

# THE MANAGEMENT OF ASBESTOS IN SCHOOLS

An infant school teacher died 5 years ago from an asbestos related cancer. The coroner decided it had been caused by asbestos exposure at school. A senior HSE officer wrote to the HSE Head of Asbestos Policy about the case:

***“This is a delicate case with potential national issues raised”***

***4<sup>th</sup> February 2004***

Released under Freedom of Information Act

This paper raises the national issues.

4<sup>th</sup> January 2006

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## THE THREAT

My draft paper “Asbestos in Schools” (30 July 05) gives a detailed analysis of how asbestos fibres have been released and how teachers and children have been exposed. It shows how this has resulted in their deaths. An estimate of children’s deaths is given in the annex to this paper.

The HSE Head of Asbestos Policy identified the threat:

*A high proportion of our present schools contain asbestos and represent the potential to release deadly fibres.....*

*Due to their physical immaturity children are at greater risk of suffering from asbestos related disease than adults, and will live longer to develop the disease.....*

*Whilst many authorities have been managing asbestos risks effectively for many years, HSE believes a significant minority have still not established complete control of asbestos on their premises.<sup>1</sup>*

The Secretary of State for Schools identified failures in asbestos management:

*Asbestos in schools has not always been dealt with in a professional manner. ....*

*Our guidance to schools and LEAs is dated and should therefore be revised as a matter of urgency. ....*

(letter to the General Secretary of the NUT, approved by HSE Head of Asbestos Policy)<sup>2</sup>

The schools “Asbestos Guidance,” referred to by the Minister, is 20 years old and much of the information is now out of date. However if schools had followed the guidance they would have identified the presence of asbestos, its extent, type and location and then would have implemented an effective management system. The professional failures identified by the Minister include those schools who have failed to have an effective management system, as a consequence staff and pupils have been exposed to asbestos.

The numbers of schools who have no effective plan are impossible to identify as the supervisory system is inadequate. The DfES Officer responsible for asbestos safety in schools illustrated this by writing: *“I think that certain critical Health and Safety procedures should be checked by OFSTED as no one else is doing it really. They should check there is a Health and Safety policy and plan and that key elements such as asbestos management, ...are written down.*

As the HSE have rarely inspected schools, investigated asbestos incidents in schools or corrected failures of asbestos management, they have no real idea how many schools have failed to manage their asbestos risks. There is no evidence on which to assess the size of the failing ‘significant minority’ identified by HSE Head of Asbestos Policy, or even to identify whether it is a minority. As no one is really checking whether schools have an asbestos management plan, the statistics required to demonstrate whether asbestos is being controlled do not exist. The schools without plans, or with weak plans, will have an impeccably clean record. Where there is no system for reporting exposures,

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<sup>1</sup> HSE LA Forum/04 Nov 04 , extract from HSE 2004/05 delivery plan, extract from minutes of HSE meeting Bristol 18 Nov 04

<sup>2</sup> Secretary of State for Schools/ General Secretary NUT draft 23 Aug 04

or gathering and collating information on exposures, then there is no record of asbestos incidents and damage to asbestos. No record on which to judge the extent of the “*deadly fibres*” released, and no record of the teachers and children present at the time. As no reporting system exists and few inspections and investigations are carried out, there really is no one to identify whether a school has an effective asbestos management plan, and no one to give guidance on how to correct an ineffective one.

In his letter the Minister expressed the urgency, and put forward pragmatic and effective proposals for managing asbestos in the future. The HSE have abandoned two of those key proposals and they have been replaced with ones that do not improve on past bad practice.

The threat is that children and teachers will continue to die because of avoidable asbestos exposure in schools. That exposure has been caused by poor guidance, poor management plans, lack of supervision of management plans, lack of openness and a failure to collect, analyse and act on information.

This paper addresses the Government’s admitted failure to manage the threat. The threat can be readily countered, and the reinstatement of the campaign to improve the asbestos management in schools is an essential step.

I ask for you help.

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## **FAILURE OF HSE ASBESTOS MANAGEMENT IN SCHOOLS INITIATIVE**

### **HSE and DfES Initiative to Improve the Asbestos Management in Schools**

In January 2004 a memo from the HSE Education Division to the DfES concerning an infant teacher’s death from the asbestos related disease mesothelioma stated:

*“In order to help ensure that cases like this one cannot happen in future HSE is introducing the new duty to manage asbestos in buildings, which was added to the Control of Asbestos at Work Regulations that will come into force on 21 May 2004. HSE is running a three year campaign to make people aware of this new duty and the action they will need to take to ensure effective compliance. **In particular we will be targeting the education sector including independent schools.** HSE will be seeking to meet with DfES to see what part they can play in this.”*

*“One of the issues raised is the need for DfES to be involved in developing guidance on informing people in schools exposed to asbestos. This is something DfES may want to consider and HSE would support this”<sup>3</sup>*

In August 2004 planning for the campaign was progressing well:

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<sup>3</sup> HSE Education Department Note to Hindmoor DfES 8 Jan 04

*“ DfES officials have agreed to take part in the initiative and the NUT has been invited to become involved with other main stakeholders. This will ensure that they have confidence in the steps taken to prevent teachers and pupils from being exposed to asbestos in schools in the future ”.*<sup>4</sup>

In November 2004 there was a meeting attended by HSE Head of Asbestos Policy and a representative from the HSE Education Division where it was acknowledged that some schools were not managing asbestos satisfactorily. More details of the campaign were given:

*“A working group would be set up to drive the campaign forward in schools, which would be a priority, and care would be taken to ensure that the right stakeholders are engaged.”*<sup>5</sup>

In an HSE briefing to the Local Authority Forum the Head of Asbestos Policy said:

*“ The intention is for this group to be more than simply a consultation forum, for it will propose, and more importantly take forward, many of the initiatives anticipated in the project*

*...”The project will be aiming to reduce exposure dramatically over a few years, initially we will be concentrating on achieving a 20% reduction in current exposures.”*<sup>6</sup>

The working group was to be led by the HSE with the DfES playing a leading part. There were to be stakeholders from a wide cross section of interested parties, including the teaching unions, the Independent Bursars Association, Local Government, LEAs and the Welsh Assembly. The advantage of these stakeholders was that a wide cross section of views and experience could be sought, openness would be assured and there would have been the commitment and drive to ensure that any decisions that were made would have been vigorously taken forward.

The first meeting was planned for early January 2005. It was cancelled.

