

Recommended Escalation Procedure for LCA Members if Your Client is Failing to Address a Serious Risk

ACOP L8 paragraph 76 (a) and (d) (ACOP) and paragraph 82 (guidance) detail how service providers “should make clear to the responsible person any deficiencies in the water system or measures that may pose a significant risk of exposure to legionella bacteria”. There is no further guidance in ACOP L8 on what to do if the responsible person does not act to deal with these identified deficiencies.

To allow a dangerous situation to continue without action or to simply “walk away” from a client’s business because he is failing to take action constitutes “guilty knowledge” which is not acceptable. Furthermore, continuing to provide a service, without taking all necessary steps to get your client to address the risk might very well lead to prosecution, as you (the service provider) would be exposing your employees to risk and could be deemed to be contributing to the continuation of the risk, as well as accepting that the client continues to put their employees (and others) at risk.

This document from the LCA is intended to give further guidance for our members on what to do in this difficult situation and how to comply with their duties under the law and their obligations under the LCA Code of Conduct. Members of the LCA should possess sufficient competence to allow adequate judgement in the application of this guidance.

The first and sensible thing you should do is to evaluate objectively the risk to site staff, your staff and the public. This approach is similar to how regulators (ie HSE/EHO) use a framework to evaluate the risk which informs the appropriate response to risks and apparent breaches of health and safety legislation. Having done this, regulators would initiate a communication process that provides a proportionate and effective response using a number of enforcement options:

- **Notice of Contravention**
- **Improvement Notice**
- **Prohibition Notice**

Some examples of the types of situation and appropriate response are detailed in the table below*:

Situation	Relevant legislation/ guidance	Initial Enforcement Expectation
Failure to notify an evaporative cooling installation in HSE- enforced premises	Reg 3 NCTEC Regulations	Improvement Notice
Inadequate risk assessment to identify any legionella risk;	Reg 3(1) MHSW; Reg 6(1)(a) COSHH	Improvement Notice
No risk assessment to identify any legionella risk;	Reg 3(1) MHSW; Reg 6(1)(a) COSHH	Improvement Notice
No written scheme to control the risk, but the dutyholder is able to demonstrate effective control	Regs 6(4)(b) & 7(3), COSHH Regs 5(1) & 5(2) MHSWR	Improvement Notice
Risk of serious personal injury or risk to health	HSWA 1974, Sections 2 (1) and 3 (1), COSHH 2002 (as amended) Regulation 7(1)	Prohibition Notice

*Taken from the HSE Cooling Tower Programme Inspection Pack

<http://www.hse.gov.uk/legionnaires/assets/docs/cooling-tower-programme-inspection-pack.pdf>

Staged Escalation Procedure

We advocate staged escalation where there are matters of significant concern. Where you feel that lives of employers' staff, your staff, site contractors, general public, etc. may be at risk, you should consider using this escalation procedure.

Stage 1 – Initial Report to Responsible Person

Raise the concern in the normal way via the normal channels. Record in writing on the usual service documentation and seek a commitment to act.

Stage 2 – Escalation to Duty Holder

If no action is taken or planned within a reasonable timescale, repeat stage 1 and indicate that if no action is taken then a formal escalation will be initiated. If it is necessary to escalate the matter, write to the Duty Holder, formally outline the concerns and seek a commitment to act. Attached at 903.17 05-18 is a draft escalation letter. A reasonable timescale is a judgement that needs to be made for each individual situation, but as a guide, the next scheduled or reactive service call may be a reasonable timescale for action or a commitment to action.

Stage 3 – Report to the Regulator

If after formal escalation of the issue and explanation in writing to your client they still continue to ignore the problem this process is required by the LCA for its Members.

When all other communication processes with your client have been exhausted and you feel there is still a risk of serious personal injury or risk to health, you should report your concerns to the relevant enforcing authority (i.e. HSE/EHO). You can request anonymity which they are then obliged to maintain.

If you find yourself in this situation, with a client who won't take action we would also suggest you seek legal advice.

Further Information

Reporting concerns to HSE:

<http://webcommunities.hse.gov.uk/connect.ti/concernsform/answerQuestionnaire?qid=594147>

Reporting concerns to Local Authorities: use the "Contact us" details for the relevant LA

Some of the advice above is based on the HSE's Enforcement Management Model and associated documents. These are available for further reading and can be found at:

<http://www.hse.gov.uk/enforce/emm.pdf>

<http://www.hse.gov.uk/pubns/hse41.pdf>

<http://www.hse.gov.uk/foi/internalops/og/ogprocedures/enforcement/edmflow.pdf>

<http://www.hse.gov.uk/legionnaires/assets/docs/cooling-tower-programme-inspection-pack.pdf>