



## Social Housing

## Asbestos Management – Your Top 10 Questions Answered

Santia Asbestos Management Ltd

Registered address:

Axys House, Heol Crochendy, Parc Nantgarw

Nantgarw, Cardiff, CF15 7TW

T: 02920 852852



## Table of Contents

1. What is the difference between a Duty Holder and a Responsible Person? .....	3
2. What are the responsibilities for managing contractors /site visitors in areas where asbestos is located?.....	4
3. How often should social landlords re-inspect asbestos in their properties?.....	5
4. Is there any legal requirement to provide housing tenants with information in relation to surveys of their properties?7	
5. Brownfield Sites: is there a requirement to survey and keep an asbestos plan at the new build site? .....	8
6. What organisational capacity should we have to lead, resource and manage asbestos risk? .....	9
7. What is the best way to record that we are legally compliant? .....	11
8. What are the triggers for licensed and non-licensed asbestos removal works? .....	13
9. Should we use cloned information for properties of similar archetypes?.....	14
10.What training should be provided for Asbestos Management?.....	15

<b>Document Title:</b>	Social Housing – Your Top 10 Questions Answered
<b>Written and approved by:</b>	John Evans B.Sc. CMIOSH, FRSPH, MIOA, PGCE Technical Director Santia Asbestos Management Limited
<b>Date:</b>	13 <sup>th</sup> February 2017

## 1. What is the difference between a Duty Holder and a Responsible Person?

Regulation 4 of the Control of Asbestos Regulations 2012 refers to Duty Holders as being:

- (a) every person who has by virtue of any contract or tenancy, an obligation of any extent in relation to the maintenance or repair of non-domestic premises or any means of access or egress to or from those premises or
- (b) in relation to any part of non-domestic premises, where there is no such contract or tenancy, every person who has to any extent, control of that part of those non-domestic premises or any means of access or egress to or from those premises

In the context of Social Housing organisations the Duty to Manage as detailed within regulation 4 does not apply within the domestic units or parts of sheltered accommodation premises which are used for domestic purposes e.g. common rooms such as dining rooms and lounges.

However the Duty to Manage does apply to common areas such as garages not allocated to a particular person, foyers, lifts, stairs, lobbies, boiler rooms, plant rooms and communal yards. Table 5 of the ACOP L143 provides further detail.

In the context of the above the Duty Holder will be the Housing Management Organisation with the ultimate responsibility for the safe management of asbestos resting with the Management Board and / or the Chief Executive or other very senior Member of the Management Team e.g. Director of Asset Management, depending on the articles of association of the organisation.

The Responsible or Appointed person is specifically referred to in the Health and Safety Executive Guidance Document HSG264, "Asbestos – the survey guide". This document says, "To help with the legal requirements and to ensure that ACMs in premises are properly managed, the Duty Holder should identify a person (and in some cases a deputy) within their organisation who will be responsible for that management".

The purpose of the Appointed/Responsible Person is to ensure on a day to day basis that necessary asbestos management requirements are actioned, observed by others across the organisation and in most cases to be the "go to person" within the organisation for asbestos management guidance and advice. It is vitally important that the Appointed Person has the necessary knowledge through training, skills, authority and experience to enable them to carry out their duties effectively across the organisation.

In situations where, for any reason, the Appointed Person cannot, does not or is hindered from undertaking their duties effectively it will be for those who carry the ultimate Duty Holder responsibilities i.e. the Housing Organisation Management Board, Chief Executive or Director of Asset Management to take action to ensure that the duties of the Appointed Person can and are undertaken effectively.

It is of paramount importance that that the Duty Holder and Appointed Person responsibilities are fully documented within the organisation's Asbestos Management Plan and the differentiation between the roles fully explained.

## 2. What are the responsibilities for managing contractors /site visitors in areas where asbestos is located?

In common areas of premises used for domestic purposes, where the full Duty to Manage requirements of regulation 4 of the Control of Asbestos Regulations 2012 apply, there is an absolute duty to ensure that information relating to the location and condition of any asbestos, or any such substance, is provided to every person who is liable to disturb it. Clearly this requirement will apply to any maintenance and any other contractor who is likely to undertake work in these areas.

