



JUAC Position on Academisation and Asbestos

Background

The UK Government set out its intent in 2016 to introduce a new Bill entitled 'Education for All' that would allow them to potentially:

- set a foundation for a system in which every state school in England is moved towards academy status;
- convert schools to academies in local authorities deemed to be underperforming; and
- convert schools to academies where local authorities can no longer viably support their remaining unacademised schools.

It is clear from this that the Government's intention is that all schools in England will move towards academisation over time. JUAC believes that this increasing academisation raises a number of issues in relation to the safe management of the asbestos which is present in at least 85% of schools. This paper sets out what these issues are and what JUAC believes needs to happen to protect staff and pupils from the risk of asbestos exposure.

Asbestos risks presented by the move to academisation:

1. JUAC has been raising for some time the issue of the inconsistent quality and integrity of schools' asbestos surveys and risk registers. JUAC members report many instances where surveys have failed to identify asbestos that is picked up later by a subsequent survey, and of very poorly maintained asbestos registers and records of where asbestos is present in schools. This situation persists as the HSE fails to survey or check how schools are managing asbestos. The recent DfE online survey of head teachers picked up some of these cases of poor practice, but many others remain as the survey was not compulsory, and relies on self disclosure.

A multi academy trust (MAT) taking over a school from a local authority can decide to carry out its own asbestos survey, or choose to rely on the current information. MATs may not be knowledgeable about asbestos and their subsequent responsibilities. It is likely that MATs will take on liabilities that they do not fully understand and this will result in significant unforeseen costs. Staff and pupils will be put at risk if the MAT schools do not manage asbestos effectively or remove it where that is the best option.

2. Local authorities have been duty holders for schools with asbestos for many years, and many of them perform this role well, supported by expert staff. Whilst the erosion of local



authority services has undermined this in some areas, others remain beacons of expertise and good practice.

Whilst we know that some academies take their responsibilities in relation to asbestos very seriously, the move to many, often small, MATs or stand-alone academies increases the risk of poor management, a risk that could be addressed by the HSE carrying out proactive inspections, something which does not happen under current arrangements. Having relied upon local authorities as duty holders, school leaders and MAT CEOs will not necessarily be fully aware of their obligations or how to fulfil them. The risk is that ‘they do not know what they do not know’ and such ignorance could jeopardise the safety of pupils and staff in such schools.

Currently, many local authorities allow academies to ‘buy back’ their health and safety services and advice, including in regards to asbestos management. However, as local authorities lose control of schools, they are likely to close their health and safety departments, and academies will lose this source of guidance. Without local authority support, academies will most likely have to rely on commercial consultants, with no guarantee of quality or cost-effectiveness.

3. JUAC has been lobbying for some time regarding the risk of academies failing to have public liability insurance cover for future asbestos claims from former pupils. Local authorities self-insure instead of taking out public liability insurance, but when schools become academies, they have to take out insurance. All public liability insurance policies effectively exclude the risk of asbestos as they will not pay out where the insured organisation has been negligent, and an asbestos claim will only be successful where the organisation can be proved to have been negligent in exposing an individual to asbestos.

The DfE introduced the Risk Protection Arrangement (RPA) for academies as an alternative to commercial public liability insurance. The RPA covers all risks as would an insurance policy, but also covers academies for any future claims for asbestos exposure from former pupils or former staff – a risk which is not covered by insurance.

So far, this offer has not been universally taken up. Those academies which have not done so are generally ignorant of the fact that they are not insured against this risk, as they often mistakenly believe that their public liability insurance will cover them. Pupils and staff in such academies will have little recourse if exposure to asbestos in that academy leads to mesothelioma in the future, and individual trustees may also hold some personal responsibility.

JUAC campaigned for a number of years before the DfE introduced the RPA and it is vital all academies participate. Furthermore, the DfE has not confirmed that the RPA will remain open indefinitely, and JUAC has concerns that as the number of academies grows, the DfE will reconsider the RPA’s scope.



JUAC Recommendations

1. The DfE should require that where a school is known to contain asbestos, the MAT taking over the school should carry out its own asbestos survey to understand the financial liability that it is taking over from the local authority.
2. In order to protect pupils and staff in schools that become academies, the Education Funding Agency (EFA) should create stringent requirements for all academies to access expert advice in their management of asbestos, whether in-house or bought in. There should be a mandatory survey to assess whether the trustees and leadership of the academy understand their responsibilities and a plan for how they will deliver them, including informing all staff of the location of asbestos in the school. This should be part of the approval process for a school to become an academy.
3. JUAC continues to believe that if schools are expected to manage their asbestos then there must be systems to ensure that schools have safe asbestos management processes in place. HSE proactive inspections should be reintroduced to identify those schools and academies that are failing to manage their asbestos and ensure that standards are brought up to an acceptable level. Previous HSE inspection programmes have targeted non-LA schools - this recognises that safety standards in these schools may be lower. In the new landscape, and given the vulnerability of children, the HSE should urgently reconsider its designation of the schools sector as 'low risk'. Increasing fragmentation will not improve health and safety standards, and will most likely make the situation worse.
4. The DfE should create an obligation that all academies take up the RPA cover, without which academies have no insurance cover against future asbestos personal injury claims from former pupils or staff.
5. The RPA scheme must stay in place in order to provide this protection for future mesothelioma victims.