

Minutes of the Eighth Meeting of the Asbestos Liaison Group, held on 21 January 2003, Belford House, Edinburgh

Present

HSE

Anne Wilson, Head of Health Unit
Jim Skilling, Head of ALU
June Cairns, ALU
Liz Standen, ALU
Martin Gibson, Scotland Specialist Group
Robbert Hermanns, Scotland Specialist Group
John Claxton, FOD, Norwich
Ray Cooke, FOD, Birmingham
Martin Stear, TD3
Tracy Phillips, HDC
Bill Macdonald, HDC
Katrina Campbell, ALU, Observer

TAs/TUs

Mike Keeligan, ACAD
Mike Wilkes, ACAD
Jean Prentice, ACAD
Terry Jago, ARCA
Peter Dolan, ARCA
Rob Blackburn, ATaC
Neil Moore, TGWU

1 Introductions, apologies, welcome etc

1.1 Ms Wilson welcomed everyone to the meeting and introduced Mike Keeligan, from ACAD, Ray Cooke, the new HSE ALPI representative and Katrina Campbell from ALU. Apologies for absence were received on behalf of Tony Tynan, NFDC and TGWU. She extended thanks on behalf of ALG to Nigel Bryson, who had now left GMB and to John Claxton, HSE, the previous ALPI representative, for their contributions to the Group.

2 Minutes of the meeting held on 24 September 2002

2.1 The minutes were agreed subject to an amendment at paragraph 4.1.2 to read as follows: "In response to a query on this, Mr Skilling confirmed that BIOH had not been involved and mentioned that completion of P402 course would not be sufficient to be deemed competent to obtain a supervisory asbestos licence".

3 Matters arising

3.1 (3.2) Dr Gibson reported that HSL had surveyed HSE staff and found that few staff made use of Protimeter devices to test moisture levels. HSL had now purchased a Protimeter Hygromaster so its effectiveness could be tested. He hoped to report further progress following a meeting with HSL in February.

Action: Dr Gibson

3.2 (3.5) ACAD's comments about not making chest X-rays mandatory as part of the CAWR medical examination, had been forwarded to EMAS for consideration. Further discussion was remitted to the substantive agenda item on this matter.

Item discharged

3.3 (3.7) Mrs Standen reported that from 1 January 2003, the CSC Scheme was now open to asbestos workers. There were 3 routes into the Scheme, the details of which she would circulate by email (post meeting note — now done). In summary these were (a) by applying for a Green Card as a construction operative (no specific skills quoted); (b) by applying for a Blue Card as an asbestos removal operative (this

involved providing industry accreditation. Route open until 16.12.04, thereafter applications would be via the “Experienced Worker “route; and (c) for trainees via a Red Card (asbestos operative trainee card), valid for 3 years, but they had to register for an NVQ level 2.

Item discharged

3.4 (3.8) Mr Skilling reported that ALU’s revised disclosure procedures had been implemented and were in the process of being documented.

Item discharged

3.5 (3.9) Mr Stear reported that there was no current standard for “type 5” coveralls and that a draft standard had been under development for more than 3 years. The draft standard considered various physical performance properties eg performance against abrasion, puncture, seam strength, tearing, etc as well as the performance of the material as a barrier to dust. Further details would be emailed to members (post meeting note — now done). There were literally thousands of variants of properties and performance for something described as a “Type 5” suit. Mr Stear agreed to pursue further and liaise with manufacturers about use of any testing process, application of an in house standard, matching the right coverall to the worker (stripper, surveyor, analysts etc) etc and report back.

Action: Mr Stear

3.6 (3.10) Dr Gibson reported that two meetings had been held with HSE/Home Improvement Companies (HICs) and representatives from ARCA and ACAD to discuss removal of AIB soffits. Draft guidance had been discussed at the second meeting in January, and this was now being reviewed following comments received. The main issues included: expanding the scope of the guidance to include soffits and other external AIB; asbestos cement soffits and over cladding; type of clothing to be worn under overalls; RPE suitability; DCU clearance requirements and full enclosure not being reasonably practicable in many cases. Once the revised draft had been consulted upon within HSE and with the HSE/HICs/ARCA/ACAD group, it would then be presented to ALG (hopefully at the next meeting).

Action: Dr Gibson

3.7 (3.11) Ms Cairns reported that HSE’s waiver policy had been published as ALG Memo 6/02 on 17.12.02.