In domestic areas where regulation 4 may not apply, consideration must also be given to Section 3 of the Health and Safety at Work etc. Act 1974 which applies to anyone conducting a business such as landlords of domestic premises, as specifically mentioned in the Approved code of Practice, "Managing and Working with Asbestos" L143 second edition. Section 3 stipulates that an employer or self – employed person must ensure, so far as reasonably practical, that the conduct of their undertaking does not present a risk to the health and safety of people who are not their employees.

To comply with this Section of the Act it will therefore be necessary not only to provide contractors with information relating to the asbestos containing materials, which may be present both in the domestic units and associated common areas but to also ensure that they work in a manner that does not adversely impact on their own wellbeing and also that of tenants and others who may be in the property. To ensure this, it is vital that the contractors employed are competent to perform the tasks for which they are engaged, which will involve the provision of, as a minimum, Asbestos Awareness training as detailed within regulation 10 of the Control of Asbestos 2012, along with the competencies within their organisations to undertake the necessary Risk Assessments for the work they undertake and to document these and the associated Plan of Work Method Statements.

While it is for the contractors to work safely in accordance with the control measures identified in their Risk Assessments and the safe methods of work detailed in their Plan of Work Method Statements, landlords will still retain the general responsibility under Sections 2 and 3 of the HSW etc. Act 1974 to ensure that work conducted in the premises, over which they have ultimate control is done so safely without risks to their own employees and that of others who may be affected including contractors, tenants and visitors to the properties in question. Inevitably this will involve detailed competency assessments for contractors and elements of control over the work undertaken by them.



### 3. How often should social landlords re-inspect asbestos in their properties?

The Approved Code of Practice L143, in referring to non-domestic premises, advises that any ACMs or suspected ACMs must be inspected and its' condition assessed periodically, to check that it has not deteriorated or been damaged. The frequency of inspection will depend on the location of the ACMs and other factors which could affect their condition e.g. activities within the building. In connection with this it should also be considered that the HSE Guidance Document HSG 227, "A comprehensive guide to Managing Asbestos in premises" advises, "The time period between monitoring will vary depending on the type of ACM, its' location and activities in the area concerned, but would not be expected to be more than 12 months".

For domestic properties however there is no such specific guidance. Notwithstanding it must be considered that the Housing Health and Safety Rating System – Operating Guidance, says in relation to asbestos, "Asbestos should not be present in dwellings. However, where it is, as removal is likely to result in an increase in fibre levels, existing asbestos should be managed in situ if it is:

- In good condition
- Not likely to be damaged and/or
- Not likely to be worked on

Management of asbestos materials involves:

- Identifying the location and condition of asbestos
- Ensuring it is effectively sealed
- Making inaccessible to prevent occupiers damaging the dealing surfaces
- Labelling and
- Keeping a record of the location of asbestos in building."

This advice clearly indicates that Social Housing Landlords should not only undertake surveys across its' property portfolio to locate ACMs in the domestic properties they manage but also introduce a realistic re-inspection regime to monitor the condition of the materials on an ongoing basis.

In deciding on the frequency of this re-inspection regime, using the spirit of the guidance included in the Approved Code of Practice to undertake periodic re-inspections the following regime is suggested

- ACMs such as asbestos containing insulation and asbestos insulating board present within domestic properties – every 12 months
- Bonded ACMs such as floor tiles, toilet cisterns, textured coatings and Asbestos-cement flues within properties – every 2 years
- ACMs external to properties e.g. AC roofing products and rainwater good – every 3 years

In addition to the above, the recommendation would be for there to be a reliable system in place for tenants to report any damage to ACMs in their properties so that necessary remedial actions can be taken as soon as possible after the damage occurs. (The latter assumes that tenants will be advised as to the presence and location of ACMs in their properties).

From the legal perspective, if social landlords do not locate ACMs, check on the condition of these materials on a periodic basis, and inform residents of their presence, if any exposures to asbestos occurs as a consequence, it is possible that it could be held that the organisation would be guilty of an offence, prescribed by Section 3 of the Health and Safety at Work etc. Act 1974, under which they are responsible for the health, safety and welfare of persons not in their employment in connection with the manner in which they conduct their business. In addition if damaged ACMs are present in rented properties then the local authority housing and environmental health authorities could take enforcement action under Housing legislation and the Statutory Nuisance procedures of the Environmental Protection Act 1990.

