

Argyll and Bute Council  
Internal Audit Report  
September 2020  
FINAL

# Legionella Improvement Plan

Audit Opinion: Limited

|                    | High | Medium | Low | VFM |
|--------------------|------|--------|-----|-----|
| Number of Findings | 3    | 4      | 0   | 0   |

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## 1. Executive Summary

### Introduction

1. As part of the 2019/20 internal audit plan, approved by the Audit & Scrutiny Committee in March 2019, we have undertaken an audit of Argyll and Bute Council's (the Council) system of internal control and governance in relation to the Legionella Improvement Plan.
2. The audit was conducted in accordance with the Public Sector Internal Audit Standards (PSIAS) with our conclusions based on discussions with council officers and the information available at the time the fieldwork was performed. The findings outlined in this report are only those which have come to our attention during the course of our normal audit work and are not necessarily all the issues which may exist. Appendix 1 to this report includes agreed actions to strengthen internal control however it is the responsibility of management to determine the extent of the internal control system appropriate to the Council.
3. The contents of this report have been agreed with the appropriate council officers to confirm factual accuracy and appreciation is due for the cooperation and assistance received from all officers over the course of the audit.

### Background

4. The bacterium legionella pneumophila and associated species bacteria can be found in naturally occurring water sources e.g. lochs/rivers and systems such as cooling towers, evaporative condensers, hot and cold water systems and spa pools. If conditions are favourable, the bacteria may multiply, increasing the risks of Legionnaires' disease which is potentially fatal.
5. It is important to control the risks by introducing measures which do not allow proliferation of the organisms in the water systems and reduce exposure to water droplets and aerosol. The Council must comply with its legal responsibilities under the Health and Safety at Work Act (1974) (HSW Act) and the Control of Substances Hazardous to Health Regulations (2002) (COSHH Regs) by ensuring, so far as is reasonably practicable, the health and safety at work of all its employees and persons not in its employment who may be affected by its undertakings.
6. In February 2017 as part of the 2017/2018 budget, the Council agreed to allocate £1million to fund legionella related works in schools and other public buildings over a three year period.
7. In October 2017, a review by the Council's Corporate Health and Safety team identified urgent action was required to ensure:
  - the activities in the Council's 2013 Control of Legionella Management Plan were completed
  - management arrangements were clarified
  - training was provided to all people with responsibilities for managing legionella.
8. The Council has developed a Management Standard for the Control of Legionella (the Standard). This outlines how the Council will organise, plan, implement, audit and review its provisions for the control of legionella bacteria.

9. The Approved Code of Practice (ACOP), issued by the Health & Safety Executive, provides details on the requirements of the HSW Act and the COSHH Regs and applies to the risk from exposure to legionella bacteria.

### Scope

10. The scope of the audit is to determine whether the Council's Management Standard for Control of Legionella has been adopted, implemented and working effectively.

### Risks

11. The risks considered throughout the audit were:
  - **Audit Risk 1:** the Council may not take appropriate measures to minimise health and safety risk to employees, and other persons accessing Council properties
  - **Audit Risk 2:** the Council does not comply with relevant statutory provision including the Approved Code of Practice.

### Audit Opinion

12. We provide an overall audit opinion for all the audits we conduct. This is based on our judgement on the level of assurance which we can take over the established internal controls, governance and management of risk as evidenced by our audit work. Full details of the five possible categories of audit opinion is provided in Appendix 2 to this report.
13. Our overall audit opinion for this audit is that we can take a limited level of assurance. This means that internal control, governance and the management of risk are displaying a general trend of unacceptable residual risk above an acceptable level and placing system objectives at risk.

### Recommendations

14. We have highlighted three high and four medium priority recommendations where we believe there is scope to strengthen the control and governance environment. These are summarised below:
  - the Duty Holder, Deputy Duty Holder, Facility Responsible Persons, Responsible Persons (Legionella) and competent persons should be formally appointed
  - staff resources for the operational delivery of legionella management tasks should be fully appraised as laid out in the Management Standard
  - legionella training should be delivered to all relevant staff
  - the Standard should be updated to reflect current working practices and be subject to formal approval
  - procedures should be established to prioritise and monitor the remaining remedial work based on a methodical risk based approach
  - procedures should be established to ensure properties are subject to control measures based on a formalised risk based approach
  - a review of log books already issued to 262 properties should be undertaken to ensure consistency and legionella log books should be issued to all relevant properties which do not currently have one.

