



Work & Pensions Committee

Health & Safety Executive Approach to Asbestos Management Examined

Response from Thompsons Solicitors

In 2021, Thompsons will have been acting for injured people for 100 years. As a point of principle we have never, throughout our history, acted for defendants or insurers, only ever for the injured and mistreated.

Since 1921, we have run many of the test cases that have led to the safety laws that exist today. We ran the first asbestos case to reach the House of Lords in 1972. We have since then been involved (on behalf of claimants) in every significant asbestos test case. Over the years, we will have acted for literally tens of thousands of asbestos victims and their families.

At the outset of our response, Thompsons is keen to make clear a number of concerns that it has with the enquiry and the scope of it.

Firstly we are, as a firm, supportive of governmentally funded and enforced regulation of workplaces. We do not believe in, and have never come across in all the cases we have run, effective self-regulation. There is a need for a legislative framework, for there to be enforcement of that framework and for there to be consequences for those who fail to comply with standards set by an external body.

As such, we are supportive of the positive role that the Health and Safety Executive (HSE) can play in regulating, monitoring and enforcing safety in the workplace.

We are critical of the cuts that have been made to the HSE budget since 2010. It is our understanding that the number of HSE inspectors has dropped by a third since 2010 (from 1,495 to 978). Further, according to the union Prospect, HSE funding has been cut from £239 million in 2009/10 to £136 million in 2017/18 (a real terms cut of 50%). We believe that those cuts have had and will continue to have a negative impact on health and safety in the workplace across England and Wales.

We are further of the view that delegation of responsibility of funding to local authority level is not the answer - asbestos is a problem across the nations of the UK and must be dealt with by way of a national, UK-wide funded response.

Any criticisms we make of the HSE within this response should be placed within that supportive and cuts critical context.

Secondly, we are concerned at the role played by Res Publica in this issue becoming the subject of an enquiry by the W&P Committee. While we note that Res Publica is an independent non-partisan think tank, it will take funding from commercial organisations. Our previous knowledge of Res Publica in the context of asbestos was at a round table event in parliament on 8 October 2019, when Philip Blond from Res Publica introduced Charles Pickles as the funder behind their proposal that there should be a new APPG asbestos group. Charles Pickles has 'a background in asbestos consultancy' and 'co-founded Lucian Environmental in 2002, which at the time of his exit from the company in 2019 was the UK's largest asbestos consultancy'. We note that the points made that day by Res Publica on behalf of Mr Pickles bear a striking similarity to the issues raised in the W&PC enquiry. Mr Pickles has the prospect of considerable financial gain should there be governmental commitment to extended asbestos monitoring or large-scale asbestos removal.

Mr Lander: exposed since 2006 in numerous buildings at RNAS Culdrose and while working on Sea King helicopters in Royal Navy maintenance.

Finally, in adopting the W&PC use of the word 'public building' we include not only workplaces (where the majority of the cases we have acted in against employers emanate from), but also municipal housing that was built using asbestos or asbestos products.

In responding to this enquiry, we only intend to answer those questions which we, as lawyers for those injured by asbestos and their loved ones, are able to respond to from our experience and case load.

I. What are the current risks posed by asbestos in the workplace? Which groups of workers are most at risk?

The risks from asbestos exposure are the same today as they were when asbestos imports were banned into the UK in 1984. Fibres from asbestos are just as deadly today as they were in the early 1900s, when the product was first recognised to lead to premature death. The scale of exposure may be significantly reduced from the days that it was routinely used as a 'wonder product' to lag trains, ships and boilers, but the

dangers of inhalation of even small quantities of asbestos fibres bring the same risks of mesothelioma decades later as they ever did.

Wayne Roddis: exposed in 2020 in a glassworks in Rotherham when an old roof containing asbestos was poorly removed by external contractors.

Asbestos remains the biggest cause of workplace deaths in the UK. Every year it is estimated that approximately 5,000 people die prematurely as a result of asbestos exposure. In 2019, 2,369 of those deaths were attributable to mesothelioma, 490 to asbestosis and it is assumed the majority of the balance will be asbestos-related lung cancer.

Although the estimated annual figure of 5,000 deaths a year is shocking in itself, we believe that it is almost certainly an underestimate and the number of those whose untimely death was caused by past exposure to asbestos and who could have that recorded as such on their death certificates is in fact far higher. Reasons for it not to be recorded would include other complications, a lack of a post mortem or the relatives of the deceased not being aware of their past exposure so assuming and not questioning that the death was from another malignant cancer.

The number of future deaths is dependent on what we do now.

There is no 'safe' threshold of exposure to asbestos fibres. The control limit for asbestos of 0.1f/cm³ is not a 'safe' level.

The estimates (and for reasons explained below they can only be estimates) is that asbestos can still be found in various products from lagging to floor and ceiling tiles to roofing sheets in around 500,000 workplaces including factories, warehouses, offices, shops, hospitals, schools (asbestos is said to be present in about 75% of our schools) and universities.

Asbestos is often hidden or has not yet been identified, but the HSE estimates that 1.3 million tradespeople are at risk of exposure and could come into contact with asbestos on average more than 100 times a year. That makes clear that scale of the risks of exposure are significant.