#### 4. Is there any legal requirement to provide housing tenants with information in relation to surveys of their properties?

While it is appreciated that tenants should not undertake work which could disturb the fabric of the homes they occupy, it is widely accepted that such work is undertaken from time to time. In addition tenants carry out their own decorating which has the potential to disturb the surface of ACMs such as asbestos – containing decorative coatings. Consideration should also be given to work carried out in properties by such parties as telephone and television signal engineers and window blind fitters which clearly has the potential to disturb ACMs, albeit that these engineers should have Asbestos Awareness training to mitigate against the possibilities of personal exposures and that of residents who may be affected by their works. If tenants have asbestos information to hand they can make it available to anyone who comes into their property to undertake work and thus help to ensure that exposures to asbestos do not occur.

For these very practical reasons and to also comply with the provisions of Section 3 of the Health and Safety at Work etc. Act 1974, it is considered that there is an obligation on Housing Management organisations to have in place effective arrangements for informing tenants as to the presence of ACMs in their properties with clear instructions that they should not disturb them. Many of the Housing Management Clients with who SAML engage have such arrangements in place.

## 5. Brownfield Sites: is there a requirement to survey and keep an asbestos plan at the new build site?

The document, “Asbestos in soil and made ground: a guide to understanding and managing risks” published by CIRIA C733 in 2014, confirms that the Control of Asbestos Regulations 2012 (CAR2012), applies to premises which legally includes both buildings and land surrounding them. They also apply to work places in general including work outdoors and would be relevant to any work activity conducted on asbestos-containing land. Consequently CAR2012 is relevant to works at any sites with asbestos –containing materials including walkovers, site investigations and remediation. CAR 2012 also applies at commercial or industrial buildings built on sites with asbestos contamination below. However the CIRIA document suggests that CAR 2012 is unlikely to be applicable to the protection of residents in properties built on such sites. The protection of such residents should be ensured through planning and EPA 1990 Part 2A Contaminated Land Statutory Guidance.

The consequence of the above is that when Housing Management organisations acquire sites potentially contaminated with Asbestos for development they have an obligation under CAR 2012 to identify the ACMs which may be present, assess their condition and put in place a plan for managing the asbestos, i.e. the Asbestos Management Plan, and in addition comply with all other provisions of CAR 2012. It will also be necessary to comply with all the requirements imposed by Planning Conditions and the site remediation strategy agreed with the Environment Agency (Natural Resources Wales). For private developments it is possible that relevant covenants will be added to the property deeds to control future excavations and developments on the site.



## 6. What organisational capacity should we have to lead, resource and manage asbestos risk?

In order to ensure that adequate organisational arrangements are in place to effectively manage Asbestos – containing materials it is vital that there is a high level of commitment from the Management Boards, Chief Executives and other Senior Managers of Housing Managing organisations. To stimulate and achieve this high level of commitment it will, in most cases, be necessary to undertake a high level Management Briefing so that there is a clear understanding of the reasons for and requirements for establishing procedures for safely managing ACMs so as to prevent the exposures of all employees, contractors and tenants alike. These briefings also need to detail the consequences of not having safe management procedures in place including statutory prosecutions and civil claims.

It is usually the case that one Senior Director e.g. the Director of Asset Management, will be designated as the Director who will be responsible on behalf of the Chief Executive and the Management Board to ensure that the Duty Holder responsibilities as prescribed by regulation 4 of CAR 2012 are complied with and that all ACMs present in the domestic units and areas are safely managed.

In order to ensure that the necessary asbestos management requirements are actioned on a day to day basis, organisations should, in accordance with the advice contained with the HSE Guidance Note, HSG 264, “Asbestos : The survey guide” nominate an Appointed Person and a deputy. These appointees should ensure, on behalf of the appointed senior director and ultimately the Management Board that the procedures for safely managing ACMs are being consistently complied with.

To comply with the requirements of regulation 4 there is a legal requirement to have in place an “Asbestos Management Plan” (AMP) that details all the arrangements and responsibilities for the whole of the organisation in order to ensure the safe management of ACMs. The AMP is usually supplemented by detailed procedures for such processes as the control of responsive and planned maintenance works to ensure that asbestos management considerations are fully considered. In addition the AMP should include an Action Plan which will detail the actions that need to be taken during the period to which the AMP applies (a twelve month period).