15. Full details of the audit findings, recommendations and management responses can be found in Section 3 of this report and in the action plan at Appendix 1

## 2. Objectives and Summary Assessment

16. Exhibit 1 sets out the control objectives identified during the planning phase of the audit and our assessment against each objective.

### Exhibit 1 – Summary Assessment of Control Objectives

|   | <b>Control Objective</b>   | <b>Link to Risk</b> | <b>Assessment</b> | <b>Summary Conclusion</b>  |
|---|--|---------------------|-------------------|--|
| 1 | A management standard for the control of legionella has been adopted   | Audit Risk 1        | Reasonable        | The Standard was considered at a meeting of the Strategic Management Team (SMT) in December 2019. The meeting minute confirmed it was discussed however there is no written record of the decision to adopt it. The Standard needs to be updated to reflect current working practices. The revised standard should be formally adopted and significant progress is required to implement it. |
| 2 | Roles and responsibilities for legionella management have been defined, staff resource has been appraised, personnel have been identified, formally assigned and received appropriate training | Audit Risk 1        | Limited           | Roles and responsibility for legionella management have been clearly defined in the Standard however staff resources in terms of the operational management of legionella have yet to be fully appraised and key roles have not been formally assigned. Significant progress is required to ensure training is rolled out to all relevant personnel.   |
| 3 | Legionella risk assessments have been carried out and risks have been identified   | Audit Risk 2        | Reasonable        | Risk assessments have been undertaken, risks identified and required remedial work has been identified. However, there is no formal written process or methodology to ensure the work identified in the risk assessment reports is prioritised, monitored and progressed.  |
| 4 | Reviews are undertaken of the Control of Legionella Management Standard to assess how well the management system is working  | Audit Risk 1        | Limited           | Control measures are in place to mitigate the risks of a legionella outbreak. However progress requires to be made in order to ensure all properties are subject to control measures and that properties are subject to checks based on a formalised risk based approach. At time of original audit less than half of properties with water supplies had                                     |

|  |                                      |  |  |  |
|--|--------------------------------------|--|--|--|
|  | both operationally and strategically |  |  | received logbooks to record legionella management activity (although this had improved by September 2020) and there are inconsistencies in how this information is being recorded. |
|--|--------------------------------------|--|--|--|

