

RAAC: 5 questions to guide investigations

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As reinforced autoclaved aerated concrete continues to be found in [schools](#), a lawyer offers advice on what to ask to determine your own school's response.

The presence of reinforced autoclaved aerated concrete (RAAC) is now known to affect 174 schools - and potentially many hundreds more.

For many this has meant rapid work to establish the risks they face and how to mitigate it, as well as dealing with insurance, planning and health and safety.

With so much swirling around, it can be hard to decide on the best course of action. Here's what schools need to ask themselves.

Do we need a survey?

Any schools concerned about the risk of RAAC should instruct a structural engineer to carry out a survey.

The surveyor should be asked to comment on whether RAAC is present, the building's current condition and whether it is safe to use, any appropriate management or remediation strategies, and whether the use of any part of the site should cease.

What are our health and safety duties?

School duties under health and safety legislation include ensuring the safety of all people present on site.

As such, schools should carry out risk assessments and include questions such as: what is the risk? Have steps been taken to manage the risk? Are these steps sufficient? Should we restrict access to areas affected? What is the probability of harm? Can people in the building be protected?

These assessments should be kept under regular review, and while there is good sense in retaining old risk assessments, (eg, to defend historic claims), it is the current versions that are relevant and important for day-to-day management of health and safety.

If buildings are affected, whose responsibility is the repair?

To establish this, schools must understand the legal basis on which their [buildings](#) are occupied. Is the relevant organisation the freehold owner, a tenant under a lease or does it occupy under some other, more informal arrangement?

A freehold owner will be responsible for the maintenance and repair of its buildings, and for the safety of those who enter the property. However, under a lease, a tenant's obligations will be set by the lease.

Most academies' leases follow the DfE's model academy lease, which is set out as follows:

- The tenant (ie, the academy trust) is required to make good "any deterioration to the condition of the property".
- The landlord (very often the local authority) may inspect the property and may then serve notice requiring that any breach of a tenant's repair obligation be addressed. (If such a repair relates to a safety issue, the tenant is required to commence the necessary works within 56 days, which can present issues of both funding and contractor availability.)

- The tenant is required to notify the landlord of any structural damage to the property, or of anything that might adversely affect health and safety at the property.
- Some repair works may amount to alterations, which will require the consent of the landlord under the terms of the lease.

This is a summary of the standard position under the model academy lease, but leases vary in their content - particularly where the leases are for a short term or for only part of a building.

As such, schools should check their position under their own particular leases, or any licence to occupy or other arrangement under which they occupy a space.

How do planning issues affect building work?

Although it may be tempting to move quickly to fix issues, it is important to establish whether any work will have implications under the town and country planning system, particularly if a school is in a conservation area or the building is listed.

Where work is planned, school leaders should take specialist planning advice and factor in a lengthy planning process to their timescales.

This will not mitigate timescales for works required by a lease, so if a landlord does serve notice for work to be carried out, discussions may be required.

Can schools claim under insurance policies?

Deterioration of RAAC is very unlikely to be considered an insured risk, but rather a maintenance and renewal issue, so in most cases, neither standard insurance policies nor the school insurance scheme - known as the [risk protection arrangement, or RPA](#) - will provide cover for repairs (although it is still worth checking).

Indeed, the [RPA has this week published guidance](#) on its coverage, confirming that neither investigative work nor the cost of replacing RAAC is covered.

However, it does state that the Department for Education (DfE) has committed to funding capital mitigation works once RAAC is confirmed. The increased cost of working while repairing or replacing RAAC will also be met by the DfE.

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