During the preparation of the AMP, in which most housing management organisations now include arrangements for managing the ACMs present in the common and domestically used areas, consideration will need to be given to all those in the organisation whose work will require them to have knowledge of and implement asbestos management requirements e.g. all those who plan, commission or control any building related works or convey information and instructions to contractors or housing inspectors and managers who have regular access to properties enabling them to identify potential asbestos management issues at an early stage.

The nominated Appointed Person and the designated Senior Director will need to include within the “Roles and Responsibilities” section AMP what is expected of those persons within the organisation whose work will impact on the safe management of ACMs.

In order to ensure that everyone in the organisation who has any involvement in the asbestos management processes it will be necessary to undertake and document within the AMP a detailed Training Needs Analysis (TNA) and to thereafter arrange for the necessary training to be delivered by competent training organisations. Training requirements will vary from basic Asbestos Awareness through to the BOHS Proficiency Modules in Asbestos Management and Surveying (P405 and P402).

Some Housing Management organisations are now electing to undertake asbestos surveys in house using suitably trained and qualified staff. In these cases it must be ensured that a Quality Management System complying with ISO 17020 is in place. All samples must be analysed by a company having a quality management system which complies with ISO 17025 which can be confirmed by the holding of relevant accreditation through the United Kingdom Accreditation Service (UKAS).

## 7. What is the best way to record that we are legally compliant?

The first proof of legal compliance will be to have in place a comprehensive and current Asbestos Management Plan i.e. a document which has been reviewed and updated within the last 12 months.

The AMP should include an Action Plan for the current period and if this is being followed and driven by the Appointed Person there should be records of regular updates to confirm that necessary asbestos management actions are being implemented within the time intervals identified within the Plan.

In terms of survey data, this is best recorded on an electronic asbestos management system which can be accessed and interrogated at any point in time to confirm for instance that the condition monitoring re-inspections are being implemented at required intervals. The better systems are accessible via the web to enable both in house maintenance operatives and contractors to access asbestos data particularly during the implementation of responsive maintenance work. Compliance with the requirements of regulation 4 of CAR 2012 to provide asbestos information and for the purposes of demonstrating compliance Section 3 of the Health and Safety at Work etc. Act 1974 can be demonstrated by adding to the web enabled asbestos management system an access register which records who has accessed the asbestos register and how long they have spent interrogating it.

An additional consideration for surveys is to ensure that the Duty Holder has been fully engaged with this process. This can be best achieved by producing a detailed specification for the surveys to be undertaken to detail such matters as

- A comprehensive description of the property portfolio to be surveyed
- The survey methodologies e.g. HSG 264 and documented in house methods
- Arrangements for access to the premises
- Limitations on caveats but arrangements for accessing such areas as lift shafts, services risers, attic spaces, electrical distribution boards
- Sampling strategies i.e. numbers and locations of samples
- Use of presumptions and visually similar methods
- Prohibition of negative presumptions between properties
- Minimum survey periods for property types e.g. 2 hours for 3 or 4 bedroom house
- Agreement on building terminology
- Agreement on room numbering and naming e.g. bedroom 1 etc
- Agreement on Priority Risk Assessment Scores (which the Duty holder need to specify)
- Report format
- Specification for drawings to be included in report
- Accreditation of surveyors and QA requirements for contract e.g. 5% re-surveys during period of contract

On the receipt of survey reports HSG 264 advises that the Client / Duty Holder should check the accuracy of reports. The checks to be carried out are detailed in Box 11 with Chapter 7 of the document. To demonstrate that these checks have been carried the Duty Holder should be able to present relevant records.

With regard to the implementation of responsive and planned maintenance works in order to comply with Section 3 of HSW etc. Act 1974, Duty Holders /Clients need to ensure that competent contractors are engaged and that risk assessments and method statements have been reviewed. There should be documented evidence of these checks being made.

