



## HOUSING COMPLIANCE (LEGIONELLA) POLICY

<b>Date of policy</b>	April <del>2021</del> <u>2024</u>
<b>Date for review</b>	<del>April 2024</del> <u>March 2027</u>
<b>Policy owner</b>	Director of Housing and Operations, Folkestone & Hythe District Council
<b>Approved by</b>	<b>Pending</b>
<b>Risk register rating</b>	Medium
<b>Associated documents</b>	FHDC Legionella procedure

<b>Revision history</b> (internal F&HDC officer use only)			
<b>Version</b>	<b>Date</b>	<b>Revision description</b>	<b>Policy author</b>
V1.0	March 2020	Document created	Lee Woods (Pennington Choices)
V2.0	March 2021	Re-branding; update of key roles and responsibilities in line with FHDC reporting structure	John Holman, Assistant Director (Housing); Jonathan Hicks, Policy & Performance Specialist
V2.1 (draft)	December 2023	Changes made to reflect current working practises.	Keith Deane, Compliance Senior Specialist; Jonathan Hicks, Performance Specialist

V2.2 (draft)	January 2024	3.4 updated to reflect new powers by the Regulator; 6.15/16 added Controlled Access.	Jonathan Hicks, Performance Specialist
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### NEW POLICY / POLICY REVIEW

New policy	
Early review – change in legislation	
Early review – significant changes in practice	
Review due – significant changes	
Review due – minor changes	YES
Other reason	

### Reason for new policy / summary of changes

To ensure the accountability for managing this policy reflects the current working practices of the housing and compliance team

### CONSULTATION

List of people/roles who have been consulted	Date
TBC	

### EQUALITY IMPACT ASSESSMENT

	Completed	Date
	Yes	28 April 2021

### DISSEMINATION

Role	Awareness	Essential
Compliance team		YES
All housing staff	YES	

### TRAINING

Role	Trainer	Date completed
Compliance Specialists	Compliance Senior Specialist	September 2021

### MONITORING AND COMPLIANCE

Method	Responsibility	Frequency
Internal audit review	EK Audit partnership	Annually or as required

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## **1. Purpose of the Policy**

- 1.1 Legionellosis is a collective term for diseases caused by legionella bacteria including the most serious, Legionnaires' disease, as well as the similar but less serious conditions of Pontiac fever and Lochgoilhead fever. Legionnaires' disease is a potentially fatal form of pneumonia, and everyone is susceptible to infection. The risk increases with age, but some people are at higher risk, e.g. people over 45, smokers and heavy drinkers, people suffering from chronic respiratory or kidney disease, diabetes, lung and heart disease or anyone with an impaired immune system.
- 1.2 Legionnaires' disease is normally contracted by inhaling small droplets of water (aerosols), suspended in the air, containing the bacteria.
- 1.3 Therefore, it is important that Folkestone & Hythe District Council (hereafter referred to as 'the Council') control these risks by introducing measures which reduce and/or control the risk of legionella growth and proliferation of legionella bacteria and other organisms in the water systems and reduce, so far as is reasonably practicable, exposure to water droplets and aerosol in non-domestic and domestic stock as required. This will reduce the possibility of creating conditions in which the risk from exposure to legionella bacteria is increased.

## **2. Policy Objectives and Scope**

- 2.1 The Council must establish a policy which meets the requirements of the Health and Safety at Work Act 1974 and the Management of Health and Safety at Work Regulations 1999 (the Management Regulations). In addition to this, the policy must provide assurance that measures are in place to demonstrate compliance with the Control of Substances Hazardous to Health Regulations 2002 (as amended) and to identify, manage and/or mitigate risks associated with hot and cold-water systems and any other systems that may cause exposure to legionella bacteria. The L8 approved code of practice, 'Legionnaires' disease: The control of legionella bacteria in water systems', is available to duty holders to provide practical guidance on how to comply with their legal duties in relation to legionella.
- 2.2 The Council must also ensure compliance with water hygiene legislation is formally reported to the Council's Cabinet ([where appropriate](#)), including the details of any non-compliance and planned corrective actions.
- 2.3 The policy is relevant to any Council employees, tenants, contractors and other persons or other stakeholders who may work on, occupy, visit, or use its premises, or who may be affected by its activities or services.

