

Minutes of the Eleventh Meeting of the Asbestos Liaison Group, held on 15 January 2004, Fortune Room, Rose Court, London

Present

HSE

Anne Wilson, Chair, Head of Health Unit
Jim Skilling, Head of ALU
June Cairns, ALU
Liz Standen, ALU
Martin Gibson, Scotland Specialist Group
John Claxton, FOD, Norwich
Bill Macdonald, CFPD2
Martin Stear, CSD3A
Tommy Taylor, CSD3A

TAs/TUs

Mike Keeligan, ACAD
Mike Wilkes, ACAD
Jean Prentice, ACAD
Terry Jago, ARCA
Grant Beglan, ARCA
Rob Blackburn, ATaC
Leonie Wingrove, TGWU
Kim Sunley, GMB

1 Introductions, apologies, welcome etc

1.1 Ms Wilson welcomed everyone to the meeting and introduced Kim Sunley, GMB and Tommy Taylor, HSE. She welcomed back Liz Standen and John Claxton, who was deputising for Ray Cooke, who was unable to attend, as was Robbert Hermanns and John Wring, NFDC. On behalf of the Group, she extended thanks to Martin Stear, who was due to leave HSE and to Tracy Phillips, who had moved to another Government Department on promotion, for their contribution to the Group over the years. She also announced that Jim Skilling would be leaving the Asbestos Licensing Unit shortly, although he would still be able to attend the May meeting.

2 Minutes of the meeting held on 25 September 2003

2.1 The minutes were agreed.

3 Matters arising

3.1 **(3.1 – Protimeter devices)** Dr Gibson reported that a draft version of the HSL report had been produced and circulated within HSE, but that it required some further work before it could be made available on general release. He was in discussion with HSL about this.

Action: Dr Gibson

3.2 **(3.2 – type 5 coveralls)** Mr Stear said that he had included the standard Type 5, category 3 for coveralls in the draft licensed contractors guide, although he was a bit unclear about what was actually meant by category 3. Mr Skilling was uncomfortable about stipulating a particular category, when another one might be acceptable. He undertook to look into this a bit more together with others (eg Dr Gibson and Mr Beglan).

Action: Mr Skilling

3.3 **(3.3 – soffits guidance)** Dr Gibson reported that the deadline for internal HSE consultation was imminent and assured external members of the Group that they would be given the opportunity to comment. His intention was to incorporate internal comments and circulate the revised version in well in advance of the next ALG meeting to allow for an informed discussion at it.

Action: Dr Gibson

3.4 **(3.4 – revised method statement aide memoire)** Ms Cairns confirmed that ALU had written to all licence holders informing them of the revised method statement format, including the need for appropriate, representative sketches and diagrams. The letter (a copy of which was sent to ALG members after the meeting) also included information about obtaining electronic updates on licensing issues by registering on the asbestos topic pages of the website. TAs/TUs were asked to encourage their members to register as this would be ALU's preferred method of communicating and consulting with the industry from now on. HSE's Infoline have been asked to tell appropriate callers about the facility

In response to a query about who should receive copies of the generic procedural information, Mr Skilling confirmed that this should be the HO ALPI, but that there might be occasions when local ALPIs would also request the generic information, in which case it should be supplied. The latest copy of the company's procedures should also be held on site.

Item discharged

3.5 **(3.5 – effective laundering of towels/coveralls)** Following the last meeting, a revised version of the memo had been circulated to members. Subject to minor changes, the draft was accepted and would be issued shortly.

Item discharged

3.6 **(3.8 – asbestos waste packaging items)** Mr Skilling reported that ALU would make one last attempt to resolve the problem of conflicting legislation so that an exemption can be allowed for wrap and cut asbestos waste to be regarded as an approved package.

Action: Mrs Standen

3.7 **(3.11 – Disposable RPE – appropriate face fit test – amendment to ALG Memo 4/02 on licensed scaffolders)**. Ms Cairns reported that the memo had now been amended and issued as ALG memo 3/03.

Item discharged

3.8 **(3.13 - Training of new supervisors)** As requested at the last meeting, members had submitted their comments on the training chapter of the new guidance to Mr Stear.