17. Further details of our conclusions against each control objective can be found in Section 3 of this report.

### 3. Detailed Findings

#### A management standard for the control of legionella has been adopted

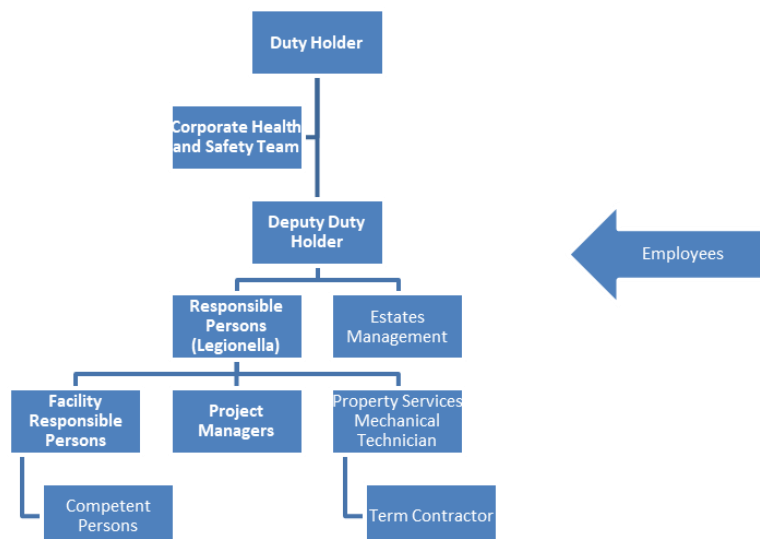
18. The Control of Legionella Management Plan, approved in 2013, set out how the Council will organise, plan, implement, audit and review its provisions for the control of legionella bacteria. A review of the 2013 plan was undertaken by Health & Safety in 2017 to provide senior managers with insight on the Control of Legionella Management document and its implementation. This 2017 review concluded there was a number of key actions outstanding which prevented the Council from being able to demonstrate it had implemented its policy. It made a number of recommendations in relation to the structure of the Control of Legionella Management Plan and on the implementation of the legionella management system. The recommendations were converted into a draft action plan using a traffic light system. 19 high priority, 7 medium priority and 8 low priority action points were identified. A number of actions remain outstanding from 2013 and 2017, these include the training of staff, including the development of a legionella e-learning module, and appointment of key officers. This is picked up further at paragraphs 26-27 of this report.
19. As a result of the 2017 review the Health & Safety Manager created a new management standard (the Standard) for the control of legionella. The Standard replaced the 2013 Control of Legionella Management Plan. In addition, a Legionella Management Plan (the Plan), updated January 2020, was created. The Plan details actions to be taken and progress to date to implement the Standard.
20. Significant progress requires to be made to implement the Standard and the action points in the Plan. Unless greater priority is given to implementing the Standard and the Plan, in particular ensuring that the roles and responsibilities for legionella management are filled by nominated and trained persons to perform the specific duties identified in the Standard there is a risk that the Council is unable to demonstrate compliance with HSW Act, COSHH Regs and Management of Health and Safety at Work Regulations (1999) which could result in a significant fine and prosecution.
21. The Standard, dated September 2019, was considered at a meeting of the SMT in December 2019. The meeting minute confirmed it was discussed however there is no written record of the decision to adopt it.

#### Action Plan 4

Roles and responsibilities for legionella management have been defined, staff resource has been appraised, and personnel have been identified, formally assigned and received appropriate training

22. Roles and responsibilities for legionella management have been clearly defined within the Standard.
23. Significant progress is required to address and assign the roles and responsibilities outlined in the organisational chart detailed in Exhibit 2.

Exhibit 2 – Organisation Chart for the Control of Legionella (detailed in the Standard)



24. In relation to the Duty Holder, the Standard:
  - establishes them as being responsible for ensuring that legionella risks are controlled and managed effectively and that the Council complies with its legal requirement under the HSW Act and the COSHH Regs
  - confirms the role will be held by the Executive Director with responsibility for Commercial Services
  - assigns them with specific duties
  - requires them to be appointed in writing by the Council’s Chief Executive and for them to ensure that the Deputy Duty Holder, Facility Responsible Persons and Responsible Persons (Legionella) are appointed in writing.
25. In addition ACOP outlines what is required of the Duty Holder so they comply with their legal duties and also requires that the Duty Holder should appoint a competent person or persons to help undertake the measurements needed to comply with the requirements of COSHH. None of the positions of Duty Holder, Deputy Duty Holder, Facility Responsible Person, Responsible Persons (Legionella) or competent persons have been appointed in writing. This raises a concern about accountability in the event of a legionella related incident or if the Council were subject to an inspection. Furthermore staff resources in terms of the operational management of legionella have yet to be fully appraised with only the Facility Responsible Persons being confirmed as the Heads of Service at the SMT meeting in December 2019.

#### Action Plan 1 & 2

26. The Head of Commercial Services confirmed that external consultants have advised that training in legionella management should be provided to staff prior to being appointed to key roles.

Despite this advice progress delivering legionella management training has been slow. The Duty Holder, Deputy Duty Holder and Facility Responsible Person (FRP) have not received any formal training. It is further noted that the Heads of Service were appointed as FRPs as part of the Council's Corporate Health & Safety policy. Within the standard they have been identified as having responsibilities for legionella prior to receiving training which is not consistent with the advice provide by the external consultants.

27. Ninety eight officers across 30 of the 327 properties have been trained in water hygiene awareness with 59 of these 98 receiving the training in 2016 and the remainder in late 2018, early 2019. We were informed that decisions on who was trained first and which properties were chosen to start 'flushing' was based on discussions between members of the Council's Water Quality Control Group to determine the high risk properties however we were unable to establish that a methodical written risk based approach had been taken to inform these decisions. The delivery of training was highlighted as an urgent action in the 2017 review of the legionella plan and significant progress is still required to address this issue.