Item discharged

3.8 (3.14) Mr Macdonald reported that the work being undertaken by the Committee for Fibre Measurement (CFM) had found that the revised WHO counting methods for asbestos fibres would not in practice make as much difference as originally thought. However, the EU proposals to amend the Asbestos Worker Protection Directive, which planned to introduce a lower single control limit of 0.1 f/ml for all types of asbestos, would have a greater impact than the new WHO counting method. When CFM had completed its work, he would discuss the RPE implications with Mr Rajan. Ms Prentice pointed out that different types of asbestos material had a different effect on the counts eg AIB resulted in a higher ratio of fibres. It was agreed to discharge the matter in the meantime and arrange to discuss at a future meeting.

Item discharged

3.9 (3.16) Ms Cairns reported that following ALPI comments from the first round of consultation on the revised method statement aide memoire, a substantially revised second draft was currently being circulated for comment. Once this had been agreed, ALG would be consulted.

Action: Ms Cairns

3.10 (4.1.2) Mrs Standen reported that having considered the aims and syllabuses of the BIOH P402 and P405 courses, it was ALU's view that P402 was not suitable to ensure that a supervisory licence holder (SLH) had been fully trained. However, P405 could be made suitable for SLHs, with some adjustments and additional modules. (Details provided in a handout at the meeting).

Item discharged

3.11 (4.3.3) Ms Cairns confirmed that the HSL report on the investigation into the effective laundering of towels and coveralls used for asbestos work had been published and a copy of the report had been sent to ALG members before Christmas. She said that guidance had been given to ALPIs to follow the recommendations in the report, which included the change in procedure whereby individuals should dry themselves as thoroughly as possible in the shower cubicle of the hygiene facility.

3.12 Mr Wilkes expressed concern that guidance had been provided to HSE staff, and not the industry, which had resulted in problems being experienced on site. He queried why the guidance was being changed, when the report inferred there wasn't a problem ("fibre levels were calculated not to be significant when workplace conditions were taken into account"). Ms Cairns replied that the guidance was developed as a result of the report's recommendations. Given that contamination had been found on towels, HSE could not ignore this information and had taken a precautionary approach, emphasising better decontamination and drying in the shower cubicle. However, the approach was proportionate as HSE had not banned the use of cotton towels or said that cotton towels could not be laundered. She accepted that there would be individuals who decontaminated themselves properly and who did not misuse their towel and whose towels did not therefore become contaminated. However, given the findings in the report, ALU had to develop guidance that would cover situations when decontamination procedures were not properly followed.

3.13 Mr Blackburn found the report illogical. He queried: why there was no attempt to identify the source of contamination and yet made recommendations as if the source had been identified; why it "allowed" drying off to be finished in the clean end having stated that thorough drying should be completed in the shower area ie if thoroughly dried what further drying was necessary; the fact that there was no mention of a standard for filtration and yet passed comment on the lack of filtration in one of the laundries; the absence of comment on the cumulative effect on fibre levels from towels used on a daily basis with many operatives; how it was acceptable to use "clean" towels which still contained residual contamination when the licensing regulations stated "no matter how small the quantity of asbestos " a product was defined as an asbestos containing material; and whether the contaminated towels fell under the definition of either an asbestos containing material or licensable debris under the technical definitions of the current regulations.

3.14 Dr Gibson explained that the study had not been asked to determine the source of any contamination. As such, HSL had taken the logical view that the bulk of contamination would have arisen from poor decontamination (hair, nails, etc) and misusing towels to wipe RPE, boots etc. This being the case, HSE had then taken a practical approach to try and minimise the potential for any contamination to be carried over into the clean end. If the recommendations were followed, the possibility of transfer of contamination to the clean end was very slight indeed. If HSE became aware of evidence to the contrary, then action would have to be taken. Research had shown that aggressive laundering and drying processes removed the majority of asbestos. Therefore the risk to someone from using a “clean” towel was very, very low. Any remaining fibres would not be easily released. Also the towels were being used in well-ventilated DCUs, where they would quickly become damp, where there was a good flow of air and where the potential for exposure was very, very low. Filtration was a matter for the Environment Agency/SEPA and as HSE understood it, there was no standard at present.

3.15 Ms Cairns would prepare draft guidance for circulation to ALG.

Action: Ms Cairns

3.16 (4.4.1) Mrs Standen had written to 24 DCU suppliers about the minimum requirements for modular DCUs and had taken their comments into account in preparing the draft guidance.

Item discharged

3.17 (6.1.1) Mr Macdonald had raised the issue of lack of appeals procedure for BIOH examinations and associated issues at CFM and it was proposed to hold a separate meeting with BIOH to find a way forward. Ms Prentice reported that the situation had improved — questions were getting better, course providers were being vetted and any appeals were referred to an individual who had been appointed to review the submission. Mr Blackburn reported that his experience had been less favourable. In one case where an individual was informed no changes to the results or paper were to occur and yet the course provider was informed the question was inaccurate and would be removed.