Item discharged

3.9 **(4.1.1 CAWR Regulation 20 – Standards for Analysis)** Mr Macdonald stated that there would be no prospect of changing the regulation, ACoP or guidance to allow other bulk sampling methods, such as the use of a Raman Probe by surveyors on site to determine whether asbestos was present in materials, in the immediate future and that this would have to await the revision of CAWR 2002.

Item discharged

3.10 **(4.2.1 -PVA use in enclosures -)** Mr Keeligan confirmed that he had submitted comments on behalf of ACAD on this issue to Mr Stear for inclusion in the licensed contractors consolidated guidance.

Item discharged

3.11 **(4.2.3 – PVA use in enclosures continued)** Following the discussion at the last meeting, Dr Gibson made the distinction of when it was acceptable and not acceptable to apply PVA. Its use was acceptable as a measure to suppress asbestos fibres to stop spread prior to and during removal or after air sampling prior to dismantling the enclosure. The method statement should specify where PVA would be used. It was not acceptable to apply PVA on surfaces after removal prior to clearance unless directed by the analyst. In these instances PVA should only be used on non-asbestos dust. PVA should be applied in a controlled manner to the relevant surfaces otherwise any overspray may be judged by the analyst to be improper or illegitimate. The analyst would make a professional judgement insisting where necessary that the PVA be washed off. Once PVA has dried out it is very difficult to remove. The analyst should record where PVA has been used.

Item discharged

3.12 **(4.3.2 - Accidental exposure – no reference limit)** Mr Macdonald confirmed that the issue of when and what should be recorded in the event of inadvertent exposure would be considered when the regulations and ACoPs were reviewed. In the meantime, HSE would be considering the issue of retrospective recording. The meeting noted that the primary duty was prevention of current and future exposure.

Item discharged

3.13. **(6.4 – CAWR medicals and fitness for work)** The consensus view was that members would like to see the regulations changed so that the CAWR medical became a fitness for work medical (currently it isn't). Whilst the consequences for employees declared unfit were acknowledged, it was agreed that if people were physically unfit to carry out the work, then the individuals and their employers needed to know this in advance. Mr Skilling mentioned that from 1 April 2004, HSE will introduce fitness for work medicals for nominated asbestos personnel. Mr Wilkes added that his company had a system whereby employees gave consent for contact to be made with their GP, who would confirm whether or not the individual was sufficiently fit to wear a respirator. The issue would be progressed when the regulations were reviewed, although some employers might want to move towards a fitness for work medical in the meantime.

Item discharged

3.14 **(7.3.1 - Publicly Available Standard)** Following meetings that Mr Stear had attended with ARCA and ACAD, he was pleased to report that work was now underway to develop three standards – wet injection equipment, which was well advanced; type H vacuums and NPU's, for which work had yet to start. Panels, consisting of representatives from HSE, BSI and the industry, were being formed for each standard. Bob Daunton would take over the HSE input now that Martin Stear was leaving. The work was being financed by HSE, ARCA and ACAD and was scheduled for completion by the end of 2004. Regular progress reports would be provided.

Item discharged

3.15 **(7.5.3 Current Issues of Concern)** – remitted to substantive agenda item 4.

4 ALU Issues – ALG is it relevant?

Mr Skilling referred to the memo he had sent members in which he had outlined ALU's concerns about poor standards involving licence holders and thanked those who had sent him written responses. He was concerned that such standards were typical of the industry and if so, what could be done about it. It was his belief that if the Asbestos Liaison Group was still relevant, then we would have to work together to make a step change to improve the practices of those working in the asbestos industry. This was not something that HSE could do alone and the idea held by some that the solution lay with HSE doing more "policing" by visiting more asbestos operations on site was not the answer. The step change had to come from within the industry itself.

A lively discussion took place about the issues raised by Mr Skilling, the details of which have not been included in the minutes (provided as a separate annex). Following discussion, Miss Wilson proposed that a small steering group, consisting of representatives from HSE, TUs and TAs should be set up to take the discussion forward and to develop an action plan to present to the May meeting of ALG. (Mr Beglan, Ms Sunley and Ms Cairns were nominated).

