils making claims. She stated:

"I understand that the industry is worried about a cohort of younger people who might access the scheme because of exposure in schools and other areas with a less obvious asbestos risk. I am afraid that that is bunkum, because not only would schools have some form of liability insurance, but it would be possible to access compensation via civil procedures."¹⁸

She is correct if the child attended a local authority school as local authorities can meet claims out of their own resources. However, in the case of academies and free schools, she is incorrect as in general they are unable to obtain public liability insurance.

However the lack of insurance cover has only existed for relatively few years and therefore it is unlikely there will be a large number of claims from this period. But it is inevitable that the number of claims from former pupils and non-employees will increase in the future and yet there are no means in place to meet those claims.

The present problem is similar to the situation the Bill is designed to address of employees making a claim where the employers' liability insurance is untraceable, and there is therefore no means of funding a claim. In general since their inception, many academies and free schools have had no asbestos insurance cover for their pupils. There still is no cover and no plans to provide cover. The problem for future victims appears identical to that addressed in the Bill.

The failure of the Government to address the problem appears to be a repeat of the errors of history. However this can be corrected so long as measures are introduced now that will ensure funds are available to meet future asbestos related claims from former non-employees and pupils.

Academies and free schools cannot be expected to manage asbestos if they are not insured

The lack of asbestos risk insurance cover for pupils and non-employees has far reaching implications for the government's policy of managing asbestos in schools rather than removing it.

The Government cannot expect schools to manage their asbestos if they are unable to obtain insurance for the majority of the people in the school, the pupils.

The Government cannot expect people to be governors of academies or free schools if they could be liable for settling any future claim.

The Government cannot expect parents to send their children to schools that contain asbestos if they know that the schools cannot obtain asbestos risk insurance cover for their children.

In addition academies and free schools cannot be allowed to enter blindly into an agreement that could have far reaching implications for their financial viability. The governors have to be aware of the risks from asbestos and informed of the implications if they do not have full public liability asbestos risk insurance.

¹⁸ House of Commons debate Mesothelioma compensation bill. 2 Dec 13 Extracts:

<http://www.asbestosexposureschools.co.uk/npaper%20links/H%20of%20C%20debate%20%20dec%202013.htm>

Full debate; <http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131202/debtext/131202-0002.htm#1312023100001>

Conclusion

As at 1st November 2013 there were 3,444 academies and 174 free schools,¹⁹ so this is a problem that potentially affects thousands of governors and millions of pupils and non-employees in schools. If asbestos is present in a school there is always the potential for claims.

The Government's stated policy is transparency, so it has a duty to inform governors of academies and free schools that they could be legally and financially liable for future asbestos related claims.

Parents should also be told when their children are in a building that contains asbestos but there is no insurance cover for their children.

The laws on asbestos risk public liability insurance should be brought into line with the laws on employers' liability insurance so that for insurance purposes the injury occurred at the time of exposure.

All policies should be worded so that it is clear whether or not future asbestos related claims from pupils and non employees will be met.

If asbestos management is to be a viable option then there is a practical and moral obligation on the Government to ensure that there are means in place to meet those claims.

Michael Lees
4th December 2013

- Annex 1. Parliamentary questions
- Annex 2. Extract from Education Select Committee
- Annex 3. Current DfE guidance

Annex 1. Parliamentary questions

Schools: Asbestos 21 Mar 2012

Ian Lavery: To ask the Secretary of State for Education (1) what level of funds his Department advise local authorities to hold in respect of asbestos-related claims made by former school staff and pupils; [100811]

(2) what assessment his Department has made of the availability of employer and public liability insurance for asbestos exposure risks in academies and free schools; [100812]

(3) what (a) arrangements his Department has made and (b) guidance his Department has issued for academies and free schools in respect of employer and public liability insurance cover for asbestos exposure risks to school staff, non-employees and pupils; [100813]

(4) how many local authorities are unable to obtain public liability insurance for asbestos exposure risks to visitors and pupils in their schools; [100814]

(5) how many local authorities are unable to obtain employers' liability insurance for asbestos exposure risks to school staff; [100815]

¹⁹ DfE web-site. Number of open academies. Number of open free schools. Downloaded 3 Dec 13

(6) how many local authorities are self-insured for (a) employer and (b) public liability asbestos exposure risks to visitors and pupils. [100816]

Mr Gibb: Local authorities and schools are responsible for making their own arrangements for insurance. As such the Department does not maintain central records on insurance coverage in place.