Action: Mr Macdonald

3.18 (6.2.2) Ms Cairns reported that since the last meeting the Department for Work and Pensions (DWP) had announced a review of Employer’s Liability Compulsory Insurance (ELCI) and that comments were invited from stake holders by 17 February 2003. HSE still had several queries outstanding, which were lodged with DWP solicitors, one of which concerned the issue of whether licensed asbestos agencies needed to have asbestos ELCI cover. Members were invited to comment direct to DWP by the deadline. It was agreed in future that there would be a standing item on ELCI.

Action: TAs/TUs/Ms Cairns

3.19 (6.5.1) Mr Skilling reported that the system for electronic ASB5s to all HSE offices went live on 13 January and that from 24 January there would be an asbestos topic site within the HSE web site. Full details would be contained in the forthcoming mailshot ALU would be sending to all licence holders in the near future.

Item discharged

3.20 (6.6.2) Mr Skilling thanked members for their comments about other methods, besides density, for differentiating between AIB and asbestos cement. HSL were currently working on this, the aim being to feed in the new method to the forthcoming review of ASLIC.

3.21 In answer to Mr Blackburn's query about asbestos containing debris and when it was classed as licensable material, Mr Skilling confirmed that if it could be clearly determined that the material was previously a licensable ACM, then the debris would be licensable too. However, if the debris was indistinguishable and it was impossible to determine what the material had been before, then it could not be classed as licensable.

Item discharged

3.22 (6.8) Mr Wilkes had not pursued the issue of using wet vacuum cleaners as he had subsequently found the product not to be appropriate for the particular work he had had in mind.

Item discharged

3.23 (7.1.2) It was confirmed that a summary of the L27/L28 changes had been issued to members on 25.10.02.

Item discharged

3.24 (8.2) Mr Skilling confirmed that the RPE face fit test was a test of how well RPE fitted the person's face — it was not an indicator of whether the person was suited to do work that required a respirator to be worn. Dr Hermanns added that the medical under CAWR did not address this issue either as the certificate of examination provided by the appointed doctor was not a certificate to work, it was only a certificate which confirmed that a statutory medical had been carried out. He pointed out that the proposed amendment to the European directive was more concerned about the fitness to work aspect. However, the risk assessment required by the Management Regulations would require the employer to check an individual's physical fitness to undertake the work.

3.25 As far as scaffolders were concerned, the existing ALG guidance was correct, viz that scaffolders did not need to undergo medicals unless they were likely to exceed the action levels.

Item discharged

4 ACoP L28: Clearance Arrangements

4.1.4 Stage Clearance Procedure

4.1.1 Mr Macdonald confirmed that HSE expected the same person, viz an independent analyst, to complete the four stages of the clearance procedure — not the contractor removing or repairing the asbestos. There was no distinction between minor and major licensable works — the procedure applied irrespective, although for some external work, there might not be any airborne sampling undertaken and this would have to be considered. As discussed at the previous ALG meeting, there was no transition period therefore contractors should be applying the new procedures now. HSL had received some comments on the draft Certificate of Reoccupation form included in the latest edition of Fibre Aspects. This would be revised and made

available as the preferred format for the certificate, although the use of the final HSE version would not be mandatory. He added that UKAS hoped to offer accreditation for all 4 stages within the next 6 months. (Post meeting note – following a meeting with UKAS the timescale for this is more likely to be 12 to 18 months).

4.1.2 Mr Blackburn responded that analysts supported the new procedure so long as they were involved at the outset of the work (ie day 1 of the job). Mr Stear felt that this was not what the guidance intended – analysts would be involved at stage 1 of the procedure, but did not envisage that they would be brought in before or just as work commenced. Mr Blackburn felt that his members would want prior involvement and would discuss this issue with them and comment accordingly. In the meantime, in answer to a question referring to the reuse of brushes used for disturbance, Mr Stear confirmed that such brushes used for disturbance testing should not be reused.

Action: Mr Blackburn

4.2 Appropriate use of PVA

4.2.1 Mr Dolan said the new guidance precluded the use of PVA to spray the polythene enclosure (paragraph 161, L28). As a result, small one day jobs took four days to obtain a clearance. HSE explained that the reasoning behind the guidance was to stop the over liberal use of PVA getting onto other (stripped) surfaces. If wet removal techniques were applied correctly the amount of dust on the polythene sheeting should be low. HSE took the view that it should not be difficult to clean and dry the polythene and were concerned that this problem had not been presented to them before. Mr Skilling agreed to consider the matter and respond. (Post meeting note – since the meeting ACAD members have indicated that the matter was raised before as they recall voicing their reservations at a previous ALG meeting when the proposed changes to L28 were discussed).