### Action Plan 3

#### Legionella risk assessments have been carried out and risks have been identified

28. Water Hygiene Risk Assessments have been carried out by private contractors on 318 properties. The dates of the assessments are recorded on a spreadsheet. Within the assessment reports risks are highlighted for each property and any remedial work is recorded and prioritised using a colour coding system depending on how urgently the remedial action is required.
29. Documentation to evidence that remedial work identified has been carried out provides limited detail. There is no evidence to support that a systematic and risk based approach has been adopted to prioritise the remedial work identified. In addition there is no supporting documentation to evidence that remedial work identified in the risk assessments has been tracked and we were unable to establish what percentage of remedial work still required to be completed.

### Action Plan 5

30. The Standard establishes that legionella risk assessments must be carried out for all Council premises with water systems and that these must be reviewed if:
- positive samples are found
  - the water distribution infrastructure changes
  - control measures appear to be no longer valid
  - after three years no significant change occurs.
31. The policy of reviewing risk assessments after three years, if no significant change occurs, has been reviewed and a decision taken it is no longer necessary. This is based on the Health & Safety document Legionnaires' Disease (HSG274) which outlines that '*carrying out a legionella risk assessment and ensuring it remains up to date is required under health and safety law and is a key duty*' and that '*the risk assessment should consider and evaluate: arrangements to review the risk assessment regularly and particularly when there is reason to suspect it is no longer valid*'. HSG274 does not stipulate a time frame when reviews should be undertaken. The Standard requires to be updated to reflect current policy and subject to formal approval.

### Action Plan 4



Reviews are undertaken of the Control of Legionella Management Standard to assess how well the management system is working both operationally and strategically

32. Reviews are undertaken of the Standard to assess how well the management system is working both operationally and strategically. Water quality meetings are held on a quarterly basis with a member of the Council's Health & Safety team in attendance with water quality highlight reports produced following the meetings. The reports detail current legionella activity, budget status and issues including any positive samples of legionella in properties and current risks. These reports are provided to the Head of Commercial Services.
33. Operationally responsibility for the day to day technical management for the prevention of legionella within properties sits with the Mechanical Technician, Property Customer Service. The Mechanical Technician has extensive knowledge of legionella and there is clear evidence he has driven forward the operational matters regarding legionella prevention ensuring visits are undertaken to properties to confirm compliance with procedures and ensure remedial works have been undertaken as agreed. Legionella management is one of many tasks that are required to be undertaken by the Mechanical Technician role which further reinforces the need for staff resources to be fully appraised (as highlighted at paragraph 25).
34. Control measures are in place to mitigate the risks of a legionella in water systems. The Council has responsibility for 327 properties which have a water supply. Significant progress requires to be made in order to ensure all properties are subject to control measures. Specific details are set out in paragraphs 35 to 37.
35. A Contractor specialising in water quality undertakes various checks on a monthly, quarterly, six monthly and annual basis at 72 of the 327 properties. The properties were chosen based on discussions held by representatives of the water quality group who confirm that a risk based approach was adopted. However no formalised and methodical risk based approach has been established so it is not possible to confirm that one was applied which ensures testing is informed by the risk assessments.

#### **Action Plan 6**

36. Flushing (running of taps, showers etc.) to prevent legionella should be done on a weekly basis where outlets are infrequently used and records maintained. Flushing is currently being undertaken at 13 of the 327 properties – although this was much higher during the closure of buildings during the covid pandemic. Similar to the Contractor checking outlined in paragraph 35 this list of 13 was based on risk based discussions held by representatives of the Council's Water Quality Group rather than a written risk based approach.

#### **Action Plan 6**

37. The Standard requires that in each of the Council's premises with water systems, a Water Hygiene Logbook must be kept. Log books have been distributed to 121 properties at the time of the audit. However at the time of publication of the audit in September 2020, 262 logbooks had been issued. We reviewed the log books held by four properties undertaking flushing and all were found to be kept up to date. However there were inconsistencies in terms of record keeping. One site did not provide adequate details of the extent of the flushing throughout the building and another site had developed their own flushing record sheet.

