

This Report will be made public on 12 March 2024

Report Number **C/23/94**

**To:** Cabinet  
**Date:** 20 March 2024  
**Status:** Non-Key Decision  
**Director:** Andy Blaszkwicz, Corporate Director of Housing and Operations  
Gill Butler, Chief Officer Housing  
**Cabinet Member:** Councillor Shoob, Cabinet Member for Housing and Homelessness

**SUBJECT:** HOUSING COMPLIANCE (LEGIONELLA AND LIFT SAFETY) POLICIES

**SUMMARY:** This report presents two policies in relation to health and safety compliance for the Council's housing landlord service. These are, specifically:

1. Housing Compliance (Legionella) Policy
2. Housing Compliance (Lift Safety) Policy

**REASONS FOR RECOMMENDATIONS:**

Cabinet is asked to agree the recommendations set out below because: -

- a. There have been changes in legislation and best practice since the policies were introduced in 2021. Cabinet needs to be made aware of these changes and the policies updated.
- b. The policies will expire in April 2024 and therefore require updating/renewing to ensure the Council is fully compliant with health and safety legislation.

**RECOMMENDATIONS:**

1. To receive and note report C/23/94.
2. To approve the proposed changes to the Council's Housing Compliance (Legionella and Lift Safety) Policies outlined in the report and in the appended track-changed documents.

## **1. BACKGROUND**

- 1.1 Six policies covering the FLEGAL (Fire, Legionella, Electric, Gas, Asbestos and Lifts) areas of health and safety compliance were approved by Cabinet in May 2021. These policies are due to expire in April 2024.
- 1.2 An audit on tenant health and safety was conducted by the East Kent Audit Partnership (concluded in August 2023) which awarded the Council with 'Reasonable Assurance' that it has a robust system of internal controls in place for the management of tenant health and safety. Part of this assurance is based on evidence that the Council has clear and up-to-date policies on the 'big six' aforementioned 'FLEGAL' areas of tenant health and safety compliance.
- 1.3 All six policies have undergone an internal review to ensure that they reflect current legislation and best practice. As a result, all six policies have been amended to reflect changes in regulatory powers to the effect that, from 01 April 2024, the Regulator of Social Housing will be able to proactively intervene or carry out inspections where landlords are underperforming.
- 1.4 In addition, all six policies now have corresponding paragraphs in relation to 'controlled access' that stipulate that the Council will make every effort to obtain access to properties to carry out safety checks, giving reasonable notice, 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.
- 1.5 Following on from Gas and Fire safety (presented to Cabinet 31 January 2024) and Asbestos and Electric safety (presented 28 February 2024) we now present policies for Legionella and Lift safety. Both policies have been updated with changes noted below (and highlighted as track changes at appendices 1 and 3).

## **2. HOUSING COMPLIANCE (LEGIONELLA) POLICY**

- 2.1 Broadly, the aim of this policy is to meet the requirements of 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, including legionella.
- 2.2 The Housing Compliance (Legionella) policy has been updated to ensure it reflects the current working practices of the housing compliance team. Aside from the amendments noted in 1.3 and 1.4 (above), no other significant changes have been made to this policy and there are no changes to the legal or regulatory framework that underpins the policy.

2.3 Minor changes we have made are:

- **Section 3 - Sanctions** noted in 1.3 above regarding regulatory powers
- **Section 4 - Responsibilities** updated to reflect current roles and accountabilities, particularly 4.7 re: 'duty holder' and 4.8 – competent persons
- **Section 5 - Obligations** clarified role of 'duty holder'
- **Section 6 - Statement of intent** noted in 1.4 above regarding 'controlled access'
- **Section 7 - Compliance Risk Assessment** references to HRA commercial stock removed
- **Section 10 - Performance reporting** updated to reflect current reporting requirements
- **Section 12 - Quality assurance** updated to reflect independent audit of water hygiene and contract responsibilities at least every three years
- **Section 14 - Equality and diversity** paragraph added to address potential tenant vulnerabilities when gaining access to undertake safety checks

2.4 Other minor changes and/or re-phrasing have been made throughout the policy.

2.5 Note that the register holding data against each property that has had a Legionella Risk Assessment along with their inspection dates, and the KPI 'Properties with a valid (in date) Legionella Risk Assessment' are the main controls for effective operational management of this policy.

### 3. HOUSING COMPLIANCE (LIFT SAFETY) POLICY

3.1 Broadly, the aim of this policy is to meet the requirements of the Health and Safety at Work Act 1974 and the Lifting Operation and Lifting Equipment Regulations 1998 (LOLER).