Action: Ms Cairns

5 Review of Guidance

5.1 Mr Stear reported that the revised draft of the consolidated licensed contractors guide would be issued to key external people (eg ALG members) week commencing 19 January for comments by 13 February. He confirmed that Dr Gibson would take on responsibility for completing the guidance when he left HSE at the end of the month.

5.2 Dr Gibson gave a presentation of the decontamination process for transiting and non transiting situations and for transfer of waste via bag locks. It was agreed that Dr Gibson would copy the overheads and include these in the copies of the revised draft guidance sent to ALG members.

5.3 Mrs Standen circulated a draft ALG memo about the use of asbestos removal equipment by licensed contractors in potentially explosive atmospheres and asked for comments by 31 January.

Action: TAs/TUs

6 Policy Group Issues

6.1 **Resources** - Mr Macdonald reported that three of his staff had left his team on 28 November. Authority had been given to fill the B3 and 4 posts, although these were still vacant.

6.2 **"Ghost ships"** - four of the ships had arrived in Hartlepool but no work was being carried out for a variety of reasons. If the issues could not be resolved, then there was a possibility that the ships would return to the USA.

6.3 **Insurance** – Mr Macdonald has attended a meeting with the Association of British Insurers (ABI), which had also involved many other Government Departments. The general feeling was that insurance for asbestos work was still obtainable, although it was very expensive. ABI have been asked to host a seminar for the insurance industry and HSE will present a session. DWP had been supportive of HSE, as they confirmed the view that the duty to manage regulation was

proportionate and should not be blamed as the reason for asbestos insurance problems.

6.4 **HSE website developments** – he reported that work was progressing in conjunction with ALU to streamline the asbestos campaign and general licensing topic pages on HSE’s website. The aim would be to have a single central access point.

6.5 **Duty to manage video** – How are You to-day? This has been re-shot and was currently with various focus groups for comment.

6.6 The meeting noted that the **Asbestos Watchdog** website had gone live.

6.7 **BOHS/UKAS/HSL meeting** – Mr Macdonald attended this meeting on 25 November 2003, the notes of which are appended to the minutes. In response to Mr Blackburn’s query about whether surveying companies would require accreditation when CAWR 2002 was revised, Mr Macdonald thought that, given the time constraints, that this would be unlikely.

7 **Relevant issues raised by ALU/Trade Associations/Trades Unions**

7.1 **Asbestos containing decorative coatings** - Mr Skilling reported that in readiness for the review of the Asbestos (Licensing) Regulations, HSL had been commissioned to undertake work on asbestos containing decorative coatings to establish the level of fibre release when (a) buildings were demolished with residual amounts of material left in situ; and (b) work was done (usually in domestic properties) on damaged ceilings, etc covered with asbestos containing decorative coatings. The results would help inform any subsequent debate about whether decorative coatings should remain within the licensing regime. He also mentioned that reference to a revised analytical technique to test for asbestos in decorative coatings would be included in the next edition of Fibre Aspects, the newsletter of the Committee for Fibre Measurement.

7.2 **General queries** - Mr Jago had raised some issues prior to the meeting, which had been resolved by correspondence. It was agreed that in future, such responses would be copied to all ALG members so that everyone was aware of the issue and outcome.

All to note

7.3 **4-stage clearance and certificate of reoccupation** – Mr Jago asked whether a 4-stage clearance and certificate of reoccupation were required on all contracts, regardless of an enclosure being erected. He referred to ACoP L27 paragraph 121 (for non licensable work) which stated that “... Unless the work with the asbestos or ACM was of a minor nature (eg tasks covered by Asbestos Essentials task manual) clearance air sampling and a certificate of reoccupation will be required”. He had been under the impression that if there was no enclosure, then there could not be 4 stages to the clearance process and no certificate of reoccupation was necessary.

7.4 Dr Gibson explained that the general rule of thumb was that if work was carried out in an enclosure then 4 stage clearance was appropriate and a certificate of reoccupation was required. If there was no enclosure, or the work was external, then no air sampling would be conducted (ie no stage 3) and the certificate of reoccupation should be annotated accordingly.