No guidance has been issued to local authorities, academies or free schools in respect of insurance cover for asbestos exposure risks.

Discussions with insurers indicate that asbestos is not considered to be a barrier to obtaining employer liability insurance, though there is a general asbestos exclusion for public liability insurance.²⁰

Schools: Asbestos 22 May 2012

Annette Brooke: To ask the Secretary of State for Education whether an academy trust would be personally liable for an asbestos exposure claim against the academy. [108132]

Mr Gibb [holding answer 21 May 2012]: An academy trust is a corporate body so its members should not be held personally liable provided they act reasonably and in good faith. An academy trust acts as a single entity with an identity separate from that of its members. Responsibility for actions and decisions, therefore, lies with the whole academy trust rather than its individual members. Academy trusts are required to have governor liability insurance with a minimum cover of several million pounds. This insurance covers the collective liability of the academy trust acting in good faith.²¹

Schools: Mesothelioma 12 Jun 2012 :

Annette Brooke: To ask the Secretary of State for Education (1) what process will be followed in the event that a former pupil or non-employee from an academy or free school develops mesothelioma and makes a claim against the school; and who would be liable for any costs; [108133]

(2) whether pupils and non-employees are covered for public liability asbestos exposure risks in academies and free schools. [108134]

Mr Gibb [holding answer 21 May 2012]: Academies and free schools are autonomous institutions and, as such, are responsible for making their own arrangements for insurance. The Department does not maintain central records of the insurance coverage in place. Discussions with insurers have however indicated that there is a general asbestos exclusion for public liability insurance. The Secretary of State for Education, my right hon. Friend the Member for Surrey Heath (Michael Gove), is not legally responsible for any compensation awarded, and nor is he bound by the terms of the funding agreement to compensate an academy for any such liability. However, the Department for Education would work with any affected academy or free school to ensure that it remained financially secure and the education of its pupils was not compromised.²²

²⁰ <http://www.publications.parliament.uk/pa/cm201212/cmhansrd/cm120321/text/120321w0003.htm#1203222000906>

²¹ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120522/text/120522w0003.htm#12052254002792>

²² <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120612/text/120612w0003.htm#12061375000619>

8 Oct 2013 : Column 232W

Academies: Insurance

Annette Brooke: To ask the Secretary of State for Education if he will issue guidance to governors of free schools and academies on the financial and legal implications of not obtaining public liability insurance for (a) asbestos risks and (b) risks associated with radon for their pupils and other non-employees. [169433]

Mr Timpson: The Department for Education already issues guidance to all schools, including academies and free schools, which emphasises the importance of having public liability insurance, available at:

<http://www.education.gov.uk/schools/adminandfinance/emergencyplanning/a0010634/guidanceoninsurance>

and the safe management of asbestos in schools, available at:

<http://www.education.gov.uk/schools/adminandfinance/schoolscapital/buildingsanddesign/managementofpremises/b00215518/asbestosmanagementschools>

It is the responsibility of academies and free schools to obtain appropriate insurance. Given the general asbestos exclusion and general exclusions for contamination in public liability insurance, it is not possible to advise schools to obtain insurance that explicitly covers such risks.²³

Annex 2: Extract Education Select Committee hearing on asbestos in schools 13th March 2013.