An email from HSE Head of Asbestos Policy read : *“I want to emphasise that we are still strongly committed to the project and will take it forward as soon as we can..... I wish them and you every success in eliminating the risks from asbestos in schools”*.<sup>7</sup>

## **Minister Fails to Enforce Action**

As part of the campaign the asbestos guidance for schools was to be updated. In August 2004 the Secretary of State for Schools wrote:

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<sup>4</sup> HSE Head of Asbestos Policy POS letter from General Secretary NUT, to Secretary of State for Schools, background notes 23 Aug 04

<sup>5</sup> Meeting Lees/HSE Head of Asbestos Policy 18 Nov 04

<sup>6</sup> HSE Briefing for Local Authority Forum 23 Nov 04

<sup>7</sup> HSE Head of Asbestos Policy/Lees 1Feb 05

*“What schools need is clear guidance on best practice including what should be done in the event of inadvertent exposure. This should not dumb down the subject as has so often happened in the past, but needs to be written in a way accessible to the layman.”  
Our guidance to schools and LEAs is dated and should therefore be revised as a matter of urgency.”<sup>8</sup>*

Despite the rhetoric no action has been taken for more than a year.

It seems inevitable that this inaction has resulted in some teachers and children being exposed to asbestos who would not have been. It is also inevitable that they will continue to be exposed, until action is taken.

I would be grateful if you would ask the Minister if she would ensure that the guidance is urgently updated.

### **Education Initiative Cancelled to meet Construction Industry Target**

*“It is evident that a number of initiatives would generate very limited results in terms of contributing towards 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**”*

*.....I would propose that we call a meeting of DfES and HSE officials with the aim of discussing, and if possible, agreeing an exit strategy for this project.”*

HSE Head of Asbestos Campaign e-mail 23<sup>rd</sup> August 2005.

The HSE’s reason for dropping the education initiative is because *“it would generate very limited results in contributing towards PSA targets”*. The main effort in reducing asbestos exposure is instead targeted at the construction industry which is *“likely to be a significant contributor to those PSA targets.”<sup>9</sup>*

For some years this industry has been comparatively well regulated with laws and guidance aimed specifically at achieving a reduction in exposure levels. There is a reasonable idea of likely exposure levels and all asbestos contractors carry samplers that measure the levels of fibres in the air. Statistics show how many have died and are likely to die. Given the information available improvements in this industry are readily measured and can be used to meet targets. The 2002 laws and the proposed 2006 laws are designed specifically to reduce asbestos exposures of this group of workers and PSA targets have been set to achieve, and be seen to achieve, a reduction in their exposure and subsequent deaths.

In contrast insufficient resources have been put into ensuring the effective management of asbestos in schools. Management of asbestos has not been supervised, corrected or analysed so there are no readily accessible statistics. Teachers’ deaths from asbestos exposure are known, however there are no official estimates of how many children have been exposed to asbestos at school and have died as a result. Because asbestos is so

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<sup>8</sup> Secretary of State for Schools/ General Secretary NUT draft 23 Aug 04

<sup>9</sup> HSE Head of Asbestos Campaign/DfES e-mail 23<sup>rd</sup> August 05

poorly managed and the facts are not known there is no base line on which to measure improvement. Reducing exposure and deaths amongst teachers and school children cannot be seen to be *'a significant contributor to PSA targets'* as there is no way of measuring the present situation or measuring improvements, or failures.

The results of asbestos exposure in the construction industry can be clearly identified and progress can be easily measured, consequently the Government has taken the decision to concentrate the limited resources available on reducing that exposure. Those resources are being taken from the education initiative, where the results of exposure cannot be easily identified and progress is difficult to measure. The risk in schools was identified by a Government Minister who proposed the education initiative to dramatically reduce asbestos exposures in schools. It is therefore clearly flawed to chase a *'PSA target'* for the construction industry at the expense of an initiative that would have protected school children.

*"The Education initiative no longer forms part of our present programme of work"*

HSE Head of Asbestos Campaign e-mail 23 August 2005

### **FAILED GOVERNMENT ASBESTOS POLICY REINTRODUCED**

Instead of the asbestos campaign the HSE Acting Chief Executive now proposes a new strategic partnership between the HSE and DfES which he states will ensure that *"The needs of the education sector, with regard to health and safety are appropriately met. Importantly, the partnership will be a gateway for topic specific issues that need addressing, such as asbestos"*<sup>10</sup>

In essence he proposes a return to the failed systems of the last forty years and also proposes the removal of the expertise and openness provided by stakeholder participation in decision making. This is particularly bad as the campaign was a major improvement that would have introduced openness in the place of secrecy and would have driven improvements and change.

The Acting Chief Executive says that the HSE and the DfES are still discussing, but have not yet agreed, a remit. Present discussions on the role of the DfES in asbestos management have been unresolved for more than two years and so agreement on the remit in the foreseeable future seems unlikely. Agreement is also exceptionally unlikely as, at the time of the Acting Chief Executive's letter, the DfES officer responsible for asbestos safety had not even heard of the new strategic partnership.<sup>11</sup>

Neither the DfES nor the HSE have attempted to meet the urgency demanded by the Minister, and there has been no advance in correcting the failings of asbestos management identified by him.

The new strategic partnership is, in essence, a return to the failed past policies and there is every reason to believe that the proposed partnership is fundamentally flawed.

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<sup>10</sup> HSE Acting Chief Executive /Lees 22 Nov 2005

<sup>11</sup> DfES/Lees 15 Dec 05

## **GREAT BRITAIN: POLICY IS TO MANAGE ASBESTOS.** **IRELAND AND UNIONS ADVOCATE REMOVAL**

### **British Policy to Rely on Flawed System of Asbestos Management**

The Government the HSE and the DfES agree that a significant minority of schools are not managing their asbestos. They also have a policy to leave asbestos in place and to manage it. Management they consider is safer than removal and they make no exception for schools.<sup>12</sup> This policy was underlined by the Secretary of State for Schools who stated to the NUT that:

*“Whilst respecting your view, we would hope to persuade you that this current policy of the NUT is not the best way forward. ...  
Removal creates its own risks; particularly to those removing it...  
It is probably better and safer to **leave it in place and manage it.**”<sup>13</sup>*

In contrast, Ireland and the teaching unions consider that removal is the best long term option, and the only safe one.

### **Leaving Asbestos in Place is only an Option if it is Effectively Managed, and if the Management is Effectively Monitored**

If asbestos is removed completely then there is no need to implement a system of management. However if it is left in situ then it has to be managed to prevent damage and release of fibres. The system of management has to be effective and it has to be regularly revised and updated. Schools have to be monitored to ensure that they are following best practice. Unless the system is fail safe it is inevitable that over time an inadequate system will fail and exposures will take place.