Post meeting note – Dr Gibson will review the various levels of clearance certification that are applicable in different work situations. This information will then be included in the analyst and consolidated licence contractors guides.

Action: Dr Gibson

8 Date, time, location of next meeting

8.1 The next meeting will take place on 20 May 2004 in HSE's Edinburgh office (23 September 2004, Rose Court).

Annex 1

ALG – is it still relevant - record of discussion at 15.1.04 ALG

1 Mr Skilling referred to the memo he had sent members in which he had outlined ALU's concerns about poor standards involving licence holders and thanked those who had sent him written responses. He was concerned that such standards were typical of the industry and if so, what could be done about it. It was his belief that if the Asbestos Liaison Group was still relevant, then we would have to work together to make a step change to improve the practices of those working in the asbestos industry. This was not something that HSE could do alone and the idea held by some that the solution lay with HSE doing more "policing" by visiting more asbestos operations on site was not the answer. The step change had to come from within the industry itself.

2 He pointed out that asbestos licence holders were different from many other duty holders HSE encountered in that at least every three years HSE was able to meet, discuss and assess senior management before they were granted a licence. Yet, many of the same people who had demonstrated their competence and given a commitment to undertaking asbestos work in accordance with the regulations and their licence conditions, appeared to throw away the rule book and condone work methods, which contravened the law as soon as HSE's back was turned.

3 He reported that since 1 April 2004 to date HSE has:

- issued 106 enforcement notices regarding work with asbestos;
- successfully prosecuted 24 defendants on 53 charges concerning asbestos matters;
- prosecuted 5 licence holders including one ARCA and one ACAD member;
- issued 29 notices against licence holders, over 50% of which were to Trade Association members (8 to ARCA members; 4 to ACAD members; and 4 to NFDC members; unfortunately 3 ARCA members received more than one notice and one of these received 3 notices)

4 In addition, in certain of these enforcement notice situations, inspectors would be taking matters further.

5 He acknowledged that ALG, established in 2000 had naturally needed some time to settle in, familiarise itself with the mechanics, build up trust, etc and some good work had been achieved in clarifying a range of issues. But three years on it was difficult, especially in the light of the above statistics, to see what value ALG was adding in the wider sense. Often, the issues raised at meetings tended to concentrate on minor queries that might have been more appropriately dealt with through correspondence and it appeared that the participants to gain most benefit from ALG were the trade associations. If ALG was to continue, then it was time to challenge what the Group was about, to determine the issues to be tackled and to demonstrate its worth.

6 Mr Macdonald supported this view and explained that some critics might argue that the performance statistics show that licensing has not worked and should be replaced with something else. If the performance has plateaued, we must try something else eg a points system for various offences leading to licence suspension, the detail of which would be for ALG to decide. He felt ALG needed a programme with targets. If TAs were to get tougher, they needed to publish in advance the criteria for membership and eviction. In reality, there was little chance of HSE getting more resource to do significantly more inspections. If contactors then perceived their chances of “getting caught” were low, then HSE needed to consider a “whistle blowers/snitch” line, for employees, safety reps, contractors, trainers, trade associations, etc which would improve HSE’s intelligence. These steps could only be taken forward with the support of ALG – with all members signed up to the initiatives and accepting the consequences if, for instance, a TA member met the criteria for licence suspension. To do this perhaps ALG members would have to sign a concordant to confirm their acceptance and commitment.

7 Mr Jago did not entirely share HSE’s pessimistic view. He saw ALG as a very important “plus” that had led to better working relationships between HSE and the industry and felt that the only way the trade association could act as a conduit to the industry was through policy and training eg better information to members on the interpretation of issues (as a result of ALG), delivering more robust training in line with the revised ACoP to educate asbestos workers better, etc. ARCA training centres had led the way since the mid 1990s. He said that ARCA had also taken steps to improve standards through its mandatory site audit scheme, which demonstrated that members were able to apply the proper standards and more recently through the establishment of a new standards committee, which would deal with bad practice issues arising from the audits. It was depressing for the Association when the performance of one of their members lapsed. However he did think that more policing was required by HSE inspectors and that the current levels (<3% of notifications inspected) was inadequate.