Action: Mr Skilling

5 Revised Guidance for HSE Appointed Doctors

5.1 Mr Skilling referred to the extracts from the draft revised guidance, which had been circulated to members as the primary external consultation group. Dr Hermanns explained that the revised guidance was designed to allow flexibility, so that individuals would not have to undergo repeat chest X-rays but at the same time it would allow the appointed doctor to give X-rays to those individuals who would “benefit” from them.

5.2 Mr Jago said that the Trade Associations had submitted their comments on this matter before and hoped that individuals would be “allowed” to have an X-ray, if it was of psychological benefit.

5.3 Ms Wilson invited comments on the wording of the draft guidance by 31.1.03.

Action: TAs/TUs

6 ALU Update

6.1 Training providers WG update

6.1.1 Mrs Standen reported that a lot of work had been undertaken by the Asbestos Training Working Group (ATWG), which was set up after the training providers’ forum

in September. ATWG members included representatives from ARCA and ACAD and two independent training providers and the group had helped draw up training modules (25) and course criteria that all training providers could work to. This material had been fed into the consolidated draft licensing guidance, which would be available for consultation later in the year.

6.1.2 Mr Jago was concerned about the haste in which two training providers had formed an Asbestos Training Providers Association, which appeared to have been established on a business footing — not as a trade association, inviting training providers to “sign up now” to become members. Whilst the TAs acknowledged the merits of HSE being able to deal with a single body on training matters, they were unhappy about being pressed into this so quickly and were unlikely to “sign up” in the short term, especially since at this stage there were no Articles of Association.

6.1.3 Mr Skilling said that HSE needed a single forum, (either a trade association or a working group) which represented all training providers that HSE could deal with. He hoped the various trade associations and training providers would be able to work together to overcome any potential commercial conflicts. Mrs Standen planned to attend the meeting of training providers scheduled for 30 January.

6.2 Asbestos Waste – packaging issues

6.2.1 Mrs Standen reported that a conflict had been discovered between the carriage of dangerous goods (CDG) legislation and L28 in that asbestos could not be carried “in bulk” (ie wrap and cut items such as large pipe sections or tanks were not legally packaged at present). Where CDG applied, asbestos waste should only be transported in UN approved packaging (standard red/clear bags) — layers of polythene were not regarded as UN approved packaging. The Department for Transport was looking into the possibility of creating an exemption for the transport of asbestos waste. In the meantime, members were advised that the status quo applied until the legalities had been sorted out.

Action: Mrs Standen

6.3 Prosecution of an unlicensed asbestos “agency”

6.3.1 Mr Claxton gave a summary of the above case, which originally arose in mid 2001, when he received a complaint about forged documentation for an employee of an agency supplying asbestos labour. When the director (Anthony Willing) attended a meeting with Mr Claxton to produce the documentation he was advised about the need to hold a licence. The company subsequently stopped trading.

6.3.2 In early 2002, during a site visit, Mr Claxton came across three operatives inside enclosures all hired from an agency run by the above man. Two employees had valid certification, but a third had forged training, medical and face fit test certificates. In his statement to Mr Claxton, he said he had never been trained or medicalled. This operative had been hired out to a dozen or so licensed contractors (all members of ARCA or ACAD) between November 2001 and February 2002. All of these companies committed offences under asbestos legislation as none of them carried out any checks on the agency or its operatives. All of them were interviewed and provided evidence including exposure records and invoices.

6.3.3 On 13 December 2002, the agency owner pled guilty to: 2 counts of running an agency without a licence; 2 counts of supplying an operative with forged documentation; and 1 count of failing to maintain health records.

6.3.4 Mr Claxton pointed out that whilst no criticism was being levelled at ARCA or ACAD, who had communicated the position regarding agency workers to their members, it was disappointing to see their members not following the guidance contained in the ALG memo on this subject. At least 25 offences had been committed as a result of these breaches!

6.4 HSE inspectors and medicals

6.4.1 Mr Skilling explained that HSE's own health and safety guidance for asbestos inspectors had been reviewed. Because many HSE inspectors would not exceed the action level, they would not require a CAWR medical. As a result, there would be some inspectors who entered enclosures who would not have a CAWR examination certificate (MS72A).