- 2.4 The policy should be used by officers to ensure they understand the obligations placed upon the Council to maintain a safe environment for tenants and employees within the homes of each tenant, and communal buildings.

### 3. Legal/Regulatory Framework

- 3.1 **Regulatory Standards** - the application of this policy will ensure compliance with the regulatory framework and consumer standards (Home Standard) for social housing in England, which was introduced by the Regulator of Social Housing (RSH).

- 3.2 **Legislation** - the principal legislation applicable to this policy is the Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1999 (the Management Regulations) and the Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH). The Council has a legal obligation under COSHH to prevent or control exposure to biological agents. Being harmful to human health, legionella falls within the scope of these regulations.

- 3.3 **Code of Practice** – the principal approved codes of practice applicable to this policy are:

- ACoP L8 - 'Legionnaires' disease: The control of legionella bacteria in water systems' (4th edition 2013).
- HSG274 - Legionnaires' disease: Technical guidance Part 1: The control of legionella bacteria in evaporating cooling systems (2013).
- HSG274 - Legionnaires' disease: Technical guidance Part 2: The control of legionella bacteria in hot and cold-water systems (2014).
- HSG274 - Legionnaires' disease: Technical guidance Part 3: The control of legionella bacteria in other risk systems (2013).
- INDG458 - Legionnaires' disease: A guide for duty holders Leaflet (HSE Books 2012).

### 3.4 Sanctions

- 3.4.1 The Council acknowledges and accepts its responsibilities in accordance with the regulatory standards, legislation and codes of practice and that failure to discharge these responsibilities properly could lead to a range of sanctions including prosecution by the Health and Safety Executive under the Health and Safety at Work Act 1974, prosecution under the Control of Substances Hazardous to Health Regulations (COSHH), and/or prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007, ~~and via a serious detriment judgement from the Regulator of Social Housing.~~

- 3.4.2 In addition, the Regulator of Social Housing has powers to proactively intervene where landlords are performing badly on consumer issues (including non-compliance with building safety measures) and may conduct routine inspections to investigate systematic issues.

3.5 **Tenants and ~~HRA Commercial~~ Leaseholders** – the Council will use the legal remedies available within the terms of the tenancy agreement, lease or licence should any tenant refuse access to carry out essential safety checks, maintenance and safety related repair works.

### 3.6 **Additional legislation**

This Water Hygiene Policy also operates in the context of the following legislation:

- The Workplace (Health Safety and Welfare) Regulations 1992
- Construction (Design and Management) Regulations 2015
- Housing Act 2004
- Landlord and Tenant Act 1985
- Homes (Fitness for Human Habitation) Act 2018
- Housing Health and Safety Rating System (HHSRS) 2006
- Data Protection Act 2018
- Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) 2013
- Public Health (Infectious Diseases) Regulations 1998
- Water Supply (Water Quality) Regulations 2016
- Water Supply (Water Fittings) Regulations 1999

## 4. **Responsibility**

4.1 The Council's Cabinet will have overall governance responsibility for ensuring the Water Hygiene Policy is fully implemented to ensure full compliance with the regulatory standards, legislation and approved codes of practice. The Council's Cabinet will formally approve this policy and review it every ~~two~~ three years (or sooner if there is a change in regulation, legislation or codes of practice).

~~4.2 The Council's Cabinet will receive regular updates on the implementation of the Water Hygiene Policy and compliance performance, along with notification of any non-compliance issue which is identified as part of the routine performance-reporting process.~~

4.2 The Corporate Leadership Team (CLT) will receive reports in respect of Water Hygiene performance and ensure compliance is being achieved as part of the routine performance-reporting process.

