

Managing asbestos

Clients' legal responsibilities

ARCA unannounced site audits of members performance provide reassurance

Asbestos management is an issue faced by property owners, whether owning one premises or a large portfolio of premises, constructed prior to the year 2000. That is, they are responsible for ensuring that employees and non-employees are not exposed to health or safety risks as a result of the presence of asbestos.



The **Health and Safety at Work Act etc.1974** places a duty on every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all employees and non-employees who may be affected by the employers' activities.

This requires a robust management plan which can easily be communicated to and understood by all those who have a duty under the plan.

The human cost of asbestos-related disease is devastating and significant exposures are entirely avoidable. Current figures show that over 5,000⁽ⁱ⁾ people die each year in the UK from asbestos related diseases (predominantly mesothelioma, lung cancer and asbestosis). Also, the financial and reputational costs of getting asbestos management wrong are substantial.

It is vital that organisations take the risks from asbestos seriously and deal with asbestos in a controlled and safe manner. When asbestos is managed well, inadvertent exposure can be prevented so that the health and safety of individuals is not put at risk.

'clients have a legal duty to manage risks from Asbestos'

The Control of Asbestos Regulations 2012 (CAR 2012), Regulation 4, places a legal duty on those who own, occupy, manage or have responsibilities for premises that may contain asbestos.

Those who have these responsibilities will either have a **legal duty to manage the risk** from this material; or a **legal duty to cooperate with whoever manages that risk**.

The Control of Asbestos Regulations 2012 (CAR 2012) places a legal duty to 'manage asbestos in non-domestic properties' by:

- Finding out if there is asbestos in the premises, the amount and what condition it is in (asbestos survey)
- Presuming the materials contain asbestos, unless there is strong evidence that they do not
- Making and keeping an up-to-date record of the location and condition of the Asbestos Containing Material's (ACM) or presumed ACM's in premises (asbestos register)
- Assessing the risk from the material

- Preparing a plan that sets out in detail how to manage the risk from this material
- Taking the steps needed to put this plan into action
- Reviewing and monitoring the plan and the arrangements made to put it in place and
- Providing information on the location and condition of the material to anyone who is liable to work on it or disturb it.

The requirement is to manage asbestos. If materials are in good condition and managed so that they cannot be disturbed, a periodic check might be all that is needed. For some premises, that see a large number of employees/students/visitors, maintenance work is inevitable and accidental damage is often possible. Therefore, all premises which were constructed prior to the year 2000, will require an asbestos management plan based on an asbestos management survey.

The purpose of the asbestos management survey is to manage asbestos containing materials (ACMs) during the normal occupation and use of the premises. The duty holder can compile a management survey where the premises are simple and straightforward. Otherwise, an asbestos surveyor is needed.

When a premises, or part of it, needs upgrading, refurbishment or demolition a refurbishment/demolition survey is required. This survey, normally carried out by an asbestos surveyor, is to locate and identify all ACMs before any structural work begins at a stated location or on stated equipment at the premises.

Once an asbestos survey has been carried out, the duty holder should record information, referred to as an **asbestos register**. This should include accurate drawings and be dated, as periodic reviews should be carried out, so an up-to-date record is available on the location and conditions of all ACMs.

'good communication between all parties is vital'

Work at premises should only start once the duty holder is satisfied that the information in the asbestos register, is known and understood by the workers who are doing the work on-site, and is easily accessible for anyone who needs to use it.

Also, the **Construction (Design and Management) Regulations 2015 (CDM 2015)** places explicit responsibilities on clients.

Clients, as they are at the head of the procurement chain, have opportunities to set standards for project delivery, including health and safety management.

The law therefore requires that clients make suitable arrangements for managing a project, and maintain and review these arrangements throughout the project, to ensure health and safety risks are managed appropriately.

Clients are not expected to be 'experts' in either construction work or asbestos work and do not need to directly manage or supervise the work themselves.

However, they are responsible for ensuring appropriate arrangements are in place to manage and organise projects during both the 'pre-construction' and 'construction' phases of the project. This means appointing suitably competent people and providing them with sufficient information, time and resources to do the job properly.

If asbestos removal is required, the client, needs to appoint a competent asbestos removal contractor.

Therefore, they need to make reasonable enquiries to satisfy themselves that contractors are appropriately resourced and competent for the work.

Guidance on CDM 2015 states:

"When considering the requirements for designers and other construction professionals, due weight should also be given to membership of an established professional institution or body. For example, do these bodies have arrangements in place which provide some reassurance that health and safety is part of the route to membership of their profession?" ⁽ⁱⁱ⁾

To provide reassurance for all parties of compliance with relevant legislation, the Asbestos Removal Contractors Association (ARCA), introduced an audit scheme in 2000, to support member's performance and therefore maintain standards. ARCA member contractors are required to have a satisfactory site audit to join (and an office audit), and then two satisfactory site audits every year to maintain membership of the Association.

'ARCA site audits are a strong system of reassurance'

ARCA took a further step towards supporting consistent high standards and a higher level of reassurance, by enhancing its audit scheme in January 2017.

Members still need to complete two satisfactory site audits every year to maintain membership, however, these audits are now **unannounced**. This has been made possible by the HSE providing ARCA with some details (name of licensee, site location, dates of work and nature of work) off the licensed contractors 'notification of asbestos work' form.

Using this information ARCA can arrange site audits, so that ARCA members (excluding Ireland) have **no prior notice** of when, or where, an ARCA auditor will be assessing their performance. Therefore, being unannounced, ARCA site audits are an even stronger system of reassurance for all parties, including clients.

'ARCA member site audits are unannounced'

Once a contractor is appointed, the client will then need to provide the contractor with sufficient information, time and resources to do the job properly. For example, an asbestos removal contractor will need appropriate preconstruction information in order to prepare a suitable work plan, and contractors need time (and access) to assess the premises properly and discuss key site information with the client.

Also, an asbestos analyst must be appointed for licensed asbestos work - it is desirable that the analyst is employed directly by the client. The analyst will be required to verify that a work area has been thoroughly cleaned and that airborne fibres in the work area are as low as reasonably practicable, prior to handover for reoccupation or demolition etc.

Good coordination and cooperation between all parties is a must for a project to be successful. Clients' decisions, actions and inaction have an enormous impact on how work can be delivered.

The financial and reputational costs of getting asbestos management wrong are substantial. With a well communicated structured approach to asbestos management, clients can ensure that they meet the challenge to comply with health and safety regulations.

To support all clients, the Asbestos Removal Contractors Association (ARCA), has published 'Guidance on Clients Responsibilities on appointing Asbestos Contractors' which is available as a free download at www.arca.org.uk

Notes

(i) Asbestos related diseases in Great Britain 2018 published by HSE

(ii) Managing health and safety in construction – Construction (Design and Management) Regulations 2015 – guidance on regulations published by the Health and Safety Executive (ref L153)

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