Where ACMs have been repaired, encapsulated or removed it is imperative that detailed records of these works are made and retained as these may need to be produced for requirements in many years. The most effective way is to produce a project completion pack on completion which includes copies of

- The Specification for the works
- The Contractor's License
- The Contractor's risk assessment and method statement
- The relevant notifications of works to the Health and Safety Enforcement Authority
- All site check lists and smoke testing records
- Copies of all air monitoring results and inspections carried out during the works
- Copies of the four stage clearance inspections and monitoring and Certificate of Re – Occupation
- Copies of waste consignment notes

The project completion pack (PCP) can be collated into one pdf document and then attached to the electronic asbestos management database. The availability of this document should provide adequate evidence of compliance with the relevant legislative requirements.

In relation to Asbestos related training it is important that detailed records of training provided are prepared in order to produce evidence of compliance with the requirements of Section 2 of HSW etc. Act 1974 and regulation 10 of CAR 2012.

A number of Santia Asbestos Management Clients in both the public and private sectors have elected to demonstrate and measure their level of compliance with asbestos management regulations and related legislation by commissioning Gap Analysis / Strategic reviews.

This is a very successful process which identifies areas of compliance and matters which need further attention. The reports produced include detail recommendations for future actions which can be incorporated into the Asbestos Management Action Plans for the subsequent 12 month period and sometimes beyond. The reports can if necessary be produced as evidence of compliance and progress to governmental audit bodies.

## 8. What are the triggers for licensed and non-licensed asbestos removal works?

Regulation 2 of CAR 2012 states that work is licensable:

- a) where the exposure to asbestos of employees is not sporadic and of low intensity; or*
- b) in relation to which the risk assessment cannot clearly demonstrate that the control limit will not be exceeded;*  
*or*
- c) on asbestos coating; or*
- d) on asbestos insulating board or asbestos insulation for which the risk assessment:*
  - (i) Demonstrates that the work is not sporadic and of low intensity, or*
  - (ii) cannot clearly demonstrate that the control limit will not be exceeded, or*
  - (iii) demonstrates that the work is not short duration work.*

In relation to the above the Sporadic and Low Intensity threshold is 0.6 fibres per cm<sup>3</sup> measured over a period of 10 minutes while the Control Limit is 0.1 fibres per cm<sup>3</sup> measured over a period of four hours. Due to the friable nature of asbestos coatings, not including asbestos-containing textured coatings, it is highly probable that any contact with such materials will result in both the Sporadic and Low Intensity threshold and the Control Limit being exceeded and therefore all works with these materials will be licensable.

While it is the case that most work with asbestos-containing insulation and asbestos insulating board (AIB) will be licensable, CAR2012 includes for situations which may not require the use of a licensed contractor. These situations are where the work carried out with either the asbestos-containing insulation or AIB is of short duration, which is defined in the regulations as work in which the total time spent by all workers working with these materials does not exceed two hours in a seven-day period, including the time setting up, cleaning and clearing up, and no one person works for more than one hour in a seven-day period. As above it is a requirement that the Sporadic and Low Intensity Threshold and the Control Limit is not exceeded during such works.

From a practical point of view the consequence of the above is that short duration work with AIB where the Sporadic and Low Intensity Threshold and the Control Limit will not be exceeded and the work is part of a maintenance activity e.g. to lift an AIB ceiling tile to undertake maintenance work on a light fitting, can be undertaken as Non-Licensed Work for which there is no requirement to notify the Health and Safety Enforcement Authority or for those undertaking the works to be subject to medical surveillance.

Short term work with AIB, which does not exceed the Sporadic and Low Intensity threshold or the Control Limit but which is not part of maintenance e.g. to permanently remove a small AIB riser panel and replace with a non-asbestos product will be classified as Notifiable Non-Licensed work. These works will need to be notified to the Health and Safety Enforcement Authority and those undertaking the works will need to be subject to a medical surveillance regime.

All short duration work with asbestos insulation, which does not exceed the sporadic and low intensity threshold and the control limit, will be classified as Notifiable Non-Licensed Work.

Any work with asbestos-containing insulation and AIB which is not short duration or which exceeds the sporadic and low intensity threshold or the Control Limit will be regarded as Licensable Work.

It is important to stress that all employees allocated to Non-Licensed or Notifiable Non-Licensed Work (NNLW) will need to have received the appropriate training as detailed in CAR 2012 and the accompanying Approved Code of Practice L143. Such training should only be provided by a competent organisation e.g. UKATA approved.

