Unite Union submission to DWP Select Committee Inquiry: HSE's management of asbestos

This response is made by Unite, one of Britain and Ireland's largest unions with well over 1 million members across all sectors of the economy including manufacturing, financial services, transport, food and agriculture, construction, energy and utilities, information technology, service industries, health, local government and the not for profit sector. Unite also organises in the community, enabling those who are not in employment to be part of our union.

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

Asbestos continues to be the biggest cause of workplace deaths. This year around 5,000 people are likely to die prematurely as a result of asbestos exposure. These deaths are from historical exposure many years before due to the long latency of asbestos related diseases. Whilst improvements to managing risks from asbestos have improved, the risk of developing mesothelioma remains significant due to the fact low levels of exposure can result in future development of the disease.

The United Kingdom has the highest mesothelioma rate in the world because of the extensive use of amosite asbestos between 1960-1980. Asbestos-containing materials can be found in around half a million non-domestic premises and the figure in domestic premises is significantly higher. Given the lack of proper regulation, asbestos controls and awareness connected to domestic housing poses an unacceptable high risk scenario.

Whilst it is excepted those working in construction, ship building and other industries where work is likely to disturb asbestos such as maintenance, refurbishment and demolition there is increasing evidence that people are detrimentally exposed by working in buildings that contain asbestos. This is due to the fact there are tens of thousands of buildings that are in a poor state and in disrepair. The number of women affected is rising, indicating exposure outside the traditional occupations.

For example GB Mesothelioma Statistics and recent research show thousands of teachers and support staff have contracted mesothelioma, it is particularly relevant that CLASP type buildings are known to have substantial amosite asbestos in their construction. Please refer to the response from the Joint Union Asbestos Committee (JUAC) which Unite is an active member, for more in depth details. See also JUAC report Continuing Government failure leads to mesothelioma deaths.

The current GB Asbestos Regulations (2012) require more stringent asbestos management of buildings, with HSEs 2012 review showing that overall the regulations are working well. However Unites experience in dealing with enquires is that there is not universal compliance with the regulations, with many organisations failing to identify where asbestos is in a building or allowing buildings to fall into disrepair. There remains a very high risk of exposure in domestic properties where the regulations are not fully applicable. Both trades people and DIY residents are at high risk.

Unite has a particular concern around social housing, which has been highlighted by recent reports of the very poor state this housing stock is in. See Unite (UCATT section) report As Safe as Houses | Non-Class publications | CLASS (classonline.org.uk)

Unite believes HSE's estimate that the present high number of deaths from mesothelioma is likely to peak at around 2,500 for the rest of this decade before falling is very optimistic. Previous estimates indicated that asbestos deaths were going to peak in 2010 at 1,500 a year, which has proved far from the mark. 1.3 million trades-people remain at risk, with millions more working and living in asbestos ridden buildings many of those buildings in poor condition.

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

The current asbestos regulations (Control of Asbestos Regulations 2012) set out legal duties and give minimum standards for protecting employees from the risk of developing asbestos related diseases due to exposure such as mesothelioma, asbestosis and lung cancer. That persons responsible for maintenance of non-domestic premises have a duty to manage the asbestos in them in order to protect people using them.

Risk assessments need to be under-taken, there is also a need to identify where asbestos is in the building, its type and what condition it's in. There is a need in essence to undertake surveys in all buildings built before 2000 with HSE providing comprehensive guidance on how this should be undertaken.

Observations and Current weaknesses:

- There are very little duties associated with domestic premises apart from communal areas
- Assessment of risk is very difficult where asbestos may be found within inaccessible / hidden areas within the building structure.
- Actual risks of developing mesothelioma are not configured into the regulations
- The control limit of 0.1f/cm3 is not a "safe" level. Inhalation of small quantities of asbestos can lead to mesothelioma.
- No account of cumulative exposure

This proportionality regarding cumulative exposure is widely supported by the evidence, and according to the scientific judgement of WATCH in 2011, there are risks of asbestos-induced cancer arising from work-related cumulative exposures below 0.1 fibres/ml. years. WATCH stated:

> "The risk will be lower, the lower the exposure, but "safe" thresholds are not identifiable. Where potential exposures to amphiboles, particularly crocidolite, are below 0.1 fibres/ml. years (for example, 0.01 fibres/ml. years), the available scientific evidence suggests no basis for complacency, but rather a basis for active risk management."