4.3 The Council's Director of Housing and Operations ~~will have~~ has strategic responsibility for the management of water hygiene safety and for ensuring compliance is achieved and maintained. ~~The Director will also oversee the implementation of the Water Hygiene Policy.~~

- 4.4 The Council's ~~Director of Housing and Operations~~ Assets Lead Manager will be responsible for overseeing the delivery of the agreed water hygiene programme, and the prioritisation and implementation of any works arising from the safety inspections.
- 4.5 The housing teams will provide key support in gaining access into properties where access is proving difficult and use standard methods to do so. ~~They will also facilitate the legal process to gain access as necessary.~~
- 4.6 The Council's ~~Director of Housing and Operations~~ Chief Officer for Housing will be responsible for ensuring the policy is reviewed every ~~two~~ three years, and will notify the Council's Corporate Leadership Team (CLT) and relevant operational team(s) responsible for the delivery of the compliance programme, of the upcoming review.
- 4.7 The Health & Safety Executive's Approved Code of Practice and Guidance Note L8, three key distinct roles of 'duty holder', 'responsible person' and 'deputy responsible person'. The duty holder (the Council) has overall responsibility for the control of legionella within the Council's managed residential and non-residential stock, and the 'responsible person' will identify the resources and requirements needed to successfully implement this policy

#### **4.86 Competent Persons**

- 4.86.1 The Council will ensure that the manager with lead responsibility is appropriately competent, holding a recognised qualification in legionella control through the completion of a certified training course designed to meet the training needs of a 'duty holder' or 'responsible person' for legionella control. ~~This qualification will be obtained within 12 months of the start of employment for any new operational leads, or within 12 months of the approval of this policy for the existing post holder if they do not already hold it. Where the appropriate qualification has not yet been obtained, the Council will seek assistance from a relevant third-party consultant, until the Council employee(s) has obtained the qualification(s).~~
- 4.86.2 ~~Training includes courses by BOHS (British Occupational Hygiene Society) such as P901 — Management and control of building hot and cold water services, City and Guilds, CIBSE, or HABC around the requirements of ACoP L8 - 'Legionnaires' disease: The control of legionella bacteria in water systems'.~~
- 4.86.3 The Council will ensure that only suitably competent consultants and contractors, registered members of the Legionella Control Association (LCA) or equivalent, are procured and appointed to undertake risk assessments, prepare written schemes of control and undertake works in respect of water hygiene and legionella control.
- 4.86.4 The operational team with responsibility for delivery will check the relevant qualifications of employees working for these contractors to ensure that all persons are appropriately qualified for the work that they are carrying out.

These checks will be undertaken on an annual basis and evidenced appropriately.

## The Policy

### 5. Obligations

- 5.1 The Control of Substances Hazardous to Health Regulations 2002 (as amended) (COSHH), the Management of Health and Safety at Work Regulations 1999 and the Health and Safety at Work Act 1974 place a duty, as an employer or person in control of a premises (e.g. a landlord), to take suitable precautions to prevent or control the risk of exposure to legionella.
- 5.2 The Council, as the 'Duty Holder' as defined by ACOP L8, is responsible for Health and Safety and must take the right precautions to reduce the risks of exposure to legionella, including understanding how the organisation will:
- Identify and assess sources of risk
  - Manage any risks
  - Prevent or control any risks
  - Keep and maintain the correct records for 5 years
- 5.3 The Council must ensure there is a risk assessment undertaken for all hot and cold-water systems, cooling plant and any other systems that can produce water droplets to establish any potential risks and implement measures to either eliminate or control identified risks.
- 5.4 The Council as the 'Duty Holder' ~~responsible for control of legionella and water hygiene safety must appoint a competent/responsible person to take managerial responsibility for legionella control – risk assessment, production of a written scheme and implementation of that scheme to prevent or control the risks. A competent person is someone with sufficient authority, competence, necessary skills, knowledge of the system and experience. The Council will ensure that properties are risk assessed by a competent person for potential to cause exposure to legionella.~~ will appoint a person(s) to take responsibility to control and manage the risk of exposure. The Responsible Person will have sufficient authority, competence and knowledge to ensure that all operational procedures are carried out in a timely and effective manner.
- 5.5 The 'Duty Holder' will ensure that all persons involved in the management and control of risk, or who could impact on its controls, receive appropriate training. With regard to external suppliers, the Council will seek evidence of training and competence.
- 5.65 In addition, the 'Duty Holder' will appoint an authorised deputy responsible person who will provide cover to the responsible person in their absence. The