8 Mr Beglan commented that HSE needed to make it harder to obtain a licence in the first place and to make it easier to revoke licences, as this would send a clear signal to the industry. He added that ARCA were taking steps to tighten up their site audit scheme and to develop criteria for ejecting disreputable members from the trade association. ...but this raised the question of what was achieved by expulsion.

9 Mr Blackburn felt that one of the strengths of ALG had been as a source of sound technical advice, having provided clarification on a range of issues. He felt HSE’s targeting of licence holders might distort the overall performance picture and made the point that the UKAS assessment took 4 days in comparison with the half day assessment interview undertaken by HSE. He wondered why companies that seemed unable to write a decent method statement could be granted a licence.

10 Mr Keeligan said that the insurance community viewed the asbestos industry as a well regulated and well managed one. He agreed that the trade associations acted as a conduit to the industry and that training, as a means of educating asbestos workers, was of paramount importance. He also saw scope for training associations and trainers to channel feedback to HSE eg information obtained about clients accepting incredibly cheap quotes for work (often a problem as the customer was only interested in getting the job done as cheaply as possible); feedback from trainees about bad practice within companies, etc.

11 Mr Wilkes believed that the ALG had achieved improved liaison with HSE and had helped to interpret and clarify a range of issues. He felt it was beholden on trade associations to build on their reputation, so that being a member actually meant something, and to increase their membership but also to have the resolve to eject members when circumstances warranted it. TAs should aim for a climate whereby customers would question and be suspicious of contractors who were not TA members. Given the amount of work carried out by TAs, he wondered how companies who weren't members managed.

12 Ms Sunley felt there could be more of a partnership between TUs and TAs and referred to the Worker Safety Advisor pilot involving UCATT, TGWU and the Federation of Master Builders whereby TU reps were given more training and then worked on site as roving advisors. This had generated better standards and discussion amongst those involved. Possibly money could be found from DWP's Champion Fund to do more on this. Whistle blowing was also an issue.

13 Mr Claxton said that as the Government is target orientated, it expects its Departments to look at the what, the why and the how, to measure and to set targets for improvement. So for licensing we need to look at its purpose, what it has achieved, and set objectives for improvement. Licensing should distinguish between good companies, who occasionally get it wrong and bad companies who regularly get it wrong. He would like a system which was more stringent and allowed for licence suspension and "easier" revocation. He noted that ALG had identified good and bad practice and had produced some good documents, which had helped advance the industry, but there was scope for the Group to operate differently, as he had observed in other joint committees. For instance, ALG could operate as the overarching policy body which drives the work agenda forward, with the actual work being remitted to small working groups. He wondered what members wanted and pointed out that if industry wanted to retain ALG then we would have to demonstrate that the Group pushes forward a joint agenda with HSE, TUs and TAs to improve standards. He also referred to the problems associated with the mobile workforce which was prevalent within the industry with few employees per employer and agency workers. Bad standards generally related to management and supervision issues and these aspects needed to be looked at critically at licence assessment.

14 Prior to leaving HSE, Tracy Phillips had submitted her views. She had felt that ALG had lost its focus, that many of the issues raised were trivial, that it was too one sided with HSE doing much of the work and that the TAs wanted prescription. In her view, ALG needed a programme of work with outcomes and targets, which would then form the basis of the meetings' agendas.

15 Miss Wilson summarised the discussion. Whilst good work had been done by ALG, it was clear that the time was ripe for a step change. Our objectives should include achieving exemplary standards in the asbestos removal industry; elimination of poor performing companies and personnel; and prevention of any new cases of asbestos related disease amongst employers, operatives and customers.

16 To raise the stakes and make a significant step change, the following themes might be suitable for development:

- a motivational leadership approach within the industry lead by directors ie influence companies from within;
- tougher penalties – more revocation; more licence application rejections; licence suspension;

- Trade Association – powers/limitations of TA membership; maintenance of membership, importance of membership status, expulsion criteria;
- Trades Unions - worker safety advisors approach;
- Intelligence - value of getting inside company intelligence from workers/training providers/safety reps, etc;
- Focusing on poor performers – what can be done to get rid of them?