- Regarding Clearance levels in buildings after work involving asbestos which is a threshold of less than 0.01 f/ml [10,000f/m3], which although should be taken only as a transient indication of site cleanliness we feel is much too high. This level is twenty times higher than the average level (500f/m^3) found in buildings with asbestos in a good condition and so is not a safe level according to the Courts:

The Courts in 2009 accepted that levels of asbestos above that found in buildings (schools) with asbestos in a good condition (0.0005f/ml; 500f/m3) can materially increase the risk of mesothelioma developing. High Court QBD Liverpool District [2009] EWHC 1831 (QB).

- The regulations do not contain a removal strategy, which given the drive in Europe and the concern many properties are in a continuing state of disrepair leaves the situation increasingly intolerable. Managing asbestos alone is no longer a viable or safe strategy.

Asbestos Victims Support Group Forum UK: "The presumption underpinning the current HSE position is that asbestos is safe providing it is in good condition and that it is undisturbed. In practice, this gives unscrupulous duty holders too much leeway to retain asbestos indefinitely, as they can simply argue that it is 'in good condition' (even when this is not the case)." A previous review recommended a "more objective assessment of compliance levels and the presence of asbestos (e.g. through surveying or reviewing of duty holder surveys on a larger scale) in UK building stock."

- There must be more effective regulation on the purchasing and transporting of asbestos-containing materials.

- All workplaces have a programme of identifying, managing and safely removing and disposing of all asbestos. Unite the TUC, sister unions, asbestos victims support groups and the all-party parliamentary group on occupational safety and health, believe that the Government should pass legislation requiring all employers to do this

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?

Organisations Unite is affiliated to in the EU are making far more ground in improving standards around asbestos, and using the green agenda in order to address the removal of asbestos at the same time. There is a direct connection between several important ongoing EU policy initiatives and an asbestos removal programme

- Building Renovation Wave,
- Implementation of the European Pillar of Social Rights (EPSR),
- The Beating Cancer Plan,
- EU Multiannual Financial Framework (MFF) and the recovery strategy,
- New EU Strategic Framework for Health and Safety at Work
- Circular Economy Action Plan

See European Federation of Building and Woodworkers *EFBWW position paper* which contains links to these programmes. In the Netherlands, Germany, France, Poland and Australia there are national government backed campaigns for the removal of asbestos.

The devolved authorities are making good progress, not replicated across the UK. The Workforce Partnership Council in Wales has issued a new drive for employers in devolved public services to meet their duty in the safe management of asbestos. Similarly, the Welsh Department for Education has published clear guidance emphasising the steps duty holders in schools must take to control risks. A similar approach from the UK government would be welcomed.

The World Health Organization (WHO) policy statement (October 2006) on the *Elimination of Asbestos-Related Diseases*, recognised the cancer risk from exposure to relatively low levels and called on Governments to stop using all forms of asbestos. English language version of its Asbestos Fact Sheet 4

Does HSE keep adequate records of asbestos in public buildings?

It is not the role of the HSE to keep records about asbestos in public buildings, maintaining a record of asbestos presence in all public buildings would be a drain on HSE resources. Those resources would be best served enhancing HSE's regulatory and enforcement activity.

However a National register that everyone could access electronically would be useful and ensure transparency. The National register would need to be managed centrally by a designated government department.

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

Within the scope of its current policy and current regulations HSE is continually reviewing new technology to aid in the monitoring of asbestos. Research on new products that appear on the market or new analyses in the scientific literature by HSE's scientists inform this.

