

P-04-522 Asbestos in Schools – Correspondence from the Petitioner to the Committee, 17.05.17

Petitioner's response to the Petitions Committee 17th May 2017

1. Response to the Petitions Committee 1st March 2016

I would repeat this response together with the appended items. This was intended to bring together the main issues relating to the petition. The Committee agreed to seek the Minister's views on my further comments and he responded on the 5th April 2016.

I would ask that these matters be put to the Cabinet Secretary for Education as her views on these important matters would be welcomed

2. Phased removal of asbestos from schools in Wales

In its booklet "The asbestos crisis–Why Britain needs an eradication law", the All-Party Parliamentary Group on Occupational Health (which is chaired by Ian Lavery MP), with the support of the TUC, called for the phased removal of asbestos from schools.¹ At page 9 a date for phased removal in schools is set out,

*"Where asbestos is identified in any premises, all refurbishment, repair or remedial work done in the vicinity of the asbestos containing material should include the removal of the asbestos. Where no such work takes place, or is planned within the foreseeable future, the duty holder must develop and implement a plan for the removal of all asbestos which ensures that removal is completed as soon as is reasonably practical, but certainly no later than 2035. **In the case of public buildings and educational establishments, such as schools, this should be done by 2028².**"*

Phased removal of asbestos from schools is now Labour Party policy and I refer to 2017 manifesto³. Specifically it set out with regard to schools,

*"1. Investment – we will make sure schools are properly resourced by reversing the Conservatives' cuts and ensuring that all schools have the resources they need. We will introduce a fairer funding formula that leaves no school worse off, while redressing the historical underfunding of certain schools. **Labour will also invest in***

¹ <https://www.tuc.org.uk/sites/default/files/asbestoseradication.pdf>

² The passage in bold is the Petitioner's emphasis

³ <http://www.labour.org.uk/page/-/Images/manifesto-2017/Labour%20Manifesto%202017.pdf>

new school buildings, including the phased removal of asbestos from existing schools.”⁴

In light of this manifestos commitment I would request that the Petitions Committee ask Welsh Government for confirmation that this is now Welsh Government policy insofar as schools in Wales are concerned.

3. Responsibility for policy on asbestos in schools in Wales

The Committee will be aware that during its consideration of the petition a significant issue that has arisen has been the question of responsibility whether it be Welsh Government or UK Government. I have previously used the inelegant description of schools sliding into “a devolutionary crack”.

The latest statement from UK Government was made on 1st November 2016, when the Minister of State for Schools, Nick Gibb MP, in response to a written question from Amanda Solloway MP (Derby North) (and addressed to the Secretary of State for Education) regarding the removal of the presence of asbestos from school sites in England and Wales advised,

“Policy on the effective management and removal of asbestos at Welsh school sites is devolved to the Welsh Government, but in England it is one of the department’s priorities in order to ensure that our schools are safe for children and teachers.”⁵

In my respectful submission the UK Government’s position cannot be clearer as to where responsibility for management and removal lies.

On the 6th October 2016, together with Joseph Carter, the Head of the British Lung Foundation in Wales, I met with the Cabinet Secretary for Education, Kirsty Williams AM. She considered that the issue of responsibility had been determined and I assured her that this was not the case. She was willing for me to contact her further on the matter, although sadly pressures of work have led to my not having done so to date. The response of the Minister of State for Schools has not been put to her as far as I am aware. It is however in line with all previous UK Government statements made in both Houses at Westminster.

⁴ Ibid Page 37 with the Petitioner’s emphasis

⁵ <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-10-07/47204/>

I refer also to the email of Mike Green, the Chair of Department for Education (DfE) Asbestos in Schools Steering Group dated 19th October 2015, which has been shared with the Petitions Committee both when I gave evidence and subsequently. He stated clearly in his email,

“The Department for Education’s remit is for schools in England. As such, the Asbestos in Schools Steering Group, which was set up by the department in 2012, only covers the issue of asbestos management in schools in England.

Focussing on schools in England enables the group to consider the specific issues faced by English schools, which exist in a different policy framework to those in Wales. I would therefore suggest it is right that the remit of the Steering Group is to consider schools in England.”

Again in my respectful position the position could not be clearer. The DfE Asbestos in Schools Steering Group is concerned with schools in England. (I do welcome that officials on behalf of Welsh Government are now attending Steering Group meetings, but the remit of the Group remains schools in England.)

Those Welsh Government officials will be able to confirm that the Education Funding Agency have produced draft “Proposals for an Asbestos Management Assurance Process” which are provided with authority of the Joint Union Asbestos Committee but are not for wider circulation at the present time.

It is stated therein,

“1.1 The Asbestos Management in Schools Data Collection report was published in February. This voluntary data collection provided a partial picture of the management of asbestos in schools, **in England**. The Secretary of State has agreed with the recommendation to seek assurances from **all** duty holders who have a responsibility for the management of asbestos in their schools, **in England**, to improve our understanding of the management of asbestos in schools. All duty holders will be expected to undertake the necessary due diligence checks, to ensure that the assurances they provide are based on evidence from all their respective schools.”⁶

Further it is stated,

“5.1 Although not mandatory, as the department does not have the powers to compel all duty holders to complete the assurance process, it is expected that

⁶ The petitioner’s emphasis

all duty holders (approximately 3,500) will participate in the assurance process. We intend to validate our list of duty holders against other sources to ensure that they are all captured. We would expect that this approach should then cover **the estimated 25,000 schools, in England**. The department will communicate the importance of managing asbestos effectively and will set a clear expectation in this communication that all duty holders participate in the assurance process.”