In America a considerable amount of asbestos remains in their schools. Since 1982 there have been laws that have required schools to identify the extent, location and type of their asbestos and then manage it. Priorities were made, and resources were allocated in proportion to the risk. A system of monitoring was devised to ensure that best practice was being followed. Training and guidance is given and regularly updated. A policy of openness ensures that parents and teachers are aware of the standards of management in their own schools. The policy has been vigorously pursued and any school failing to follow the guidance has been heavily fined. Because there is an effective system of management, asbestos can remain in situ and parents and teachers can have the confidence that it is being safely managed.

In Britain the Government have not devoted sufficient resources to ensure that schools identify their asbestos and implement effective asbestos management systems. They have neither given adequate training and guidance nor have they adequately monitored whether schools are following best practice.

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<sup>12</sup> HSE briefing LA Forum/04

<sup>13</sup> Secretary of State for Schools/ General Secretary NUT draft Aug 04

America has policies and laws that enable the management of asbestos to be an option. In contrast Britain does not have the policies, the supervisory and enforcement regime, the openness or the resources to ensure that leaving asbestos in place and managing it is a safe option. It will take a fundamental change in policies and priorities and considerable additional resources to make it so.

(A comparison between the policies of America and Great Britain concerning asbestos in schools is in the annex)

## **Asbestos Removal from Schools**

If asbestos is managed effectively then leaving it in situ is an option, however if the system of management is inadequate then a safer option is removal. This policy is advocated by Ireland and the teaching unions.

## **Republic of Ireland**

The Republic of Ireland consider that a school is a special place and therefore has to be treated differently from normal commercial premises. They have announced that they will refurbish every school. One of the reasons for this decision was that they recognised that children are particularly vulnerable to the effects of asbestos,<sup>14</sup> and the stated priorities are :

*“The priorities for major works within the building programme are clear. We must respond to the need for schools in rapidly developing areas, to the particular needs of schools in areas of social disadvantage, and **school buildings the condition of which give rise to health and safety concerns.**”<sup>15</sup>*

A major part of the initiative is the Schools’ Asbestos Remediation Programme. The Office of Public Works (OPW) has been surveying all of the nations schools to identify the asbestos. The Irish Government’s asbestos briefing document states in relation to schools:

*“Based on risk assessments and the result of surveys done by asbestos professionals, it (OPW) is making decisions on how and when the asbestos needs to be removed. It is important to remember that if asbestos is in good condition, it poses no threat to health, **but because of the proximity of children to this material, the decision is being made to remove asbestos, even if this would not normally be considered necessary.**”<sup>16</sup>*

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<sup>14</sup> Republic of Ireland Department of Education and Science Major School Building Project. Asbestos Remediation Programme

<sup>15</sup> Ireland. The Minister for Education and Science 21 Mar 02

<sup>16</sup> European Agency for Safety and Health at Work. Asbestos Briefing Republic of Ireland Office of Public Works

## Great Britain

### Removal Advocated by Teaching Unions

The teaching unions strongly advocate the total removal of asbestos as a school is a very different place from an office or a factory, because it contains children.<sup>17</sup> Their safety is of paramount importance and a higher duty of care is imposed on those in authority to implement effective measures to ensure their safety. A school is also different because, even if asbestos is well managed, it is inevitable that it will become damaged through, vandalism, accidents, above normal wear and tear and children's curiosity. Children are also more susceptible to developing asbestos disease than adults.

### Government Missing Opportunity to Permanently Remove Threat of Asbestos

The HSE's Acting Chief Executive has identified the 'Building Schools for the Future Initiative' (BSF) as contributing towards reducing asbestos exposures in schools.<sup>18</sup> This Government and DfES initiative proposes to rebuilt or refurbish every secondary school and half of the primary schools over the course of the next 15 years.<sup>19</sup>

The Secretary of State for Schools has made it clear that the Government, HSE and DfES oppose the removal of asbestos and consider that it is "*Better and safer to leave it in place and manage it.*" Leaving asbestos in place during refurbishment is a short term expedient, for any asbestos left in situ will always have to be managed. The Minister's opposition to removal seems an unnecessary stand when the BSF initiative creates an opportunity to address the asbestos problem permanently. It would seem more logical for the Minister to grasp the opportunity and to wholeheartedly support the removal of all asbestos.

The Schools Minister has not based the priority for rebuilding or refurbishment on the schools with the worst asbestos problem.<sup>20</sup> It is based instead on standards of social deprivation and educational needs, being scored on GCSE passes and eligibility for free school meals.<sup>21</sup> This means that schools with the worst asbestos problems have no particular priority and may be refurbished or rebuilt last – or may be such a low priority that their asbestos problem is not addressed at all.

Presently the initiative is not being put into action as rapidly or as widely as initially envisaged. The method of raising the necessary funds and the availability of the funds is being questioned both in Parliament and by the teaching unions.<sup>22</sup> The cost of the scheme has already started to rise, partially because in the first schools to be refurbished asbestos is being found in greater quantities than originally envisaged, causing disturbance and an unforeseen level of risk to all involved, and considerable additional costs.<sup>23</sup>

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<sup>17</sup> Health and Safety in Schools 4 Asbestos NUT Sep 1989. Asbestos in Schools A Continuing Threat NUT1994

<sup>18</sup> Acting HSE Chief Executive/Lees 22 Nov 05

<sup>19</sup> DfES press release Building schools for the Future 12 Feb 04. BSF Look to Long Term Partners BSF web site 28 Nov 05 Chancellor of the Exchequer Financial Statement 15 Mar 05

<sup>20</sup> DfES/ Lees 15 Dec 05

<sup>21</sup> DfES BSF Prioritisation and Forward Planning Information Nov 04.

<sup>22</sup> DfES Press release 12 Feb 04 BBC News, 2 Dec 04, 16 Mar 05, 23 Mar 05

<sup>23</sup> DfES/Lees 15 Dec 05

As there are limited funds and predetermined targets it means that priorities will be given to those schools that can be built or refurbished on target, on time and within budget. Consequently the schools with the worst asbestos problems may be pushed to the back of the queue.

Please could I ask that you request the Minister to:

- **Assess which schools have the worst asbestos problem.**
- **Then give those with the worst problem the greatest priority in refurbishing and rebuilding.**
- **Insist that those that are to be refurbished have all of their asbestos removed.**

Whether the initiative succeeds or not many schools will have to continue managing their asbestos until 2020 and beyond. In addition those that are purely being refurbished will still have to manage their asbestos unless it is completely removed.

