

Asbestos in the Home – Part 2

This factsheet, the second in a series of two, addresses the legal responsibilities of landlords and local authorities, and the rights of tenants and residents. The first factsheet in Daily Hazard 56, describes the hazards of asbestos, where it is found and how it should be dealt with.

The Law

Laws regulating asbestos are divided into those which can be used by tenants to pressure landlords into taking action and those which place a responsibility upon employers to protect the health and safety of their employees and the public.

Landlords and statutory nuisance

Although the law does not place specific duties on a landlord in respect of asbestos in their property, The Environmental Protection Act (EPA) 1990 defines statutory nuisance as "any dust...likely to cause injury...to the public". The Act gives local authorities, through Environmental Health Officers (EHOs), the power to serve abatement notices where premises are in such a state as to be prejudicial to health, or a nuisance. If an Environmental Health Department is not acting upon a complaint, residents should contact their local councillor to add weight to their case. However, local authority tenants must approach the Health and Safety Executive (HSE) regarding statutory nuisance as local authority EHOs do not police the authority they work for. If you are unsure who would be able to act in your case, ring both the local HSE office and the Environmental Health Officer at the Town Hall. Action to abate a statutory nuisance may also be taken by an individual through the Magistrates' Court. Anyone considering such action should seek advice from the Magistrates' Court, their local Law Centre or Citizens Advice Bureau.

Workplace safety laws and asbestos

The measures required to protect people whose work may bring them into contact with asbestos will, if properly implemented, usually prevent exposure of the public. There is a general responsibility under Section 3 of the Health and Safety at Work etc Act 1974 and a specific requirement under Regulation 3 of the Control of Asbestos at Work Regulations 1987 to protect the health and safety of the general public who may be affected by work activities.

- The Control of Asbestos at Work Regulations 1987 require employers

to assess the risk of exposure to asbestos dust and to record the assessment, before work begins. The regulations require an employer to prevent exposure or to reduce it as far as reasonably practicable. An employer is required to prepare a safe working method statement detailing the equipment to be used to protect those carrying out the work and "other persons on or near the site". For example, the method statement should detail whether a protective enclosure will be erected and the proposed methods of safe disposal. Although tenants have no rights in law to see the method statement, private landlords and local authorities should be pressed to release it to tenants.

- You should check whether contractors have an HSE licence under the Asbestos (Licensing) Regulations which they need for certain types of removal or if they are a member of the Asbestos Removal Contractors Association (ARCA).
- The Defective Premises Act 1972 requires a dwelling to be fit for habitation after the work is completed.
- Section 82 of the Building Act 1984 gives local authorities the right to impose conditions on the demolition of buildings.

Action

Tenants have achieved a number of successes in forcing local authorities to identify, locate, remove or encapsulate asbestos.

- **Southwark**
Local authority pledges to spend £7m to remove asbestos from the Heygate Estate and to survey 10% of its 54,000 homes to establish the likely location of asbestos.
- **Waltham Forest**
Tenants of three tower blocks with asbestos in the walls vote to have them demolished. Tenants to be rehoused.
- **Hackney**
Tenants on the Kingshold estate mount a campaign for the safe management of asbestos to reinforce a longstanding campaign to force local authority action on repairs.
- **Southampton**
Improvement notice served on the city council when a tenant called in an HSE inspector after being

exposed to asbestos during rewiring work. Contractor fined £3000 plus costs. Southampton city council fined £26,000 plus costs. A representative survey of council premises will create a database of materials containing asbestos in council properties.

Birmingham

150 right-to-buy home owners take legal action against the local authority after asbestos is discovered in their homes. Removal will cost £1.5 million.

Ombudsman

Council tenants can complain to the Local Government Ombudsman. In 1997, the Ombudsman required the London Borough of Tower Hamlets to take immediate action to identify the location of asbestos in their properties and to inform the occupants of their findings.

The tenant who complained also received £300 compensation for "worry and inconvenience". The Ombudsman's decision was based partly on a 1985 report produced by the Association of Metropolitan Authorities (AMA). The report recommended that local authorities should survey all properties for the presence of asbestos and instigate a management plan. Although the report placed no regulatory requirement on local authorities to survey and manage the asbestos in their properties, the Ombudsman gave it a very strong emphasis in setting this precedent.

Compensation

To make a successful claim for compensation under civil law, the defendant must have suffered an injury. Therefore, currently, an individual must have an asbestos related disease to stand a chance of winning a compensation case. A number of people are pursuing cases where there has been exposure to asbestos but no injury as yet. It is unclear yet whether any of the current cases will succeed.

Duty to survey

The HSE are to report early in 1998 on the cost of introducing a legal duty on owners of buildings to survey their properties. Government estimates for such a survey are as high as £4 billion although other agencies have suggested much lower costs. Current details of proposals are unclear and the huge cost will mean that there will be resistance to such a duty.

Asbestos Management Programme

- Full survey of all properties
- Removal or encapsulation of all asbestos found in an unsafe condition
- Record location of remaining asbestos on a public register
- Inform tenants of the location of any remaining asbestos
- Reinspect asbestos frequently and if asbestos is found in an unsafe condition either remove or encapsulate and update public register
- Involve tenants and Tenants Associations at all times
- Encourage tenants to report any damage.

Contacts

Health and Safety Executive: to find out where your local HSE office is, phone the HSE Infoline on 0541 545500.

Local Government Ombudsman
21 Queen Annes Gate, London SW1H 9BU. 0171 915 3210.

Asbestos Removal Contractors Association (ARCA)
Friars House, 6 Parkway, Chelmsford, Essex CM1 1BE. 01245 259744.

Resources

Managing Asbestos in Workplace Buildings.
HSE. Free. IND(G)223(L). HSE Books 01787 881165.
Excellent booklet setting out how asbestos in buildings must now be dealt with. Relevant to workers and tenants.

Report on an Investigation Into Complaint No 95/A/2081 Against The London Borough of Tower Hamlets.
Free. Local Government Ombudsman, 21 Queen Anne's Gate, London.

AMA. Asbestos. Part 1: Policy and Practice in Local Authorities.
September 1985. AMA now the Local Government Association, 36 Old Queen St, London SW1H 9JE. 0171 222 8100.

Asbestos guide - photographic supplement.
GMB. Free to GMB members, £5 to non members. GMB, 22-24 Worpole Road, London SW19 4DD. 0181 947 3131.