All to note

7 Health Directorate Update

7.1 Mrs Phillips reported that the main development since the last meeting was that following debates in both the House of Commons and the House of Lords, the Control of Asbestos at Work Regulations 2002 were now in force (except regulations 4 and 20, which had 18 month and two year lead in periods respectively) along with the ACoPs (revised L27, L28 and new L127), HS Guidance (HSG 227) and the revised free leaflet. The October launch, which was postponed, had been rescheduled for 24 February in the form of an "Asbestos Conference", the theme of which would be "Moving Towards Compliance".

7.2 She mentioned the review of the duty to manage, which had been agreed to by Baroness Hollis during the House of Lords debate. This would look at the operation of the regulations, how duty holders are progressing, the approach being taken, compliance, etc and would involve stakeholders.

7.3 On the duty to manage campaign front, after 24 February this would move into its second phase, where HSE would be targeting a number of significant duty holders about the duty and alerting them to what they needed to do to ensure they complied. Awareness raising would also continue during this period.

7.4 She also mentioned that work had started to scope what would be required to undertake the review of the Asbestos (Licensing) Regulations and hoped to have more information about this at the next meeting.

7.5 Mr Macdonald reported that the text of the joint HSE/RICS/Federation of Small Businesses leaflet on the duty to manage had almost been agreed and it was hoped would be issued in the next few months. He added that HDC were working with RICS on their guidance, including a series of tables, which determined when premises were and were not covered by regulation 4. RICS were also planning a series of road shows to put the message across to surveyors.

7.6 Mr Macdonald mentioned the proposal to amend the Asbestos (Prohibitions) Regulations (1992) and the current Consultative Document 186 about this, which invited comments by 28 February. The proposals were to equalise the position on importation with that for supply and use.

7.7 Regarding accreditation, Mr Macdonald reported that this had gone better than expected and that there were now 40 companies accredited to do asbestos surveys, with a further 40 going through the process and a further 20 at the enquiry stage. As far as personnel certification was concerned, this had not gone so well, although the ARCA/RICS scheme had reported that it was close to being ready to apply to UKAS. He would be attending a meeting with UKAS in the near future to discuss this.

8 ARCA and ACAD/TICA Technical Committee(s) Issues

8.1 Subcontracting of work — effect on licence

8.1.1 In response to the question raised by Mr Jago, Mr Skilling confirmed that supervisory licence holders required appropriate ELCI insurance to cover their work with asbestos.

All to note

8.2 12 Week cumulative exposure calculation

8.2.1 Mr Jago asked whether it was necessary for contractors to calculate the 12 week cumulative exposure in relation to the action level and maintain these records, from their daily exposure records as it seemed that the purpose was to determine items already required of licensed contractors viz medicals, notification, assessment records etc.

8.2.2 Whilst Mr Skilling acknowledged that this might be a formality for those licensed contractors who worked constantly, the difficulty arose for other licensed contractors who worked intermittently or who only used a proportion of their workforce on asbestos work. In these situations it would be necessary to record and calculate the 12-week cumulative exposure levels to prove whether or not the action level was being exceeded.

All to note

9 Any other business

9.1 Ms Cairns reported that the follow up to the SLIC asbestos event (the joint EU/ILO Asbestos Conference) was likely to take place around 3-6 September 2003, in Dresden. Details of attendance had yet to be confirmed, although it was envisaged that the event would be a tripartite one.

9.2 Mr Skilling reported that ALU would be sending out its last ever (hopefully!) mailshot to licence holders in the next few weeks. After that the intention was to communicate with licence holders through the asbestos pages on the HSE website (www.hse.gov.uk/asbestos), due to go live on 24 January, by setting up a system that would allow users to register for automatic site updates. Information on licensing, lists of training providers and licence holders, ALG memos and minutes, the Asbestos Licensing Assessment Guide, etc would be available on the site after a few weeks.

9.3 Mr Jago agreed that it was necessary for DCUs to be operational before work with asbestos started because of the risk of disturbing the material and the risk of potentially spreading asbestos contamination. However, he sought clarification about whether it was necessary for the DCU to be operational in those situations where there was no possibility of the asbestos being disturbed and asked where this

information could be found in HSE's guidance. HSE agreed to check the guidance and report back. (Post meeting note – reference is ACoP L28, paragraph 45(b))

Action: All to note

10 Date, time, location of next meetings

10.1 The next meetings were scheduled as follows:

Tuesday 20 May 2003, 10.00am, Rose Court, London

Thursday 25 September 2003, 10.00am, Edinburgh **(note change of date)**

Thursday 15 January 2004, 10.00am Rose Court, London