3.2 The Housing Compliance (Lift Safety) policy has been updated to ensure it reflects the current working practices of the housing compliance team. Aside from the amendments noted in 1.3 and 1.4 (above), no other significant changes have been made to this policy and there are no changes to the legal or regulatory framework that underpins the policy.

3.3 Minor changes we have made are:

- **Section 3 - Sanctions** noted in 1.3 above regarding regulatory powers
- **Section 4 - Responsibilities** updated to reflect current roles and practices in relation to reporting and 4.7 – competent persons/qualifications
- **Section 6 - Statement of intent** noted in 1.4 above regarding 'controlled access'

- **Section 7- Compliance Risk Assessment** references to HRA commercial stock removed
  - **Section 10 - Performance reporting** updated to reflect current reporting requirements
  - **Section 13 - Training** references to on-the-job training that we do not provide/ are not relevant, removed
  - **Section 14 - Equality and diversity** paragraph added to address potential tenant vulnerabilities when gaining access to undertake safety checks
- 3.4 Other minor changes and/or re-phrasing have been made throughout the policy.
- 3.5 The core asset register of all properties that have a lift, stair-lift and examination scheme in place, and which contains details of inspection records, plus the KPI 'Communal (passenger) lifts with a valid insurance check (LOLER)' are the main controls for effective operational management of this policy.

#### **4. CONSULTATION**

- 4.1 A working group of officers reviewed the policies between October-November 2023, including specialists in Legionella and Lift safety. In addition, the policies were reviewed by external consultants from PCM Consultancy. Details of the proposed changes were presented to the Strategic Tenants Advisory Panel (STAP) for information.

#### **5. CONCLUSION**

- 5.1 The appended policies have been updated according to current legislative requirements and best practice. It is therefore recommended that these changes and policies be approved by Cabinet before they expire in April 2024.

## 6. RISK MANAGEMENT ISSUES

6.1 A summary of the perceived risks follows:

Perceived risk	Seriousness	Likelihood	Preventative action
If the policies expire or are not adopted by Cabinet, the Council cannot provide assurance that it recognises its duty, or that it has the necessary controls in place to manage Legionella and Lift safety in tenants' homes effectively	High	Low	The policies are being presented to Cabinet for approval before they expire. There are no fundamental changes to legislative or working practices being proposed.
Failure by the Council to discharge its responsibilities for Legionella and Lift safety could lead to a range of sanctions including prosecution by the Health and Safety Executive under the Health and Safety at Work Act 1974, and/or prosecution under the Corporate Manslaughter and Corporate Homicide Act 2007	High	Low	An audit of tenant health and safety completed by the East Kent Audit partnership in 2023, provided 'reasonable assurance' that the Council has a robust system of internal controls in place. These policies form part of that assurance. In addition, KPIs for Legionella and Lift safety are monitored by the housing team weekly/monthly and reported to Cabinet quarterly.
Failure by the Council to demonstrate compliance with the regulatory framework and consumer standards may lead to an intervention and/or inspection by the Regulator of Social Housing (RSH)	High	Low	A mock assessment by the RSH against its new consumer standards (as part of a pilot exercise Jan-Mar 2023) concluded that the Council's data and controls did not suggest any potential breaches of consumer standards. The housing team are preparing to submit data against the standards for the 2023/24 year.

## **7. LEGAL/FINANCIAL AND OTHER CONTROLS/POLICY MATTERS**

- 7.1 **Legal (NM)** – These policies have been updated in light of changes in legislation, which are identified in this report.
- 7.2 **Finance (LW)** - There are no direct financial implications within this report, however, consideration will need to be given with regard to any future impact on the HRA Capital Programme.
- 7.3 **Equality and Diversity (GE)** – An Equality Impact Assessment has been completed on both policies consideration given in relation to how we treat vulnerable tenants when attempting to gain access for safety checks.
- 7.4 **Climate Change Implications (AT)** - There are no climate change implications arising from this report.

## **8. CONTACT OFFICERS AND BACKGROUND DOCUMENTS**

Councillors with any questions arising out of this report should contact the following officers prior to the meeting:

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The following background documents have been relied upon in the preparation of this report:

### **Appendices:**

1. Housing Compliance (Legionella) policy (track changes)
2. Housing Compliance (Legionella) policy (clean version)
3. Housing Compliance (Lift Safety) policy (track changes)
4. Housing Compliance (Lift Safety) policy (clean version)