#### **Action Plan 7**

## Appendix 1 – Action Plan

|      | No | Finding  | Risk  | Agreed Action  | Responsibility / Due Date  |
|------|----|--|---|--|--|
| High | 1  | <p><b>Appointment of Key Positions</b></p> <p>The Standard requires the Chief Executive to appoint the Duty Holder in writing and for the Duty Holder to then appoint the FRPs, Deputy Duty Holder and Responsible Persons (Legionella) in writing. None of this has occurred although the Standard does establish an anticipation that the Duty Holder will be the Executive Director with responsibility for Commercial Services and that the FRPs will be Heads of Service.</p> | <p>Failure to appoint staff to key positions may result in a lack of leadership, direction and progress. In addition the Council may be in breach of Health &amp; Safety legislation and regulation resulting in prosecution and fines.</p> | <p>Appointments to be made after appropriate training.</p>   | <p>Executive Director with Responsibility for Commercial Services</p> <p>Head of Commercial Services</p> <p>31 December 2020</p> |
| High | 2  | <p><b>Staff Resources</b></p> <p>Significant progress requires to be made to fully appraise staff resources and appoint key staff to undertake legionella management tasks within properties.</p>  | <p>The Council may be in breach of Health &amp; Safety legislation and regulation resulting in prosecution and fines if they cannot demonstrate full consideration has been given to the management of legionella.</p>                      | <p>Undertake benchmarking exercise and review staff resource, following which provide guidance to FRP's for them to appoint key staff.</p> | <p>Executive Director with Responsibility for Commercial Services</p> <p>Head of Commercial Services</p> <p>31 December 2020</p> |

|      | No | Finding   | Risk  | Agreed Action   | Responsibility / Due Date   |
|------|----|---|---|---|---|
| High | 3  | <p><b>Delivery of Legionella Training</b></p> <p>There has been limited progress delivering legionella training. The Duty Holder, Deputy Duty Holder and Facility Responsible Persons (FRPs) have not received any formal training. 98 officers across 30 of the 327 properties have been trained in water hygiene awareness with 59 of these 98 receiving the training in 2016 and the remainder in late 2018, early 2019.</p> | The Council may fail to comply with its required duties under legislation and regulation. | <p>Implement training and awareness programme as defined in Management Standard for the Control of Legionella; record training.</p> <p>Produce LEON training module to cover an introduction to Legionella, flushing of outlets and water temperature monitoring and recording.</p> | <p>Executive Director with Responsibility for Commercial Services</p> <p>Head of Commercial Services</p> <p>Facility Responsible Persons</p> <p>Due date:<br/>Senior Management/FRP's - 3 months from adoption of Management Standard</p> <p>Other key roles – 6 months and then ongoing from adoption of Management Standard</p> <p>Head of Commercial Services; Property Services Manager</p> <p>Energy and Building Services Performance Manager</p> |

|        | No | Finding   | Risk  | Agreed Action  | Responsibility / Due Date   |
|--------|----|---|---|--|---|
| Medium | 4  | <p><b>Update and Approve the Management Standard for the Control of Legionella</b></p> <p>The Standard was considered at a meeting of the SMT in December 2019 however there is no written record of the decision to adopt it.</p> <p>Furthermore the Standard states that properties should be subject to a risk assessment review every three years if no significant change occurs. This policy has been reviewed and is no longer a requirement. The Standard requires to be updated to reflect current policy, checked for technical accuracy, the wider findings of this audit and be subject to formal approval.</p> | Policies, procedures and working practices may not be aligning to current legislation or working practices. | Update Management Standard for the Control of Legionella; present to DMT/SMT for approvals.  | <p>Head of Commercial Services</p> <p>Property Services Manager</p> <p>Energy and Building Services Performance Manager</p> <p>31 December 2020</p> |
| Medium | 5  | <p><b>Prioritising and Monitoring Remedial Work</b></p> <p>Risk Assessments have been carried out on around 318 Council owned properties which has identified a range of required remedial work. There are limited procedures to prioritise the performance of remedial work and monitor progress toward its completion.</p>  | Failure to prioritise and undertake remedial works may increase the risk of a legionella outbreak.          | For the properties remaining in the programme, produce formal procedures for completing the balance of remedial works and monitor progress to completion. Include progress in monthly updates to Commercial Services Management Team and through Water Quality Quarterly meetings and Highlight Reports. | <p>Energy &amp; Building Services Manager</p> <p>31 December 2020</p>   |

