

Report of the Corporate Landlord

Water Management (including Legionella)

Summary

1. This report provides an update on the importance of managing Legionella, the standards expected, the current position at CYC and asks for approval to the proposed structure and funding arrangements to enhance the water management framework for the City of York Council.

Background

2. In the summer of 2002, an outbreak of Legionnaires' disease occurred in the town of Barrow-in-Furness in South Cumbria. It resulted in the deaths of seven members of the public and infected a further 180 people. The source of the outbreak was traced back to an air conditioning unit at Forum 28, an arts and leisure centre owned by Barrow Borough Council.
3. The prolonged investigation and subsequent public enquiry, concluded in 2007, identified significant issues relating to the need for more effective management of water and in particular 'Legionella'.
4. Legionnaires' disease is a type of pneumonia. It was named after an outbreak of severe pneumonia that affected a meeting of the American Legion in 1976. It is an uncommon but serious disease. Legionnaires' disease occurs more frequently in men than women. It usually affects middle-aged or elderly people, and it more commonly affects smokers or people with other chest problems.
5. The council has had risk mitigating measures in place for a number of years, but the findings of the Barrow-in-Furness case has spawned new directives and codes of practice that need to be adhered to.

Legal requirements

6. The specific relevant regulations that require following are:

Health and Safety at Work etc Act 1974

Management of Health and Safety at Work Regulations 1999 (MHSWR)

Control of Substances Hazardous to Health Regulations 1999 (COSHH)

7. These legal duties require people operating water systems, to ensure that they are operated and managed in such a way as to prevent the risk of exposure to Legionella bacteria. A single legal document called “***Legionnaires’ disease - The control of Legionella bacteria in water systems. Approved Code of Practice and guidance***”, commonly referred to as L8, describes the legal duties and provides practical guidance on how to comply with the law. It requires dutyholders to:
- Assess the risks of Legionnaires’ disease;
 - Appoint a person to have managerial oversight;
 - Prevent or Control the Risk; and
 - Monitor

CYC Current position

8. CYC has recognised the need to manage Legionella more effectively by complying with L8 and has acted positively to reduce the risk:
- (1) Appointed Neil Hindhaugh (Assistant Director: Property Services) as the responsible person; and
 - (2) Property Services FM team have promoted and coordinated all works to date.
 - (3) Property Services appointed NALCO as an external contractor to carry out the initial assessment of the risk of Legionella across 157 CYC premises (apart from within Housing who are managing their own portfolio in respect to the risk to Legionella)
 - (4) NALCO have identified the risk coming from the assessment as either priority 1, 2 or 3, With priority 1 being the most important and perceived potential breaches of legislation. CYC have a plan in place to respond to all priority 1 issues on a “needs must” basis.
 - (5) Property Services have undertaken a benchmarking exercise of other councils in the region to identify and compare levels of compliance, processes in place or being developed and costs.
 - (6) Property Services have been using the Risk Assessment to decide upon the appropriate control system that is required for the risk
 - (7) Property Services have drawn together management files that combine the risk assessment with the corresponding documentation such as schematics as well as the monitoring requirements for each specific site
 - (8) Property Services have already let a contract for the monitoring of all Elderley Persons Homes to mitigate any risk to this vulnerable group of people.

- (9) Documentation is being prepared to procure contractors for the monitoring, sampling and testing regime for all other properties.

To discharge our legal responsibilities CYC needs to ensure:

9. That the appointed person (Responsible Person) has sufficient resource to fulfil their duties (this was one of the identified failings from the Barrow Legionella Case)
 - (1) That Monitoring is carried out, evidenced and recorded in line with the legal requirements
 - (2) That there are sufficient funds to resource improvements identified by NALCO as part of their risk assessment.
 - (3) That there are sufficient funds to resource the in-house co-ordination and management of this activity, as the Responsible Person.

Conclusion

At present CYC would not be seen to be legally compliant in the management of Legionella bacteria in water systems.

10. This conclusion is made because although CYC have carried out risk assessments of the water systems through NALCO:
 - All of the priority one actions, NALCO have identified, have not been implemented; and
 - CYC are not consistently carrying out the legally required monitoring checks that are required and set out in “The control of Legionella bacteria in water systems. Approved Code of Practice and Guidance, L8”; and
 - The responsible person must have sufficient resources to fulfil the legal requirements.

Action required

11. The following actions to be implemented:
 - Sufficient resources be provided to undertake works to fulfil the obligations of the ‘Responsible Person’ within Property Services .

The proposal is to strengthen the ‘compliance team’ within the service through:

- either the creation of a new post of Assistant Compliance Officer to work alongside the Asbestos Manager (to become Compliance Officer) as part of a compliance team covering CYC’s obligations for asbestos, fire regulations and water management. This will provide cover when one or the other is absent.