deputy responsible person should be trained, instructed, and informed to the same level as the responsible person, and they should assist in the frequent monitoring of the control scheme(s).

## **6. Statement of Intent**

- 6.1 The Council acknowledges and accepts its responsibilities with regard to water hygiene safety and preventing exposure to legionella. The Council will take all reasonable measures to establish effective systems to manage the risks associated with legionella in accordance with the requirements set out in legislation and guidance (section 3).
- 6.2 The Council will hold accurate records against each property it owns or manages, setting out the requirements for water hygiene risk assessments and safety checks.
- 6.3 The Council will periodically review risk assessments (every 2 years) in case anything changes in the system. Where a system is identified as more likely to undergo change and is therefore a higher risk, the risk assessment will be reviewed on a more frequent basis, dependent on the determined level of risk. The Council will ensure that a 'written scheme of control' is developed and fully implemented for all properties risk assessed as requiring controls to adequately manage the risk of legionella exposure. The schemes will be assessed by The Council's competent person as high, medium or low risk.
- 6.4 The Council will ensure that a risk assessed approach for water hygiene safety is adopted as part of the void standard, when carrying out works on void properties prior to re-let. These checks will be applicable on all void properties prior to commencing works which may affect the hot and cold-water systems and will ensure that any identified risk control measures are fully implemented where identified.
- 6.5 The Council will ensure audits are undertaken annually, by an independent competent person, to all systems identified as a high risk (e.g. older persons' schemes) to ensure that all control actions are being fully and robustly implemented.
- 6.6 The Council will ensure that only suitably competent consultants, surveyors, risk assessors and engineers undertake works for the organisation in respect of water hygiene safety.
- 6.7 The Council will have a robust process in place to gain access to properties where tenant vulnerability issues are known or identified, whilst ensuring the organisation can gain timely access to any property in order to be compliant with this policy and safeguard the wellbeing of the tenant.

- 6.8 The Council will establish and maintain a plan of all continuous improvement activity undertaken with regards to water hygiene safety.
- 6.9 The Council will ensure that all contractors' employee and public liability insurances are up to date on an annual basis.
- 6.10 The Council will ensure contracts/service level agreements are in place with the contractors responsible for delivering the compliance service.
- 6.11 The Council will ensure there are effective contract management arrangements in place, in the form of client-led meetings taking place regularly, with standard agendas and minutes produced, key performance indicators analysed and programmes and performance scrutinised.
- 6.12 The Council will implement a robust process to deal with all changes to stock, including new property acquisitions, disposals and stock transfers, in order to ensure that properties are not omitted from the compliance programme, and to ensure the programme remains up-to-date.
- 6.13 The Council will ensure that there is a robust process in place for the management of immediately dangerous situations identified from the risk assessment or water testing/monitoring regime.
- 6.14 The Council will adopt a proactive approach to tenant communications ~~(for example, including water hygiene information within tenancy packs)~~. by providing suitable information to tenants (as required) to ensure they are aware of the measures applied to all water systems, and their obligations to use systems correctly.
- 6.15 The Council will have a robust controlled access procedure in place should any tenant refuse access to carry out essential safety related inspection and/or remediation works. The Council will make every effort to obtain access giving reasonable notice, and before the inspection/certificate is due to expire. However, if access has still not been granted, or in cases of emergency, we will take enforcement action to gain entry to the property if necessary. This may mean undertaking a 'controlled entry'.
- 6.16 Where a controlled entry is required, a locksmith appointed by the Council will gain entry to the property and change the lock. Work will be completed with or without the tenant's presence and the tenant will be recharged for the work.