Insurance

Q73 Mr Ward: There have been some court cases, I believe, where claims have been made and in one case paid out; it was a dreadful case, where somebody died and there was negligence in that there was exposure to asbestos. If schools are unable to meet the claims against them, is there a risk that central Government will have to pick up the bill for this? Many local authorities, of course, have pooled arrangements for insurance, so individual schools are covered through that; that may not be the case with the fragmented system we are moving towards.

Mr Laws: All I would say on that is that our judgment of the potential financial risk is that it is not a huge one, even if it fell back on the Government; I think I am right in saying that, so far, there has only been one successful case in this area. We would expect the first line of accountability to be the duty holder. Given the fact that there has only been one successful case, it also does not look like a very large contingent liability for the Government.

Q 74 Mr Ward: There was £240,000 compensation in that one case.

Mr Laws: Yes, I am not dismissing the size of the amount, but it is only one case so far.

Q 75 Mr Ward: Would there be a risk for governors in future cases if the local authority was not there to cover the insurance costs?

Mr Laws: The governors are the people who are the duty holders, and therefore they have the responsibility here. Obviously, in practice, the Government would not wish to see any school suffer and be penalised.

²³ http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm131008/text/131008w0008.htm#131008w0008.htm_wqn63

Q 76 Mr Ward: Would that be the case for free schools and academies?

Mr Laws: Yes, absolutely; there will be the same responsibility there.²⁴

Annex 3: DfE Guidance on insurance

General article. Updated: 06 March 2013

Insurance is a device for spreading risk and risks are classified in many ways. By law, schools must have certain types of insurance.

The risks that are likely to affect schools are

- property risks, for example loss or damage to buildings, contents or other school property
- financial risks, for example the extra cost of running a school following a fire or unexpected legal expenses
- liability risks, for example the legal obligation to compensate a pupil, teacher or member of the public who is injured as a result of negligence on the part of someone representing the school
- personal injury risks, for example accidental bodily injury to pupils or staff, or assault upon them
- miscellaneous risks, for example a variety of types of insurance, such as motor, school journey or travel insurance.

Who and what should be covered by insurance?

This question is covered by the principle of insurable interest. Put simply, this means those covered by the insurance must stand to lose financially if the insured property is lost or damaged, for example property insurance should cover the interest of the organisation or body of people that owns the property or has financial responsibility for it. The same principles apply to liability insurance, for example employers' liability insurance, which covers the legal liability for injuries to employees that might arise in the course of their employment.

Insurance arrangements should also provide cover for claims arising from the actions of staff acting within the scope of their employment, to ensure staff who volunteer to perform roles such as first-aider or who provide a medical support role are acting within the scope of their employment and are fully indemnified. There may also be insurance issues for special activities organised by a school, such as educational visits.

Is insurance compulsory?

Some insurance is compulsory in law. Employers' liability insurance is compulsory if school staff are not employed by the local authority (LA), for example if the school governing body is the employer. LAs are not required to insure by law and may 'self-insure' the employers' liability risk if they wish.

²⁴ Education Select Committee minutes of evidence Asbestos in Schools 13 Mar 13
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeduc/c1056-i/c105601.htm>

Public liability insurance and professional liability insurances (officials' indemnity, governors' liability) are not compulsory but are essential in practice.

Who is responsible for funding and arranging insurance?

The funding for insurance for maintained schools is currently governed by regulations under the School Standards and Framework Act 1998. LAs can retain funding centrally for insurance within their local schools budget. Alternatively, they may delegate resources for insurance to all or some schools. LAs are not obliged to delegate what a school actually has to spend on insurance, only the 'appropriate portion' of the LA's planned expenditure on insurance. If a school has been delegated funds for insurance in its budget share, the governing body of the school is responsible for arranging insurance.

Source: *Insurance: A Guide for Schools*, DfE, 2003.

The advice contained on this site should not be taken as an authoritative interpretation of the law. That is a matter for the courts.²⁵

Michael Lees
4th December 2013

²⁵ <http://www.education.gov.uk/schools/adminandfinance/emergencyplanning/a0010634/guidanceoninsurance>