## 9. Should we use cloned information for properties of similar archetypes?

The relevant Health and Safety Executive Guidance document relating to surveys, HSG 264, “Asbestos: The survey guide” provides guidance in relation to the surveying of domestic properties. This guidance advises that a proportion of properties should be surveyed until the results demonstrate that there is consistency in the range of ACMs in the property type. The guidance go on to say that, “Not every property will contain all the ACMs but the range of ACMs in the property types will be known.” “Information from the management surveys can be enhanced with data from more intrusive surveys when the circumstances allow e.g. when properties are vacant. Information from the refurbishment and demolition surveys should be used to update the asbestos register for that particular type of property.

While the above indicates that a cloning type approach can be used for domestic properties of the same archetype, it is vitally important that careful planning precedes any such survey programme. This planning should include for instance common agreement on the use of building terminology which should be used consistently for all the properties surveyed e.g. Soffit boards, Undercloaking, Fascia Boards and Barge Boards etc. For asbestos - containing floor tiles avoid the use of specific colours as this is not particularly relevant.

During the planning of such exercises it is important to remember, as pointed out in HSG 264 that the presence of ACMs can be quite variable and unpredictable even within the same archetype group for reasons including

- Inconsistent/variable initial use;
- Random use of waste pieces of asbestos;
- Previous unrecorded removal;
- Modifications of properties by tenants (past and present) and previous landlords.

In order to account for these variations the suggested approach is to survey an adequate sample of the properties within a given archetype (circa 20%) and to create a virtual property which includes all variations identified. The asbestos register for the virtual property can then be cloned across the rest of the archetype group with a reasonable degree of reliability. As additional surveys, including R and D Surveys are undertaken for the same archetype group then the information included in the asbestos register for the virtual property can be added to an then applied across the rest of the group. This process can continue until such time that 100% of the properties have been surveyed.

During the time that cloned asbestos survey date is relied upon, it is important that all maintenance operatives and contractors are made aware of the basis and validity of the asbestos information made available to them and that they use the knowledge they should have from mandatory Asbestos Awareness training to check the nature and content of any suspect materials which they may encounter.



## 10. What training should be provided for Asbestos Management?

The requirements for the provision of relevant levels of asbestos training should be considered within a training needs analysis included with the Asbestos Management Plan.

The most basic level of training referred to in CAR 2012 is Asbestos Awareness which must be provided to employees whose work could foreseeably disturb the fabric of a building and expose them to asbestos or who supervise or influence the work. This category of training will therefore need to be provided to all building trades' persons and those who supervise and manage them. It must be emphasised that Asbestos Awareness training does not equip anyone to undertake any work with ACMs. The duration of a basic Asbestos Awareness training is around 3.5 to 4 hours.

As an extension to the above training the United Kingdom Asbestos Training Association (UKATA) now has available a further half day session which provides additional information relating to Duty Holder requirements the conduct of surveys, the associated risk assessments and Asbestos Management Plan. This course is relevant to those who have an intermediate role to play in the management of asbestos issues in their organisation such as project or premises managers.

For Trades Persons who may be allocated to undertake low risk Non- Licensed work with ACMs and those who manage such works there is an absolute requirement as detailed within regulation 10 of CAR 2012 for them to undertake the relevant Non-Licensed Course. This is an additional one day course for those who have already undertaken Asbestos Awareness training within the previous 6 months.

For those who have a front line responsibility for Asbestos management within their organisations, such as those who have taken on the Appointed Person role, there are now two alternatives for the provision of relevant training. The first of these is the UKATA 3 day Asbestos Management Appointed Person course. This a course delivered by UKATA approved training organisations that concludes with a 30 question multiple choice test paper which is marked by the training provider. The second more demanding course available is the British Occupational Hygiene Society Proficiency Module P405 which is a 4 day course culminating in a 2 hour written examination and a 2 hour written practical examination which is an open book examination. Both examinations are invigilated and marked directly by BOHS. The P405 is a professional qualification gained by many Asbestos Analysts in their career development path to Asbestos Consultants. A further qualification which has been regularly pursued by social housing management personnel is the BOHS P402 module in Asbestos Surveying. This course provides candidates with a detailed knowledge of the Asbestos Surveying process and how to check and utilise the information contained within survey reports. This course also concludes with a 2 hour written examination and a 2 hour written practical examination.