## **7. Compliance Risk Assessment/Inspection Programmes**

- 7.1 **Risk assessment** – The Council will establish and maintain a risk assessment for water hygiene safety operations. This risk assessment will set out the organisation's key water hygiene risks together with appropriate mitigations.

7.2 **CDM** - to comply with the requirements of the Construction, Design and Management Regulations 2015 (CDM) a Construction Phase Plan will be completed for all repairs work to void and tenanted properties (at the start of the contract and annually thereafter), component replacement works and refurbishment projects where applicable.

7.3 **Legionella risk assessments** – The Council will carry out a programme of legionella risk assessments and risk assessment reviews to properties containing any water system that could present a risk of exposure to legionella. These risk assessments will be reviewed at least every two years, or after any works have been completed to the installation. Where certain communal properties (or residents) may be at a higher risk, e.g. Independent Living schemes, the Council will aim to review risk assessments annually.

7.4 **Communal blocks and ‘other’ properties** – all communal blocks ~~and ‘other’ properties~~ will be subject to an initial visit to establish whether a legionella risk assessment is required. Where a risk assessment is not required then The Council will record this as such on its records, including the date of the initial visit. Where a legionella risk assessment is required, the Council will ensure this communal block ~~or ‘other’ property~~ is included in the programme.

7.5 **Void properties** – Properties left unoccupied will be checked for ‘dead legs’, receive frequent flushing and shower head cleaning to comply with the Water Hygiene Procedure.

~~7.6 **Commercial Stock Assigned to the HRA** – The Council will ensure it has records of a valid LRA where properties it owns or manages are managed by people or organisations other than the Council (i.e. are managed by managing agents). These properties will be included on the Council’s Water Hygiene programme, so a new LRA can be requested from the managing agent prior to the existing one expiring. If the managing agent fails to carry out the LRA, The Council will step in and carry out the test and re-charge the managing agent for the cost of this work.~~

7.67 The Council will carry out a programme of maintenance visits by competent persons to all properties that have a written scheme of control in place. These programmes will ensure that all maintenance and testing set out in the written scheme of control is fully completed at the times and intervals stated. The results of these visits will be recorded electronically.

## 8. Compliance Follow-up Work

8.1 The Council will ensure there is a robust process in place for the management of any follow-up works required following the completion of a legionella risk

assessment or where this has been identified by the competent person when undertaking required maintenance activities.

- 8.2 The Council will ensure that there is a robust process in place to collate and record details of all remedial works and water testing completed against individual installations.

## **Key controls and reporting**

### **9. Record Keeping**

- 9.1 The Council will establish and maintain a register of all properties that have a written scheme of control for water hygiene in place. This register will also hold data against each property asset of the legionella risk assessment carried out.
- 9.2 Inspection and re-inspection dates, along with LRA and monitoring records will be held on the spreadsheet or on the shared drive.
- 9.3 The Council will establish and maintain accurate records of all written schemes of control and any associated remedial works and water testing, as per the organisation's Data Retention Policy.
- 9.4 The Council will maintain logbooks for all relevant sites as required to record the details of the results from the ongoing monitoring and inspection, where required.
- 9.5 The Council will hold and maintain accurate records on the qualifications of all consultants, surveyors, risk assessors and engineers undertaking water hygiene works for the organisation.
- 9.6 The Council will ensure robust processes and controls are in place to provide and maintain appropriate levels of security for all water hygiene safety related data.