Unite is satisfied that HSE's assessments of equipment and processes are appropriate. As the regulator with expertise in this area, it is appropriate that HSE continues as the organisation with this responsibility, with the independence to determine which technology is most effective and appropriate. However attention to the following would be useful.

The Phase Contrast Microscope methods do not identify all the clinically active asbestos fibres and have false positives arising from some non-asbestos materials in the samples.

Disturbance during asbestos measurement during everyday activities requires information about the level of disturbance from occupants in each building location.

TEM and SEM methods can distinguish asbestos fibre types and clinically active fibres of all sizes. However, it is not clear how their findings relate to PCM data regarding the risk of developing mesothelioma after exposure.

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

The HSE is limited by the budget that it is allocated by Government, that budget has dwindled over the years. HSE funding was cut from £239 million in 2009/2010 to £136 million in 2017/2018. Since 2010 the HSE budget has been cut by 50% in real terms. Over the same period the number of HSE inspectors fell from 1,495 to just 978.

HSE's ability to run asbestos inspection initiatives, asbestos campaigns and enforcement have been servery hampered by its lack of funding, in order to ensure asbestos management is done in line with actual risk would require much more central government funding.

How robust is the available data about the risks and impact of asbestos in the workplace? What gaps in evidence need to be filled?

- The Annual Occupational GB mesothelioma statistics considerably underestimate the risk of developing mesothelioma in different occupations. Annual Occupational mesothelioma statistics should record mesothelioma deaths (all ages) plus lifetime occupations and system buildings occupied by each victim.

- Consideration of environmental asbestos Regulations that include a measure of the actual risk to adults and children from long term cumulative asbestos exposure

- The current asbestos regulations do not measure the actual risk of developing mesothelioma, research is needed in this area

- Research suggests that the measurement of cumulative asbestos exposure from low levels of unsafe asbestos may not be technically feasible. Collate evidence and Investigate if the measurement of cumulative exposure to asbestos levels around 0.0001f/ml; 100f/m^3 is feasible.

- The Regulations recommend mandatory training of Duty Holders/support for asbestos managers but the available evidence suggests that the recommended training is not completed and applied by all duty holders. Explore the reasons for this and how the situation can be rectified

Is HSE drawing on a wide body of international and national regulatory and industry expertise to inform its approach to the management of asbestos safety in buildings?

HSE's Annual Science Review publications in which there are examples of engagement with a wide range of research on asbestos matters such as "Providing asbestos proficiency testing schemes" and Research Reports such as "Ventilation of enclosures for removal of asbestos containing materials".

However we would want HSE to explore more engagement on an international level particularly in Europe.

How effectively does HSE engage with external stakeholders and experts about its approach to the regulation of asbestos?

The HSE itself is a tripartite organisation: its Executive Board is composed of government, employer and worker representatives. There are numerous tripartite committees where HSE is engaged with Unions and Employers around asbestos issues. Particularly CONIAC and the health working group, HCLG and the Asbestos network with its own specific working groups.

There is also the All-Party Parliamentary Group on Occupational Safety and Health and Asbestos. These groups comprise a range of external stakeholders including MPs, charities, trade unions and asbestos victim support groups.

However there is a specific gap that has been created which Unite is very keen to see filled. That is the dismantling of the Advisory Committee on Toxic Substances (ACTS).

This was a Tripartite advisory Committee whose terms of reference were to advise the HSE board on matters relating to the prevention, control and management of hazards and risks to the health and safety of persons arising from the supply or use of toxic substances at work, with due regard to any related risks to consumers, the public and the environment.

The committee was abandoned because EU procedures and directives were instrumental in EU bodies undertaken some of the work ACTS was involved with. Given the situation enacted by Brexit, Unite would advise strongly that HSC - Advisory committee on toxic substances (hse.gov.uk) is reinstated. We have canvassed support from sister unions and the TUC, we are confident that employers would be on side also.

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