

Improvement Notice

Serial No. HSCP/11/01229

**HEALTH and SAFETY at WORK etc. ACT
1974,**
Sections 21, 23, and 24

Name and
address
(see sec.46)

To Mr Rod Cahill
Of The Group Chief Executive, Catalyst Housing Group,
Ealing Gateway,
26-30 Uxbridge Road, W5 2AU

Inspector's full
name and
official
designation.
Official address

trading as Catalyst Housing Association

I Giselle Francis,
Senior Environmental Health Officer

of London Borough of Barnet
Building 4, North London Business Park
Oakleigh Road South
N11 1NP

Location of
premises or
place and activity

Tel. 020 8359 7518
hereby give you notice that I am of the opinion that at
Apthrop Lodge, 1 Nurserymans Road, London, N11 1EQ

Other specified
capacity

You a person wholly/partially in control of the premises, are contravening in circumstances that make it likely that the contravention will continue or be repeated

Provisions
contravened,

The Health and Safety at Work Etc. Act 1974, Section 2 and 3
The Control of Substances Hazardous to Health Regulations 2002 (as amended)
Regulations 6 & 7 and Regulations 9

The reasons for my said opinion are

You have failed to adequately maintain the hot and cold water system in such a manner that prevents the proliferation of pathogenic legionella organisms.

Date.

and I hereby require you to remedy the said contraventions, or, as the case may be, the matter occasioning them by 7th April, 2011 in the manner stated in the schedule which forms part of the notice

(Signature)

(Date) 16th March, 2011

This is a relevant notice for the purposes of the Environment and Safety Information Act 1988.

Appeals guidance booklet enclosed

HSCP/11/01229

Apthrop Lodge, Nurserymans Road, London, N11 1EQ

Schedule

Compliance with this notice can be achieved by **either**:

A

1. You need to implement a documented and comprehensive risk assessment for preventing or controlling the risk of Legionella. This should include:
 - a) An up-to-date schematic plan of the hot and cold water distribution system showing all control valves, any associated storage tanks, standby plant, dosing points, and an indication of the length and layout of pipe runs.
 - b) A documented water treatment programme, to include the detailed system for routine Legionella growth control (whether ionisation or temperature or any alternative) together with any daily/weekly visual examination of the water system, physical cleaning, flushing, use of anti-scale chemicals/softened water and any testing of physical/chemical parameters in the hot and cold water systems which are required to ensure efficacy of the treatment programme.
 - c) Documented instructions/procedures for the correct and safe maintenance and operation of the above system eg. in the case of ionisation units they need to be monitored and maintained so as to achieve optimum efficacy. You should therefore identify the frequency of maintenance. I strongly recommend that you consult the manufacturer before deciding on the frequency of monitoring and maintenance.
 - d) Documented details of visual checks and water testing to be carried out to check the efficacy of the routine treatment programme. This should include the frequency of such checks; the circumstances when more frequent checks may be required; the safe operating limits for each parameter; corrective actions for out of limit situations; and regular microbiological testing (colony counts, Legionella) sent to a UKAS-accredited laboratory for examination.
 - e) Details of the maintenance, monitoring and testing records to be kept, by whom and where. This should include certification of any cleaning and disinfection and any other corrective actions taken. It would be best if these were kept together rather than have the records of maintenance and sampling being kept at the homes without the sampling results, as was previously the case. We would hope to see these records kept on site and readily accessible to officers of the Council.
 - f) You should identify who in your organisation and who in your contractors' organisations needs to be notified about unsatisfactory results. These individuals need to be clear about the required course of action to be taken. Appropriate communications arrangements need to be in place.

2. You should appoint a 'responsible person' to take managerial responsibility and provide supervision for the implementation of precautions. That person should have sufficient authority, competence, and knowledge to ensure effective management of the risks. They should also have a clear understanding of their duties and of your organisation's health and safety policy.

This is of particular importance since the recent incident at Apthorp Lodge identified that there was a lack of communication between Catalyst, Fremantle, Kier and Musketeer. **Due to the complexity of your arrangements at these care homes it is imperative that you identify clear lines of responsibilities and reporting arrangements for each of these parties.**

3. In order to implement the aforementioned you should ensure that you have access to competent assistance. If some aspects of operation and testing are to be undertaken by Catalyst, the relevant staff should have sufficient knowledge and be trained and instructed to a sufficient standard to fulfil that role competently and safely. Where you appoint an external contractor to address some of the above matters, it is your responsibility to ensure that they are suitably competent for the purpose.

