

## **Sharing the Duty: Managing the risk of Legionnaire's disease in commercial premises where there are multiple duty holders**

In current estate management practice it is common for there to be several duty holders within one building who may have responsibilities in relation to managing the risk of legionella bacteria growth and proliferation in their water systems. The term dutyholder relates to any party that holds a relevant legal duty under the Health & Safety at Work etc. Act 1974.

In some cases the initial water supply within a building may fall to the control of one party but then, after distribution, it may fall to others such as tenants to ensure its ongoing safety. Where the water flow is uninterrupted, then it follows that failures or non-compliance by one party could have a detrimental effect on another.

This document has been drawn up with the intention of providing guidance for duty holders in relation to the extent of their duties and offers an interpretation of the legal requirement of 'reasonably practicable' in relation to this issue. It also provides further guidance on how best to manage and co-ordinate overall compliance between any involved parties.

All parties have a legal duty to maintain the water systems within their control to a safe standard with appropriate maintenance and controls to minimise the risk from legionella bacteria. To that end a dutyholder must ensure that the following be implemented.

- A suitable and sufficient legionella risk assessment is undertaken for any water services that are within your control and that:
  - if the risk assessment shows that there is a reasonably foreseeable risk the person on whom the statutory duty falls should appoint a person/s to take managerial responsibility and to provide supervision for the implementation of precautions;
  - a written scheme should be drawn up and implemented on site, detailing all necessary control measures required for effective legionella management;
  - all personnel involved in the management of legionella are suitably informed, instructed and trained for the tasks they are to undertake;
  - appropriate documentation must be maintained on site, detailing all tasks and measures carried out to reduce the risk of legionella within your remit.

Where the risk assessment identifies potential risks outside of your direct control then appropriate arrangements should be made to assess and control that risk so far as is reasonably practicable.

It is important to note that the general maintenance and cleanliness of part of a shared water system, such as in many commercial premises, can impact on the entire building system.

## Example

A managing agent looks after a commercial building and provides mains hot and cold domestic water services to three tenanted areas. By contract, the managing agent has a responsibility to risk assess and ensure the safety of the water from the incoming mains up to the point at which it enters the tenant's demise. The tenants have a responsibility to do the same from that point onwards. The tenant should take steps to ensure that the managing agent is fulfilling their requirements as this has a direct effect on the water within their control. Likewise, the managing agent should take steps to ensure that the tenants are fulfilling their requirements because if the tenant's water system became contaminated with legionella bacteria then it may act as a reservoir and seed the bacteria back down the system and into the parts that they are responsible for.

One of the key requirements in any effective management system is to ensure there is full co-operation and transfer of information between the parties with regard to the management of the water systems within the building.

However, the responsibility of each dutyholder to control the risk remains their own distinct duty – it is unlikely to be considered reasonable for one party to completely monitor or supervise the actions of another. Where there are shared risks or risk factors, it is likely to be reasonable that enquiries are made into what control measures are in place and/or to what extent they are effective. This information should be communicated in a timely fashion to enable co-operation and co-ordination. This will be of greater importance in the event that routine monitoring by any party indicates possible problems within a system. Such information should be shared if it is believed that another party may be able to assist or could be contributing to the risk. In this way a joint plan can be formulated and appropriate remedial action taken.

The Approved Code of Practice 'Legionnaire's disease: The control of legionella bacteria in water systems' otherwise known as L8 contains recommended minimum standards of control measures for most water systems and is available as a free download from the Health & Safety Executive website at [www.hse.gov.uk](http://www.hse.gov.uk)

If you have concerns that a dutyholder within your building is not meeting their legal requirements and that this increases the risks posed to your business or self then you can contact your local Environmental Health department for advice.

*This is a guidance document produced by City of London Corporation & Westminster City Council in association with CBRE and Assurity Consulting.*

*Please note that the views within this document are guidance only and not necessarily a legal requirement. Only the Courts may provide a decisive interpretation of reasonably practicable in relation to the management of the risk by shared dutyholders.*



Independent workplace compliance