### **10. Performance Reporting**

- 10.1 Robust performance indicator measures will be established and maintained to ensure the Council is able to report on performance in relation to water safety.
- 10.2 Performance measures will be produced and provided at Corporate Leadership Team (CLT) and Cabinet as part of the reporting cycle, as required. As a minimum these measures will include reporting on:

#### **10.2.1 Data – the total number of:**

- ~~• Properties — split by domestic properties, communal blocks and ‘other’ properties;~~
- ~~• Properties on the LRA programme;~~
- Properties with a valid ‘in date’ Legionella Risk Assessment. This is the level of compliance expressed as a number and/or a percentage;

#### 10.2.2 In addition, performance reporting may include

- ~~• Properties where the LRA has expired and is ‘out of date’. This is the level of non-compliance expressed as a number and a percentage;~~
- The number of follow up works/actions arising from any risk assessments or inspections, ~~and the numbers ‘completed’, ‘in time’ and ‘overdue’ — split by domestic properties, communal blocks and ‘other’ properties.~~ narrative on the current position, mitigating circumstances and/or progress on corrective action.

#### ~~10.2.2 As well as an explanation of the:~~

- ~~• Current position;~~
- ~~• Corrective action required;~~
- ~~• Anticipated impact of corrective action;~~
- ~~• Progress with completion of follow-up works — number of actions — ‘completed’, ‘in time’ and ‘overdue’.~~

## 11. Quality Assurance

11.1 The Council will appoint an independent competent person to complete a programme of compliance audits to 5 per cent of written schemes of control to ensure that all control actions are being fully and robustly implemented. In addition all schemes identified as high risk will receive an annual audit.

11.2 The Council will carry out an independent audit of our water hygiene and legionella contract responsibilities at least once every three years. This audit will specifically test for compliance with the regulation, legislation and codes of practice and identify any non-compliance issues for correction.

## 12. Non-Compliance/ Escalation Process

12.1 The definition of non-compliance in relation to this policy refers to any incident which results in a potential breach of legislation or regulatory standard, or which causes or has the potential to cause a significant risk to health or safety.

12.2 Any non-compliance issue identified at an operational level will be formally reported to the Council’s Director of Housing and Operations in the first instance.

12.3 The Council's Director of Housing and Operations will agree an appropriate course of corrective action with the relevant operational team(s) in order to address the non-compliance issue and report details of the same to the Corporate Leadership Team (CLT).

12.4 The Director of Housing and Operations will ensure the Council's ~~Cabinet Member for Housing, Transport and Special Projects~~ Corporate Leadership Team (CLT) and/or the appropriate Cabinet Member(s) is made aware of any non-compliance issue so they can consider the implications and take action as appropriate.

12.5 ~~In cases of a serious non-compliance issue The Council's Corporate Leadership Team and Monitoring Officer will consider whether it is necessary to disclose the issue to the Regulator of Social Housing in the spirit of co-regulation, or any other relevant organisation such as the HSE, as part of the Regulatory Framework.~~

### **13. Training**

13.1 The Council will ~~ensure that all operatives working for, or on behalf of, the organisation have the relevant training required for their role. This will be managed via periodic assessments of training needs and resulting programmes of internal and/or external training work with appropriate consultants that have relevant training, where it does not have expertise in-house. However, the Council provide general legionella awareness training to all relevant staff.~~

### **14 Equality and Diversity**

14.1 An Equality Impact Assessment has been carried out to determine whether the policy would have an impact on any member of staff, tenants or contractor workforce, which unfairly discriminates or disadvantages them in the context of the Equality Act 2010. Adherence to the policy provides the same level of protection for all building users and no impacts have been identified that would adversely affect one group more than any other.

14.2 Where a tenant has or may have a protected characteristic under the Equality Act 2010, and in particular, where the tenant may be disabled, have mental health issues, language or learning difficulties, the Council will make reasonable adjustments to the delivery of its services, to take specific needs into account.