OR

B: By any other effective means, as agreed with by the Inspector.

NB: The following does not form part of the Notice

Further information and guidance can be found in: *Legionnaires' disease – The control of legionella bacteria in water systems. Approved Code of Practice* and Guidance (L8); The Control of Substances Hazardous to Health Regulations 2002 ACOP and Guidance* available from bookstores or HSE Books (tel. 01787-881165)

**(Note: ACOP, Table 3, page 43 for a guide as to parameters measured and typical frequencies of testing also Pages 8-10 'Managing the risk: management responsibilities, training and competence' Regs 8 & 12).*

NOTES

1. Failure to comply with this Improvement Notice is an offence as provided by Section 33(1)(g) of the Health and Safety at Work etc. Act 1974 and s.33 (2A) of this Act renders the offender liable on summary conviction to imprisonment for a term not exceeding 6 months, or to a fine not exceeding £20,000, or both, or, on conviction on indictment, to imprisonment for a term not exceeding 2 years, or a fine, or both.
2. An Inspector has power to withdraw a notice or to extend the period specified in the notice, before the end of the period specified in it. You should apply to the Inspector who has issued the notice if you wish him to consider this, but you must do so before the end of the period given in it. (Such an application is not an appeal against this Notice.)
3. The issue of this Notice does not relieve you of any legal liability resting upon you for failure to comply with any provision of this or any other enactment, before or after the issue of this notice.
4. Your attention is drawn to the provision for appeal against this notice to an Employment Tribunal. Details of the method of making an appeal are given below (see also Section 24 of the Health and Safety at Work etc. Act 1974).

You can appeal against this notice to an Employment Tribunal. Details of the method of making an appeal, a form to use, and information about where to send it are contained in booklet ITL 19 which will be provided by the Inspector with this notice. Copies are also available from the Employment Tribunal Enquiry Line (Tel. 08457 959775).

- (a) Time limit for appeal
A notice of appeal must be presented to the Secretary of the Tribunals within 21 days from the date of service on the appellant of the notice or notices appealed against, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the notice of appeal to be presented within the period of 21 days.
- (b) The entering of an appeal suspends the Improvement Notice until the appeal has been determined, but does not automatically alter the date given in this notice by which the matters contained in it must be remedied.
- (c) The rules for the hearing of an appeal are given in The Employment Tribunals (Constitution and Rules of Procedure) Regulations 2001 (SI 2001 No 1171), for England and Wales and The Employment Tribunals (Constitution and Rules of Procedure) (Scotland) Regulations 2001 (SI 2001 No 1170), for Scotland.

1. A notice which is relevant for the purposes of this Act will be included as an entry in a public register which will be kept by the enforcing authority. A relevant notice is one which does not impose requirements or prohibitions solely for the protection of persons at work.
2. The register entry shall be made within 14 days of either the right of appeal against the notice expiring, or of such an appeal being disposed of. Where a notice is cancelled on appeal no entry shall be made.
3. When an inspector is satisfied a relevant notice has been complied with an entry shall be made in the register to show this. If a notice is withdrawn or amended the entry shall be deleted or amended. These alterations of the register shall be made within 7 days.
4. Entries shall be kept in the register for a period of at least 3 years.
5. If you think that the entry for this notice on the register will disclose information about a trade secret or secret manufacturing process you should give written notification to the enforcing authority within 14 days. The enforcing authority will then draft an entry which in its opinion will not reveal the secret, and serve this on you.
6. If you are not satisfied with this draft entry you may appeal within 14 days to the Secretary of State who may either decide that the entry should be made as drafted, or, if it is considered it does not afford reasonable protection to the secret, the Secretary of State may specify the form the entry should take.
7. If you make a written notification the enforcing authority will not make an entry in relation to the notice other than one which only specifies your name and address, identifies any place involved and specifies the relevant legal provisions. A fuller entry will only be made when a) you give your written consent to the draft, or b) where no consent is given the time allowed for appeal to the Secretary of State has expired, or c) on appeal the Secretary of State has directed that an entry shall be made.