- Or by purchasing specialist expertise from the market place to support the compliance team covering CYC's obligations for asbestos, fire regulations and water management.
- Ensure that the legally required monitoring checks are being carried out. This can be achieved either by recruiting an in-house team to manage and perform all the checks or by using a specialist contractor. Whichever option is decided they would be responsible for carrying out all the monitoring checks and maintaining the required record keeping.
- The preferred option for delivering this work is to employ a specialist contractor. Reason: They already have a trained, skilled and efficient resource at their disposal and available to us now. The benchmarking exercise showed that other authorities had, generally, adopted a similar approach.
- Ensure that the responsible person has sufficient resources to fulfil all of the legal requirements

Consultation

12. The council has undertaken a benchmarking exercise with other neighbouring authorities to determine their approach to this matter and to compare the level of resource and budget required to implement a compliant strategy.
13. All building managers have been given an initial briefing and have been provided with management files that combine the assessment with the corresponding documentation such as schematics and the monitoring requirements for each specific site

Options

14. The only option available to the council is one of compliance. The council has been under the spotlight from the Health & Safety Executive over the last few years and on this important issue the council must be seen to have responded in a proper manner.
15. The Executive is asked to approve action on all issues set out in this report. For the specialist activities Executive has a choice of:
 - (1) Creating its own specialist team to undertake all monitoring activities, or
 - (2) Employ a specialist contractor to undertake this work.

Analysis

16. (1) would require a prolonged process of creating and approving a structure, preparing job plans, having them evaluated, advertising, recruiting and training before any of the urgent monitoring work could be undertaken.
17. (2) would require a process of procurement to appoint an established, qualified and skilled team to undertake the work. Most of the specialist contractors are currently

working for other council's doing similar works. References would be taken from those council's as part of the procurement process.

18. The preferred option for delivering this work is to employ a specialist contractor. Reason: They already have a trained, skilled and efficient resource at their disposal and available to us now. The benchmarking exercise showed that other authorities had, generally, adopted a similar approach.

Financial Implications

19. The costs associated with compliance are outlined in Annex A of this report.
20. The council recognises that compliance is a priority and needs to be effectively resourced. However, in the current financial climate existing resources will need to be re-prioritised to accommodate this need and avoid the need for growth.
21. The costs of monitoring, sampling and testing of all council buildings will be the subject of a procurement and tendering process. The figures contained in Annex A are based upon those in other council's as determined by the benchmarking exercise. This will be an annual cost recharged to each individual directorate relative to the number and size of properties used for the delivery of their services. These annual costs will be contained by the relevant Directorate within their existing budget allocations. This recharge will also include the cost of coordination and management of compliance by the Corporate Landlord (Responsible Person)
22. The capital cost of any works necessary to replace, refurbish or upgrade facilities or components within a building will be met from within existing capital budgets. These costs are not expected to be significant, but in the event of a major incident or need, provision will be met from contingencies.

Corporate Priorities

23. Responding to the risks associated with Legionella contributes to the Corporate Strategy in terms of being a 'Heathy City' and an 'Effective Organisation'

Implications

24.
 - **Financial** *See Annex A and above in the main body of the report..*
 - **Human Resources (HR):** *The implementation of the management framework for water and legionella may require the appointment of one full time post to the compliance team. The Job Plan for the Assistant Compliance Officer has been prepared and will be evaluated and the costs compared with market alternatives. The outcome of this exercise will further inform the financial implications of this report.*
 - **Equalities:** *None*

- **Legal** *Aspects of this subject matter deal with legislation, failure to comply with that legislation could lead to legal actions against the authority and individuals within it..*
- **Crime and Disorder** *none relating to this process*
- **Information Technology (IT):** *None*
- **Property** *All contained within this report*
- **Other:** *None*

Risk Management

25. The risk of Legionella outbreaks should be fully assessed and entered onto the appropriate risk register.

Recommendations

26. Members are asked to:
27. Acknowledge the importance of Water Management and particularly Legionella.
28. Approve the management framework described in this report, to include
- (1) To recruit/procure the specialist support required to undertake works to fulfil the water management obligations of the 'Responsible Person' within Property Services;
 - (2) The employment of a specialist contractor to undertake all monitoring activities.
 - (3) The provision of sufficient resources, through re-prioritisation, to fulfil the council's legal requirements.

Reason: To ensure that the council becomes compliant in its response to the risks associated with water management and particularly, legionella.

Contact Details

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Chief Officer Responsible for the report:

Chief Officer: Neil Hindhaugh

Assistant Director Property Services

Report Approved

Date 28/5/09

Specialist Implications Officer(s) *List information for all*

Jonathan Grainger

Head Of Health & Safety

Ian Floyd

Director of Resources

Wards Affected:

All

For further information please contact the author of the report

Annexes

Annex A - Estimated budgetary requirements for compliance by CYC