The BSF does not encompass the independent sector, and that includes many infant and nursery schools. They will either have to find the funds for asbestos removal or rebuild, or they will have to continue managing their asbestos for the foreseeable future. This is of concern as independent schools have been found to be particularly bad at managing their asbestos.<sup>24</sup> They retain their legal right to secrecy over asbestos management; there is no public or ministerial pressure to improve management or spend money on capital investment. It is, in fact, in their commercial and legal interests to avoid identifying asbestos on their premises, to avoid telling parents, teachers or children about asbestos and thereby avoiding any pressure to spend money on rebuilds or refurbishment. The Minister should use openness in the public sector as a method of applying pressure on the independent sector, and as part of this should consider removing their legal right to secrecy.

The BSF initiative will only succeed in making schools safe from asbestos if Government and DfES policies and priorities change. If policies are not changed asbestos will be left in place after schools have been refurbished. For those schools, and for every other school that contains asbestos, effective asbestos management systems must be put in place now, and a workable system to monitor standards has to be rapidly devised. Only then will every school follow best practice and manage their asbestos safely

## **Summary**

For many years America has had a pro-active and effective policy towards asbestos in schools and has made laws and put resources into ensuring that the management of asbestos in their schools can be an option. In Britain managing asbestos in schools has frequently not worked, and will never work unless sufficient resources are devoted to ensuring that it does, and yet the Government, the DfES and HSE continue to advocate that it is the safest option. Ireland and the teaching unions are more realistic and realise that a school has to be treated differently from normal commercial premises. Because of the inadequacies of the present system it is understandable that they advocate removal as the only safe option.

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<sup>24</sup> Asbestos Exposure in Schools Lees 14 June 04

## HSE AND DfES FLAWS

### SECRECY

#### **American Policy of Openness**

In America it has been the law for the last twenty years that schools have to have an asbestos survey carried out by an accredited inspector. The law then requires them to implement a system to manage the asbestos. Parents have to be updated annually on the school's asbestos management plans.<sup>25</sup>

*“ All primary and secondary schools must inspect buildings for the presence of friable asbestos materials, sample and analyse materials found and maintain records of all findings. **If ACM is discovered schools are required to post notices, provide guidance to maintenance personnel and notify parents or parent/teacher organisations.***  
(May 27 1982 EPA Asbestos in Schools Identification and Notification Rule)

*“Provide yearly notification to parent, teacher and employee organisations regarding the availability of the school's asbestos management plan and any asbestos abatement actions taken or planned in the school.”*  
(1986 Asbestos Hazard Emergency Response Act)

#### **British Policy of Secrecy**

In this country there is no policy of keeping parents organisations annually updated on the school's asbestos management plans. In fact the very opposite is true:

The HSC and HSE's policy on informing people about the presence of asbestos in schools is as follows:

*“HSE's approach is on a **“Need to know”** basis.  
**“A Right to know”** concept might distort what HSE is trying to achieve.”*

The HSE and the HSC's policy on who should see a school's asbestos management plan is as follows:

*“The asbestos management plan in a school would need to be seen by those likely to disturb asbestos ie: teaching staff, cleaners and caretakers. **This would not necessarily include parents.**”<sup>26</sup>*

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<sup>25</sup> US Government Asbestos Hazard Emergency Response Act 1986 (AHERA) H.R. 5073. Environmental Protection Regulations (EPA) Mandatory School Asbestos Control Programme/ Asbestos in schools identification and notification rule (ASINR) 1982. Asbestos- Containing Materials in Schools Regulation (Federal) 40 CFR 763.84, 763.85 Page 653.

<sup>26</sup>Asbestos Duty to Manage Campaign Minutes of HSE meeting Bristol 18 Nov 04

## **Private Schools Legal Right to Secrecy**

The Freedom of Information Act obliges State Schools to disclose their asbestos surveys and asbestos management plans if they are asked to do so.<sup>27</sup> This is a right that if publicised, and used by parents would ensure that asbestos management plans were effective. However this “Right to know” is against Government policy and consequently the HSE and DfES do not publicise it. In contrast Private schools (including nursery and infant schools) have the legal right to prevent anyone, including parents of children exposed to asbestos, seeing their asbestos survey and management plans.<sup>28</sup> The legal right is exercised even when mismanagement has occurred and parents ask about the extent of their child’s exposure. The school can thus avoid expensive legal action and bad publicity.

(Confidential case available but not attached)

## **Action after an Asbestos Incident**

HSE guidance on how and when to inform people after an asbestos incident is detailed in a series of pamphlets. The guidance specifically advises that people should be given prompt and reasoned advice regardless of the level of exposure.

One pamphlet cites various incidents where prompt and reasoned advice should be given, including: *“Pupils in a secondary school potentially exposed to asbestos.”*<sup>29</sup>

The HSE were informed of a particular asbestos incident in a school that had led to the exposure of teachers and children. The HSE sought and were given advice from their medical branch. The advice was as follows:

*“Even when it is not possible to determine whether an exposure was significant or not, entry in the medical record is recommended.”*<sup>30</sup>

The guidance advocates a policy of openness, however what has occurred in practice is the opposite. The “Action Level” has been used to keep the incident secret.

## **Secrecy Based on Incorrect use of Asbestos Contractors “Action Level”**

The HSE were advised that this particular incident had occurred in an infant school, the exposure had been to amosite, had been frequent and had lasted for many years.<sup>31</sup> The HSE made a policy decision that neither the teachers nor the parents should be informed unless the exposure had exceeded the “Action Level.” The Secretary of State for Schools then wrote to the General Secretary of the NUT stating:<sup>32</sup>

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<sup>27</sup> HSE Acting Head of Asbestos Policy /Lees 8 Apr 05

<sup>28</sup> HSE Head of Asbestos Policy/Lees 8 Apr 05. Foot Anstey Alms & Young Solicitors /Lees 20 June 05

<sup>29</sup> HSE OC265/48 Health Effects of Inadvertent Exposure to asbestos: Guidance for HSE Field Operations staff when Responding to Enquiries. Revised Nov 00 para1

<sup>30</sup> HSE EMAS Medical Inspector. Comments on Lees family and OC 265/48 Inadvertent exposure 29 Mar 04

<sup>31</sup> Confidential paper available but not included

<sup>32</sup> Secretary of State for School/ General Secretary of NUT draft letter Aug 04. HSE Head of Asbestos Policy/ General Secretary NUT 23 Aug 04 .

*“HSE guidance is to inform those who may have been significantly exposed to asbestos (eg: exposure has exceeded the Action Level)”<sup>33</sup>*

The Minister and the HSE did not follow their own written guidance and the expert opinion of their medical branch.

They also applied the Action Level incorrectly as it was designed for contractors whose work involves disturbing asbestos. It was not designed for teachers and children who are occupying a classroom.