|        | No | Finding  | Risk   | Agreed Action  | Responsibility / Due Date  |
|--------|----|--|--|--|--|
| Medium | 6  | <p><b>Risk Based Approach to Legionella</b></p> <p>A Contractor specialising in water quality undertakes various water hygiene checks on a monthly, quarterly, six monthly and annual basis at 72 of the 327 Council owned properties which have a water supply. The properties selected for Contractor visits were chosen on a risk based approach based on discussions with representatives within the water group and included consideration of users, location, water outlet types rather than a formalised risk based approach informed by the risk assessments. In addition flushing is currently being undertaken at 13 properties and again this was based on risk based discussions rather than a formalised risk based approach.</p> | Failure to identify and prioritise properties to undertake regular water hygiene inspections may increase the risk of legionella outbreak. | Review all properties with water and produce a written record of the nature and frequency of tasks that require contractor visits. | <p>Property Services Manager</p> <p>Energy and Building Services Performance Manager</p> <p>Mechanical Services Technician</p> <p>31 December 2020</p> |
| Medium | 7  | <p><b>Legionella Log Books</b></p> <p>Legionella log books which are required at all properties requiring testing have, at the time of original audit 121 have been distributed to Council properties. 262 had been distributed by August 2020. Furthermore sample testing identified inconsistencies in the information recorded in log books.</p>  | Legionella management records and working practices may not be aligned to current policies and procedures.                                 | Complete the distribution of logbooks to appropriate properties.   | <p>Property Services Manager</p> <p>Energy and Building Services Performance Manager</p> <p>Mechanical Services Technician</p> <p>31 December 2020</p> |

In order to assist management in using our reports a system of grading audit findings has been adopted to allow the significance of findings to be ascertained. The definitions of each classification are as follows:

| Grading       | Definition   |
|---------------|--|
| <b>High</b>   | A major observation on high level controls and other important internal controls or a significant matter relating to the critical success of the objectives of the system. The weakness may therefore give rise to loss or error.  |
| <b>Medium</b> | Observations on less significant internal controls and/or improvements to the efficiency and effectiveness of controls which will assist in meeting the objectives of the system. The weakness is not necessarily substantial however the risk of error would be significantly reduced if corrective action was taken. |
| <b>Low</b>    | Minor recommendations to improve the efficiency and effectiveness of controls or an isolated issue subsequently corrected. The weakness does not appear to significantly affect the ability of the system to meet its objectives.  |
| <b>VFM</b>    | An observation which does not highlight an issue relating to internal controls but represents a possible opportunity for the Council to achieve better value for money.  |

## Appendix 2 – Audit Opinion

| Level of Assurance  | Definition  |
|---------------------|---|
| <b>High</b>         | Internal control, governance and the management of risk are at a high standard. Only marginal elements of residual risk have been identified with these either being accepted or dealt with. A sound system of control designed to achieve the system objectives is in place and being applied consistently.            |
| <b>Substantial</b>  | Internal control, governance and the management of risk is sound. However, there are minor areas of weakness which put some system objectives at risk and specific elements of residual risk that are slightly above an acceptable level and need to be addressed within a reasonable timescale.                        |
| <b>Reasonable</b>   | Internal control, governance and the management of risk are broadly reliable. However, whilst not displaying a general trend, there are areas of concern which have been identified where elements of residual risk or weakness may put some of the system objectives at risk.  |
| <b>Limited</b>      | Internal control, governance and the management of risk are displaying a general trend of unacceptable residual risk above an acceptable level and placing system objectives are at risk. Weakness must be addressed with a reasonable timescale with management allocating appropriate resources to the issues raised. |
| <b>No Assurance</b> | Internal control, governance and the management of risk is poor. Significant residual risk and/or significant non-compliance with basic controls exists leaving the system open to error, loss or abuse. Residual risk must be addressed immediately with management allocating appropriate resources to the issues.    |