17 The aim would be to use the above to develop a programme of work with targets, which would be assigned to different subsets of ALG to deliver.

Action

18 It was agreed to set up a small steering group with representatives from HSE, the TUs and TAs to take forward the discussion and develop an action plan to present to ALG at the May meeting. Reps nominated were Mr Beglan (Trade Associations), Ms Sunley (Trades Unions) and Ms Cairns (HSE).

Annex 2

MEETING BETWEEN HSE, HSL, BOHS AND UKAS ON 24 NOVEMBER 2003

1. Persons Present:

David O'Malley, Peter Bosworth and Neil Pickering (BOHS)
Barry Tylee and Gary Burdett (HSL)
David McAuliffe (UKAS)
Bill Macdonald (HSE)

2. Oversight of Proficiency Models:

Agreement was reached that an oversight mechanism should be established for P cert courses administered by BOHS. This would cover contents of syllabus, deliver standards, fraud prevention and other aspects of the courses, but would not adopt a directing role. Its purpose would be to increase public confidence in the examination system.

Action: HSE to investigate other oversight models and report back.

Action: BOHS to provide regular updates of numbers taking P cert examinations.

3. Competency:

Agreement that although the P402 certificate was an essential first step towards establishing the competence of surveyors, it was important to prevent it being presented as sufficient in its own right.

Action: BOHS to consider how they could ensure training providers accurately reflect this position to candidates and clients.

Action: HSE to carry out initiative during 2004 designed to reinforce the campaign against non-competent surveyors (if resources allow).

4. Bulk Analysis:

The existing deadline of 1 January 2004 for all those engaged in bulk analysis to hold P401 (or 301 plus oral) will stand. No further reminders will be given by UKAS.

Action: UKAS to raise a non-conformity at all visits after 1/1/04 unless surveyors have the appropriate qualification.

5. 4-Stage Clearance Procedure (P404/P403)

A project is underway to develop and deliver an assessment and accreditation regime for the new 4-stage clearance certification system. The UKAS Technical Committee is currently preparing guidance, and a pilot assessment process, involving 10/12 organisations, should be completed by April 2004. Accreditation for the new procedure will then be rolled out during the next 12-15 months as part of annual assessment visits. Accreditation will then be granted en masse in September 2005.

In common with bulk analysis, all analysts engaged in clearance procedures will be expected to have the appropriate qualification (i.e. new P404/P403, or "old" version of the P cert plus proof of in-house training/test on changed material)

Action: BOHS to ensure training providers are ready to run courses in new procedures by April 2004.

Action: UKAS to include new procedures in LAB 30 (2004 revision).

Action: HSE to consider amending CAW 2002 to make 4-stage clearance accreditation compulsory in 2005 (possibly with lead in period).

6. WHO Counting Method (P403):

For legal reasons, HSE have decided to bring in the new counting method at the same time that CAW is amended. This will be in the autumn of 2005. The demand for P403 is therefore likely to increase significantly.

Action: BOHS to change course syllabus and examinations when the Regulations are amended.

Action: UKAS to expect all analysts to have the new P403 (or old P403 plus proof of training/examination on changes) by 2005

Action: UKAS to include WHO test procedures in LAB 30 (2005 revision).

7. AIMS:

A satisfactory AIMS score will be required in order to ensure continuing UKAS accreditation.

Action: UKAS/HSE to ensure position reflected in LAB 30 / HSG - analyst's guidance.

Action: HSL to write to BOHS with suggestions for a revised scoring scheme for the bulk asbestos practical exam, once the AIMS scoring protocol changes.

8. Skin Programme:

Dermal risks have been selected as one of 3 priority areas under HSE's Chemicals Strategy. As part of its strategy HSE is aiming to raise the profile of skin disease and skin absorption – often regarded as a Cinderella subject, and is seeking the assistance of BOHS in this.

Action: BOHS agreed to review the content of its occupational hygiene course to determine whether the right balance between skin – inhalation risks is present.