The Action Level is a limit designed for asbestos removal contractors, and is assessed before work begins, and then monitored continuously as the work progresses. Levels of exposure must be kept well below this, however if it is likely to be exceeded respirators have to be worn within a sealed negative pressure enclosure, and if exceeded medical surveillance is required every two years. It is monitored during the work by fibre samplers worn by the contractors, and cumulative exposure levels are assessed over a continuous three month period.<sup>34</sup>

The Action level far exceeds the fibre levels and safety limits that do apply to teachers and children. That level is the Clearance limit.<sup>35</sup> Even then cumulative exposures at such levels will cause cancer amongst some people,<sup>36</sup> particularly amongst children who are the most vulnerable

In theory after an asbestos incident has taken place the HSE’s policy is to tell people the facts and to be open about it. In reality they practice a policy of secrecy by using the “Action Level” to avoid openness. Because of their policy of secrecy, to this day the teachers and children in this particular school remain unaware that they have been exposed to asbestos.

### **Secrecy Results in Institutional failure to Collect or Analyse Statistics**

If there is no effective asbestos management plan then nobody will be aware there has been an exposure to asbestos. It is particularly the parents and children in schools with bad asbestos management systems who will remain in ignorance – and the bad practice will continue as there is no effective monitoring system.

The HSE and DfES have no system to collect statistics on teachers’ or pupils’ exposure to asbestos. The HSE do not inspect sufficient schools to monitor their asbestos management plans, and they have no estimate of asbestos related deaths among school children. Consequently they are unable to identify exposures and follow up their effects. The result is that statistical trends, such as the effect of low level cumulative exposure to asbestos in schools, cannot be used to identify and remedy a problem.

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<sup>33</sup> HSE Asbestos Policy/ HSC Chairman 13 Aug 04

<sup>34</sup> Work with Asbestos Insulating Board, Asbestos Coating and Asbestos Insulating Board, Control of Asbestos at Work Regulations 2002. And 1987 Approved Code of Practice Reg 2

<sup>35</sup> Work with Asbestos Insulating Board, Asbestos Coating and Asbestos Insulating Board, Control of Asbestos at Work Regulations 2002. And 1987 Approved Code of Practice Reg 16

<sup>36</sup> The Quantitative Risks of Mesothelioma and Lung Cancer in Relation to Asbestos Exposure. Hodgson, Darnton Ann Occup Hyg vol 44 8, 2000. Table 11

In addition the long latency of mesothelioma means that the children's subsequent deaths occur long after they have left school and their deaths are listed in the statistics under the occupation they had at the time of their death, and not as a death caused by exposure to asbestos at school. As records of exposure at school are concealed by both the law and HSE policy, Coroners' Inquests can rarely identify schools as possible sources of asbestos contamination. Statistics cannot be collected, problems remain concealed and corrective action cannot be taken.

## **Openness Solution to Management of Asbestos**

The policy of secrecy has the flaw that it can be misused to conceal asbestos exposures and asbestos management failings. It can also be used to conceal inaction by the HSE, failure to co-operate between HSE and DfES, and poor management of asbestos by schools. It can prevent lessons being learned.

I would welcome your support in introducing openness. Openness and action can be ensured by reintroducing the schools' asbestos campaign, and by ensuring school governors give parents and teachers annual access to asbestos management plans. Both proposals are cost effective and can be rapidly implemented. Knock on costs will be high if gross mismanagement and extensive exposure to asbestos is then found – But it is better if such faults are found than if they remain concealed and teachers and children continue to be contaminated with asbestos.

## **Bad Press**

The HSE fear an over-reaction from parents to an open policy. However when best practice has been followed and the correct actions have been taken then parents have not over reacted.<sup>37</sup> An adverse reaction would be more probable, and understandable, if bad practice had taken place or dangers had been hidden from them, and this is acknowledged by the HSE:

*“Parents have a heightened sense of awareness of the risks of asbestos exposure, and any failure to manage risks properly could result in authority losing the confidence of their local communities.”<sup>38</sup>*

The HSE are also most aware of the bad press that could result in a policy of openness:

*“ High profile incidents from maintenance activities in schools have resulted in widespread exposure to asbestos. Local authorities and school managers have been subject to serious criticism in the media....  
Recent publicity relating to possible exposures in a number of schools has provided a reminder of the potential for “Bad” press in this sector that could impact adversely on the HSE.”<sup>39</sup>*

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<sup>37</sup> Kirklees Coroners Office/Lees 7 Aug 02. Kirklees Education Service/Lees 12 Aug 02

<sup>38</sup> HSE Background to Education Sector Initiative. HSE Head of Asbestos Policy briefing to LAF Nov 04

<sup>39</sup> E-mail HSE Asbestos Campaign Manager/DfES 23 Aug 05. HSE Head of Asbestos Policy briefing to LAF Nov 04

## **Openness is the Policy in America, and the Longer that it is not in This Country then the Worse the Situation Becomes.**

Openness is the policy in America. It provides an inexpensive check on management systems. In contrast the UK policy of secrecy allows poor asbestos management in schools, and where bad practice exists it allows it to continue unchecked. Intentionally parents are not told of the existence of asbestos or whether it is being safely managed. This leads to asbestos exposure of teachers and children, and because of HSE policy, they remain unaware that it has happened.

It would be better if the HSE and DfES led by example by adopting a policy of openness. The longer they rely on secrecy the worse the situation becomes. If they do not give a lead, they will undoubtedly “lose the confidence of local communities” when their policy of secrecy is revealed. Once the public realise that the extent of the problem has been hidden from them the HSE/HSC and the DfES are guaranteed to get “bad press,” particularly when parents realise that the reliance on secrecy conceals acknowledged failings in asbestos management in their own children’s schools.

## **DfES and HSE Lack of Resources. A Solution.**

By their own admission the DfES do not have the skills or officers to lead an asbestos initiative programme.<sup>40</sup>

The HSE have limited resources and have been criticised by the Parliamentary Select Committee over enforcement policy and for carrying out too few inspections and investigations.<sup>41</sup> The situation is unlikely to improve in schools and this was confirmed by the HSE Head of Asbestos Policy who said about monitoring the new “Duty to manage” in schools:

*“There would not be an increase in inspectors to do this”.*<sup>42</sup>

There are insufficient resources to enforce the present guidance in the present way, and insufficient resources within the HSE/DfES to ensure the new regulations are complied with. It seems clear that delegating the monitoring of asbestos policy to parents, by annually publishing the plans, would be an effective and relatively inexpensive way to monitor management plans.

## **Solution to Management of Asbestos in Schools**

Successful management of asbestos in schools relies on openness and participation by parents and teachers in monitoring performance and ensuring best practice.