Although current mesothelioma deaths are more common among occupations such as plumbers, carpenters and electricians, all workers in buildings constructed prior to 1999 are at risk including health care workers, teachers, shop workers and office-based workers. Our experience from our caseload is that there is a statistically significant shift from 'traditional' occupational asbestos deaths to those in roles that would previously have seemed less at risk, such as teachers and nurses.

There is in our view no reason to believe exposure will decline appreciably unless a timetable is established for the removal and eradication of all asbestos. While, given the scale of the asbestos present in workplaces and homes around the UK, removal is a huge challenge, the untimely deaths at current scale are embarrassing for a modern economy such as the UK. And as we explain below, our lack of concerted action stands in poor contrast to the co-ordinated campaigns in other European countries.

George Grimes: exposed from August 2016 in numerous buildings while working in estate management on various privately managed estates in London.

We run an asbestos exposure register for many of the unions in the UK and it is clear from those that are currently registering exposure with us that that can only have occurred if the current asbestos regulations are not being complied with. The reality is that it is extremely unlikely that asbestos is never going to be disturbed if it is left in place - the reality from the reports of exposure that we see is that accidental disturbances by contractors and others is commonplace.

2. How effective is the current legislative and regulatory framework for the management of asbestos?

We know the current regulations are not being complied with. We know from trade union members that huge numbers are still being exposed to asbestos that is not properly "managed".

The current advice that ACMs can be left in place and just 'managed' provided that are in 'good condition' and 'not likely to be disturbed' was always seen as a temporary measure. Despite the use of asbestos being banned in 1999 the majority of asbestos is still in place and poses a major daily hazard.

Even before the cuts we outlined in our introduction, the HSE did not have the resources to monitor compliance with the current regulations to ensure that asbestos is safe in situ and the feasibility of effective oversight is now, given those cuts, even less likely.

3. How does HSE's approach to managing asbestos compare to the approach taken in other countries? Are there lessons that the UK could learn from best practice elsewhere?

In the Netherlands, in Germany, in France, in Poland and Australia there are national government-backed campaigns for the removal of asbestos. By contrast, there is no attempt to do so in the UK. We appear to be burying our heads in the sand and hoping that it will not become disturbed and not lead to exposure. We

know from the reports that we see on the asbestos exposure register that this is not an answer and governments that continue to ignore the risks are responsible for the deaths that follow.

4. How does the HSE measure and report its progress in mitigating the risks of asbestos?

The HSE reports annually on its progress on a number of fronts in health and safety and in 2019/20 in 30 pages of analysis reporting on areas that the HSE have targeted, asbestos merited less than half a page. Given the very real and present dangers, the risks associated with asbestos and the devastating death toll that it wreaks, we believe this reporting to be inadequate and an insult to the thousands who are knowingly and unwittingly exposed to asbestos in the UK every year.

5. Does HSE keep adequate records of asbestos in public buildings?

The HSE does not hold a central register of asbestos or a database recording the presence of asbestos in any buildings, let alone public buildings.

We wholeheartedly support the call by the TUC (along with trade unions, asbestos support groups and the APPG on Occupational Health & Safety) for all workplaces to have a programme of identifying, managing and safely removing and disposing of asbestos. This would require government legislation and HSE enforcement.

All public buildings should be required by law to conduct and register with the HSE a survey done by a registered consultant identifying the location, type and condition of asbestos containing materials within their premises. To pay more than lip service to such a requirement there must be a real risk of random inspection and enforcement and the HSE will need to be appropriately resourced to play that role.

6. Is HSE making best use of available technology and systems to monitor the safety of asbestos which remains in buildings?

To our knowledge, given the paucity of inspection and enforcement, there is no attempt by the HSE to use any technology or systems to monitor asbestos safety. Until there is a government commitment to do so, backed up by enforcement with sanctions and 'teeth', then this will remain.

Mark Willoughby: exposed since 2016 at Ipswich Docks when working on electrical panels of shore side cranes that contain asbestos and before that at former military base, BT Adastral Park, in Suffolk.

This must not be an area in which technology is varied and of variable efficacy, that is the worst of all worlds and will lead to variable assessments. There needs to be an approach endorsed by the HSE and accepted as the approved method of monitoring to be applied in all circumstances - a 'charter mark' of appropriate safety monitoring.

7. Does HSE commit adequate resources to asbestos management in line with the level of risk?

The short answer is no but that must be set in the context of the cuts in funding we referred to in our introduction.

There needs to be a commitment to ensure the HSE gets whatever resources it needs to inspect and enforce adequate legislation. We know from experience that the presence of inspectors in the workplace, or the possibility that they may visit, is a major driver for behavioural change by employers and concomitantly the reverse is also the case.

There is precedent for properly resourced campaigns to have an impact. While there may be dispute about the reasons for the demise of the HSE Hidden Killer campaign, its stated aim of changing behaviour among maintenance workers appeared to have good prospects of success (until its untimely halt), given that campaign material was reported to have been seen by 85% of the target group and 76% said they would take or had planned to take precautions to prevent exposure when working.

Thompsons Solicitors
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