Again in my respectful submission it is clear that the work of the Asbestos in Schools Steering Group on behalf of the DfE is concerned with schools in England and is not concerned with schools in Wales. I am not aware that there has been any similar Asbestos Management in Schools Data Collection relating to schools in Wales. In my respectful submission such work is essential to assess the extent of the issue and further that it is clearly a matter for Welsh Government to put in hand.

It should be noted that DfE has updated its Guidance on Asbestos in Schools in February 2017.⁷ This demonstrates that it is continuing to actively review matters, whereas in Wales Welsh Government has not updated its Guidance since May 2014.⁸

On the 26th April 2017 the House of Commons Committee of Public Accounts released the report entitled “Capital funding for schools” and specifically commented upon the Department for Education’s knowledge on the school estate and asbestos. Set out below is the relevant conclusion and recommendation.

“5. The Department still does not know enough about the state of the school estate, meaning that it cannot make well-informed decisions about how best to use its limited resources.

The Department now has a better understanding of the condition of school buildings after completing a survey of the estate in 2014. This property data survey estimated that it would cost £6.7 billion to return all school buildings to satisfactory or better condition, and a further £7.1 billion to bring parts of school buildings from satisfactory to good condition. Much of the school estate is over 40 years old, with 60% built before 1976. The Department estimates that the cost of dealing with major defects will double between 2015–16 and 2020–21, even with current levels of investment, as many buildings near the end of their useful lives.

The property data survey did not assess the safety or suitability of school buildings or the extent of asbestos. Over 80% of schools responding to a

⁷ <https://www.gov.uk/government/publications/asbestos-management-in-schools--2>

⁸ <http://gov.wales/topics/educationandskills/publications/guidance/asbestos-management-in-schools/?lang=en>

separate survey by the Department had asbestos, with 19% reporting that they were not complying with asbestos management guidance. However, only a quarter of schools responded to the survey, meaning that the Department does not have a complete picture. The Department estimates that it would cost at least £100 billion to replace the entire school estate which it believes would be the only way to eradicate asbestos from school buildings. The Department is undertaking a second property data survey but, until this is complete, it cannot assess reliably how the school estate is changing and does not know the extent to which its funding is helping to improve the condition of school buildings.

Recommendation: The Department should set out a plan by December 2017 for how it will fill gaps in its knowledge about the school estate in areas not covered by the property data survey. Specifically it needs to understand the prevalence, condition and management of asbestos, and know more about the general suitability and safety of school buildings.⁹

Once again it is clear that none of this is by reference to schools in Wales and I would respectfully suggest that there needs to be a review of the school estate in Wales including in particular to understand the prevalence, condition and management of asbestos in schools.

This is of course at the very heart of the Petition. Freedom of information requests have been raised of all local authority schools in Wales and England by Lucie Stephens whose mother Sue Stephens, a school teacher, died last summer from mesothelioma. For convenience I have collated all the responses in Wales.¹⁰ Once again I would urge that Welsh Government takes responsibility for the management the issue with regard to schools in Wales. It is not I would submit acceptable simply to rely upon a series of ad hoc responses of varying standards to Freedom of Information requests.

4. Working Group on Asbestos

I refer to my previous response on this issue on 1st March 2016 and I would respectfully ask the Committee to consider this, including the response of Wales TUC

In summary I stated,

“It can be seen from the above that there are significant differences between the Steering Group in England and the Working Group here in Wales.

⁹⁹ <https://www.publications.parliament.uk/pa/cm201617/cmselect/cmpublic/961/961.pdf>

¹⁰ <http://www.righttoknowasbestos.org/How-you-can-help/FOI-request.html>

Wales needs either a steering group to mirror that of the DfE or as a very minimum full representation at the DfE Steering Group which leads to action here in Wales.”

At the meeting of the Cross Party on Asbestos on 21st September 2016 the minutes record that Tim Cox representing the NASUWT stated,

“...that the group should mirror the DfE group in terms of composition and that it should not be confined to government bodies. The present composition should be challenged. Victim support groups and parent organisations should also be represented. There is currently a lack of transparency and openness.”

The Cross Party Group which included representatives from NASUWT and UCAC agreed the Welsh Government should be asked to expand the group to include other stakeholders.

In his letter to the Chair of Committee the Minister for Education and Skills Huw Lewis AM 5th April 2016 provided further detail regarding the Asbestos Management in School Working Group in Wales

“I would like to clarify that a meeting was in fact held on 29 June 2015 to discuss the review of policy by the Department for Education in England (DfE). As we considered that the group’s input was of value to Wales we agreed that it should be established formally as an Asbestos Management in Schools Working Group. A further meeting was then held in in January 2016 to discuss the draft terms of reference for the group and to agree the way forward.

“The members of the group continue to monitor progress in England. When developments occur the Welsh Ministers will consider the implications for Wales with respect to guidance and policy decisions. It is at this stage that additional key stakeholder groups will be consulted, including the teaching unions.”

I would respectfully submit that irrespective of the strong views held by those attending the Cross Party Group on Asbestos including in particular the Wales TUC and the teaching unions in Wales that the group needs to be expanded, that bearing in mind the developments in England as outlined above, that now is the time has been reached where key stakeholder groups should be consulted. I would remind that school workers are represented by additional unions to the teaching unions, whose members are also affected by asbestos, including teaching assistants, caretakers and domestic and cooking staff.

5. Conclusion

On the 1st March 2016 I wrote,

“In the meantime the issue of asbestos in schools in Wales is clearly not receiving the same attention as in schools in England. This cannot be right.”

Over 12 months later I would repeat this statement. It would seem that the gap between England and Wales with regard to asbestos in schools is widening rather than narrowing. This is not acceptable.

Cenric Clement-Evans 17th May 2017