I would like your assistance please to achieve the following in the immediate future:

- **Reinstatement of the campaign to improve the asbestos management in schools – Exactly as initially proposed by HSE.**

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<sup>40</sup> DfES /Lees 23 Aug 05. 15 Dec 05. HSE Asbestos Campaign Manager/ DfES 23 Aug 05

<sup>41</sup> Parliamentary Work and Pensions Committee report on the work of the HSE 25 Jul 04

<sup>42</sup> Minutes of HSE meeting Bristol 18 Nov 04

- **The asbestos guidance for schools to be urgently updated. (As the Minister advocated)**
- **An official estimate to be given for the number of people who have died, and are likely to die, from asbestos exposure they experienced when they were children at school.**

In addition I would ask that you lobby for:

- **A duty be placed on schools to annually publish asbestos management plans.**
- **The law to be changed so that parents of children in independent schools have the same legal right as those in state schools to see the asbestos management plans of their children's schools. As this might take time, in the interim, I would ask that the Government puts pressure on independent schools to allow parents access to their plans.**
- **All schools to be assessed for their asbestos risks. Statistics and data to be centrally collated.**
- **Asbestos to be the driving priority for refurbishing or rebuilding schools in the Building Schools for the Future Initiative. So that schools with the worst asbestos problem are given the greatest priority.**
- **All asbestos to be removed from schools being refurbished under the BSF initiative.**

None of these proposals are difficult to implement, and each one of them requires limited input and resources from the HSE and DfES. All can be done rapidly.

As a result of these proposals facts will be available that will show the extent of exposures in schools, and whether effective asbestos management systems are in place. The correct proportional response can then be given. Resources can then be allocated and measures taken to ensure that all schools have effective asbestos management plans.

**Only then will the Government's original target for the campaign be achieved:  
*"A dramatic reduction in the asbestos exposure of staff and children in schools."***

## Annex A

### **TEACHER'S AND CHILDREN'S DEATHS FROM ASBESTOS**

#### **America Estimated Children's Deaths and gave a Proportionate Response Great Britain No Estimate and no Action.**

So that a proportionate response can be given it is important to assess the risk. The risk is best assessed from making an estimate of how many teachers and children are exposed to asbestos at school and then estimating how many will die as a result.

Over twenty years ago America collected data on the extent and type of asbestos in their schools and gave an estimate of their teachers' and children's deaths.<sup>43</sup> As schools became safer because of improvements in asbestos management, they were able to reassess the risk and revise the estimates. Because of this, the scale of the problem was realised and it was possible to give a proportionate response. Priorities were set, far-reaching laws were introduced and resources were allocated. In addition the success of the measures were continuously monitored and corrected by regular inspections, and by a policy of openness. Only because the risk had been assessed in the first place was it possible to implement the correct measures to ensure that schools would manage their asbestos effectively.

In Britain it is difficult to make a prediction of deaths based on possible exposure levels because the HSE has not assessed the amount of asbestos in schools and therefore cannot use the same methodology as the Americans. In the absence of a figure that gives the numbers of deaths, the scale of the asbestos problem in schools cannot be clearly identified and it is impossible to give a proportionate response.

It is even possible to deny there is a problem

#### **HSE Denial of Problem**

The HSE and the Minister say:

*"Statistics gathered by HSE show that the mortality rate for female teachers is broadly in line with the average for the whole of the working female population. ie there is no higher risk for female primary school teachers."*<sup>44</sup>

This is, at best, a misleading statement. The Proportional Mortality Ratio is a means of comparing deaths between one occupation and another. It is assessed from all the occupations, including the high risk occupations. An "Average" number of deaths is when the statistical number of "Expected deaths" is the same as the actual or "Observed"

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<sup>43</sup> Support document for the proposed rule on friable asbestos-containing materials in school buildings. EPA report 560/12-80-003 . EPA Fact sheet AHERA 1986 Statement EPA Administrator 23 Oct 1986.

<sup>44</sup> Secretary of State for Schools/ General Secretary NUT draft letter 23 Aug 04

number of deaths.<sup>45</sup> The HSE statistics branch commented on the teachers' deaths as follows:

*“Perhaps in this case the term “expected” is unfortunate because it could give the impression that if the observed deaths are in line with the expected deaths then there is no risk.”*

*“The PMR of 100 (average, expected) does not indicate that there is no risk.....Even if the proportion of mesothelioma deaths among teachers was in line with the proportion of females that are teachers, one could still draw the conclusion that there are too many deaths among a group which are supposed to have had very little asbestos exposure.”<sup>46</sup>*

Statistics show that the number of female teachers' deaths is three times more than one would expect in a profession with little or no asbestos exposure. The number of deaths among male teachers is ten times greater than expected.<sup>47</sup> Teaching and nursing are both professions where one would expect little or no asbestos exposure. A comparison of female teachers with female nurses shows that a disproportionate number of teachers die from asbestos exposure, indeed female teachers are twice as likely to die from asbestos exposure as female nurses.<sup>48</sup> This unexpectedly high and disproportionate number of deaths indicates that teachers have been exposed to significant levels of asbestos.

(A more detailed account is given in my paper Asbestos in schools 30 Jul 05)

### **Approximate Estimate of Children's Deaths Illustrates the Scale of the Problem**

The HSE say: *“Very few people in schools are exposed. There may be a lot of ACMs in some school buildings but this does not mean anyone is, necessarily exposed.”<sup>49</sup>*

This statement is also misleading. It is true that there are a lot of ACMs in schools, but the HSE have never assessed the extent of that asbestos and have not estimated the number of people exposed.

The Minister and the HSE use an “Average” PMR amongst female teachers to claim there is no asbestos problem. It would appear that the very opposite is true.

The HSE were asked to make an estimate of children's deaths, but they have not done so.<sup>50</sup> In its absence the only course of action is to offer an estimate based on known statistics, reasoned argument and logic. The result gives a very rough idea of the scale of the problem. In a ten year period 900 people could die from asbestos exposure they experienced as a child at school. The basis for this estimate is as follows:

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<sup>45</sup> HSE Mesothelioma Occupational Statistics 1980 –2000 Interpretative Issues

<sup>46</sup> HSE Statistics Branch/Lees 22 Oct 04

<sup>47</sup> HSE Mesothelioma Statistics 1980-2000 Tables 1, 2, 6

<sup>48</sup> HSE Mesothelioma Statistics 1980-2000 Tables 4, 6, 8

<sup>49</sup> HM Principal Specialist Inspector, HSE Field Operations Directorate Specialist Group Occupational Hygiene Section e-mail 4 Feb 04

<sup>50</sup>HSE Head of Asbestos Policy/Lees 5 Jan 05, HSE Statistics Branch /Lees 10 Nov 04

## **Teachers' Deaths.**

Teachers' deaths from mesothelioma are given in statistics. A calculation can be made that gives a reasonable idea of children's deaths, by making a direct mathematical extrapolation from their teachers' deaths. For mathematical simplicity it is based on the presumption that children and teachers have been exposed at the same levels and are as liable as each other to develop mesothelioma.

In 2004 there were about 800,000 teachers.<sup>51</sup>

In order to avoid arguments over statistics the extrapolation is based solely on numbers of qualified school teachers. Teachers in higher education, education assistants and non qualified teachers are excluded. (Amongst all the teaching groups 145 died between 1991-2000)<sup>52</sup>

There were 79 deaths of qualified teachers in the ten year period between 1991-2000.<sup>53</sup>

## **Children's Deaths**

Everybody attends school for at least ten years of their life.

In 2004 there were approximately 9,000,000 children in primary and secondary schools.<sup>54</sup> A direct extrapolation between teachers' deaths and children's deaths gives a figure of 900 children who will die over a ten year period as a result of asbestos exposure they experienced at school.

## **Figure Gives Informed Estimate of the Scale of the Problem.**

The direct mathematical extrapolation between teachers and children gives a very rough idea of the scale of the problem. There are various reasons that the actual number of deaths is likely to be greater but it is beyond the scope of this paper to detail those reasons. The statistics are given and the arguments are addressed in my paper "Asbestos in schools" 30 July 2005.

## **Official Estimate is Essential**

The extrapolated number of deaths amongst children is not meant to be a definitive figure. It is given as a demonstration that it is possible to derive a figure. It is also given to show that there is a problem and that the likely number of deaths is high. An official estimate is essential.

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<sup>51</sup> Statistics of Education England 2004. Education Statistics The Scottish Office

<sup>52</sup> National statistics Mesothelioma Occupation statistics Tables 7.8 (see my paper Asbestos in Schools 30 July 05).

<sup>53</sup> National statistics Mesothelioma Occupation statistics Tables 7.8 (see my paper Asbestos in Schools 30 July 05).

<sup>54</sup> Statistics of Education England 2004. Education statistics The Scottish Office.

## **A METHOD FOR ESTIMATING CHILDREN'S EXPOSURE AND ENSURING TIMELY INTERVENTION**

A 1980s study by the American Environmental Protection Agency (EPA) estimated how many staff and children could die because of asbestos exposure at school. It was because of these estimates that stringent laws were introduced to manage asbestos in schools. (Emergency Hazards Response Act (EHRA))

They estimated that more than 8,500 schools contained friable asbestos, and 250,000 staff and 3,000,000 pupils could be potentially exposed.

Based on these figures they estimated that:

*“A total of approximately 100 to 7,000 premature deaths are anticipated to occur as a result of exposure to prevalent concentrations of asbestos in schools containing friable asbestos materials over the next 30 years. The most reasonable estimate is approximately 1,000 premature deaths. About 90% of these deaths are expected to occur among persons exposed as schoolchildren.”*<sup>55</sup>

(Note: This estimate was based on airborne fibre levels.)

### **Four Times as Many Schools Found to Contain Asbestos.**

Surveys were carried out in primary and secondary schools, and by 1984 sufficient information was available from the surveys to reassess the extent of the problem. The results showed that about four times as many schools contained asbestos than had been originally presumed and that five times as many pupils were at risk. 34,800 schools contained friable asbestos potentially exposing an estimated 15,000,000 pupils and 1,400,000 staff.<sup>56</sup>

### **Estimates gave a scale of the problem. Laws introduced.**

Because data had been collected and the scale of the problem had been estimated, the Emergency Response Act became law and staff and children were protected from the dangers of asbestos.

### **“ACTIONS PROPORTIONATE TO ESTIMATED RISK” GREAT BRITAIN NO ACTION**

In America data has been collected and the American Government gave an estimate of their children's deaths. Because of this far reaching laws were introduced to ensure that asbestos was managed effectively in their schools. Twenty years ago they collected and analysed statistics, made estimates of children's deaths and then took action. They set priorities and allocated resources in proportion to the risk.

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

<sup>56</sup> EPA Fact sheet AHERA 1986 Statement EPA Administrator 23 Oct 1986.

In Great Britain there are insufficient statistics and no official estimates that give our children's level of exposure, or the likely numbers of deaths resulting from that exposure.

The extrapolated figure for children's deaths points to a high level of risk that should result in urgent action being taken. But no official estimate has been given, consequently no action has been taken. It is essential that an official, soundly based, estimate of children's deaths is made. This should be based on both past exposure and from an analysis of current asbestos condition in schools. Then there can be a proportionate response.

Government priorities and resources are based proportionately on risk:

The HSE's policy is that: "*HSE has a responsibility to ensure that schools understand that any actions that they take to manage asbestos should be in proportion to the level of risk.*"<sup>57</sup>

The flaw in that policy is that, as there are no robust statistics collected by the HSE, and there is no official estimate of children's deaths, there is no official measure of the level of risk. It is therefore impossible for schools, LEAs, the HSE, DfES or the Government to produce a proportionate response – or indeed any informed, effective response.

It is even possible, with skilful use of words, to deny there is a problem.

## SUMMARY

HSE figures, based on teachers' deaths, have been incorrectly used to deny there is an asbestos problem in schools. The very opposite is true, for the deaths of teachers illustrate that an unexpected and disproportionate number of them are dying from asbestos exposure. They also illustrate that it is highly probable that a large number of children are being exposed to asbestos at school and are dying later in life because of it. There is therefore a very considerable problem.

The Americans estimated the risk and implemented proportional measures.

In this country as there are no official estimates on which to assess risk, and no data on which to set a standard to measure improvements, no particular priority has been given to schools. PSA targets cannot be met, and PSA priorities are inevitably "*Refocused*" on other initiatives where the level of risk is clearly defined and improvements can be measured.

Because no action has been taken to identify the scale of the problem insufficient resources have been allocated to solve it.

Only once a proper assessment is made, and the true scale of the problem of asbestos in our schools is made public knowledge, will the HSE, the DfES and the Government give a proportionate response. Only then will our teachers and children be safe.

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<sup>57</sup> Minutes of HSE meeting Bristol 18 Nov 04

**Please can you ask the Minister for an official estimate of the number of people who have died, and are likely to die in the future, from asbestos exposure they experienced when they were a child at school.**

Annex B:

## Annex B

### A COMPARISON OF THE IMPLEMENTATION OF ASBESTOS POLICIES

By the mid 1960s both America and Britain were publicly acknowledging the dangers from asbestos. They were aware that even very low levels of exposures could cause mesothelioma and that children were particularly at risk.<sup>58</sup> Initially both Governments issued guidance to schools giving advice on how to protect staff and children, in neither country was the guidance compulsory.<sup>59</sup> However as knowledge increased America took effective measures to counter the threat by introducing far reaching laws which made the guidance compulsory. At the same time they introduced measures that monitored the schools performance by the simple expedient of adopting a policy of openness. In comparison the measures taken in Britain have been inadequate with the guidance remaining optional and a policy of secrecy has allowed schools with inadequate management systems to continue unchecked. The consequence has been that “*A significant minority of schools*” have failed to manage their asbestos. The following is a comparison between the policies and actions of America and Britain:

#### America

In the late 1970s the EPA gave technical support to schools to identify and correct potential hazards from asbestos in schools.<sup>60</sup> In the early 1980s as the extent of the problem became more apparent America made an assessment of the risks and estimated how many teachers and children might die from exposure at school.<sup>61</sup> In 1982 they made their guidance compulsory so that every school, by law, had to identify its asbestos and implement effective asbestos management plans. The law stipulated that schools had to notify parents and teachers of potential exposure risks.<sup>62</sup> The Environmental Protection Agency (EPA) carried out a survey of all the nation’s schools to assess the extent of asbestos so that they could estimate the exposures to teachers and children.<sup>63</sup> Priorities were set and funds were allocated to the schools with the greatest risk.<sup>64</sup> Guidance was given and people were trained.<sup>65</sup>

In 1986 the laws were reinforced so that further inspections are required every three years, and annually parents and teachers have to be updated on the school’s asbestos management plan.<sup>66</sup> The EPA introduced a means of monitoring whether schools are

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<sup>58</sup> Head of Medical Inspectorate of Factories/Department of Education 6 Mar 67. Control of Asbestos Hazard Leading Article The Lancet page 1311 Jun 67. Seikoff, Churg, Hammond. New England Journal of Medicine 1965 272,560

<sup>59</sup> Department of Education Administrative Memorandum 20/67 Inhalation of Asbestos Dust 18 Jul 67. EPA Technical Support Programme 1979

<sup>60</sup> EPA Technical Support Program (TAP) 1979

<sup>61</sup> Support Document for Proposed Rule on Friable Asbestos-Coating Materials in school Buildings: Health effects and Magnitude of Exposure. EPA Report 560/12-80-003 Oct 80

<sup>62</sup> EPA Mandatory School Asbestos Control Programme/ Asbestos in schools identification and notification rule (ASINR) 1982. EPA press release EPA Announces Rule Requiring Schools to Test for Asbestos 24 May 82

<sup>63</sup> EPA Evaluation of the Asbestos-in-schools Identification and notification Rule EPA Report 560/5-84-005 Oct 84

<sup>64</sup> Asbestos School Hazard Abatement Act 1984

<sup>65</sup> US General Accounting Office Report RCED-85-91B-20367 School District Officials Face Problems in Dealing with Asbestos in Their Schools 19 Mar 85

<sup>66</sup> US Government Asbestos Hazard Emergency Response Act 1986 (AHERA) H.R. 5073. Environmental Protection Regulations Asbestos- Containing Materials in Schools Regulation (Federal) 40 CFR 763.84, 763.85

following the guidance, and the laws are vigorously enforced, with substantial fines being imposed on any school that fails to follow the guidance.<sup>67</sup>

The extent of the problem was assessed. Priorities were made, and resources were allocated in proportion to the risk. Laws were introduced so that schools maintain an effective system of asbestos management, and a system of monitoring was devised to ensure that they do. Training and guidance is given and regularly updated. A policy of openness ensures that parents and teachers are aware of the standards of management in their own schools. Because there is an effective system of management, asbestos can remain in situ and parents and teachers can have the confidence that it is being safely managed.

## Great Britain

In 1976 The Department of Education issued a memo which warned of the dangers of asbestos in buildings.<sup>68</sup> In 1986 they issued a further memo which gave guidance advising that schools should identify the location, extent, type and condition of their asbestos and then implement a plan to manage it.<sup>69</sup> However this guidance was not mandatory and many schools did not identify whether their buildings contained asbestos. The guidance has never been updated, and as the management of the asbestos was optional some never implemented any management system. To this day it is not known how many schools are managing their asbestos as no overall assessment has been made. Schools do not have to notify parents and some have a legal right not to. There is no robust supervisory system so the HSE/ DfES cannot identify those schools that fail to have effective management systems, and also cannot correct those who fail.

A “duty to manage” asbestos was made law in 2004.<sup>70</sup> The HSE recognised that they had no method of assessing the past or current situation. In an attempt to remedy the situation the HSE asbestos in schools campaign was planning to send a questionnaire to all schools:

*“The purpose of the questionnaire was to determine how well the industry was complying with the “Duty to manage” and in particular to highlight “weak” topics, authorities and sectors.”*<sup>71</sup>

As the campaign has been dropped the questionnaire has never been sent.

The “*weak topics, authorities and sectors*” are still not known. A risk assessment cannot be made, as the scale of the asbestos problem cannot be assessed. Consequently resources cannot be allocated correctly in proportion to the risk.

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<sup>67</sup> US Government Asbestos Hazard Emergency Response Act 1986 (AHERA) H.R. 5073. Environmental Protection Regulations Asbestos- Containing Materials in Schools Regulation (Federal) 40 CFR 763.84, 763.85 Enforcement. EPA Enforcement Alert Schools learn to protect students and staff from exposure to asbestos hazards Vol7 No1 Sep 04

<sup>68</sup> Department of Education Administrative Memorandum 7/76 The Use of Asbestos in Educational Establishments 2 Jul 76

<sup>69</sup> Department of Education Administrative Memorandum 3/86 The Use of Asbestos in Educational Establishments 15 Aug 86

<sup>70</sup> 2002 Asbestos at Work Regulations. Regulation 4 “A Duty to Manage” 2004

<sup>71</sup> HSE Asbestos Campaign - Education sector “What had been achieved” 23 Aug 05

## Summary

Both the UK and USA were warned of the risks from asbestos in schools at the same time. The Americans assessed the situation and progressively passed laws, allocated resources and implemented measures that made sure that schools were able to put them into action, and then monitored them to ensure that they did. In contrast 24 years later our Government has not yet assessed the extent of the problem, or updated their guidance. Rather than allocating the necessary resources they have taken them away by cancelling the campaign designed to *dramatically reduce the exposure of teachers and children*. They have no system of monitoring the result of their policies, and yet they advocate that it is safer to leave asbestos in place and manage it.

America has policies and laws that enable the management of asbestos to be an option. In Britain fundamental changes in policies are needed, priorities have to be changed and resources allocated in proportion to the risk. Only then will every school implement an effective system of managing asbestos. Until that is achieved, leaving asbestos in place and managing it cannot be a safe option.

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4<sup>th</sup> January 2006

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