Housing and Property Chamber
First-tier Tribunal for Scotland

First-tier Tribunal for Scotland (Housing and Property Chamber)

Housing (Scotland) Act 2006 Section 34

Chamber Reference:	PRHP/RP/16/0357
Title Number:	MID168540
Property Address:	314 Websters Land, Edinburgh EH1 2RU ("the house")
The Parties:-	Mr John Watt, formerly 314 Websters Land, Edinburgh EH1 2RU ("the tenant")
	Francesca Tarr, 5a Northumberland Street, Edinburgh EH3 6LL("the landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber "the Tribunal")

Decision

The Tribunal, having made such enquiries as is fit for the purpose of determining whether the landlords have complied with the duties imposed upon them by Section 14(1)(b) in relation to the property concerned, and taking account of the evidence presented in the written and oral representations, determines that the landlords have complied with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") and accordingly dismiss the application.

Background

1. By application received on 17 November 2016 the tenant applied for a determination of whether the landlords have failed to comply with duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

2. The application by the tenant set out that the tenant considered the landlord had failed to comply with her duty to ensure the house meets the repairing standard and in particular that the landlord had failed to ensure compliance with Sections 13(1)(c), (d), and (f) of the Act. The tenant complained of the following:-

   a. Her failure to provide an Electrical Installation Condition Report confirming previous highlighted issues had been resolved.
   b. Confirmation of the issues identified in the Legionella Report had been repaired.
   c. That there was significant dampness and associated smell.
   d. The defective heating required to be repaired.

3. In the documentation submitted by the tenant it was confirmed the tenant had rented the property from 22 August 2016.

4. The tenant produced copies of email correspondence dating from 24 August 2016 in which he set out a number of issues regarding the tenancy.

5. Correspondence took place with the landlord's agents.

6. The Tribunal consisted of the following members:-

   a. Mr Mark Thorley – Legal Member
   b. Mike Links – Ordinary Member

7. The Tribunal inspected the house on the morning of Wednesday 1 March 2017. There was no tenant present the property having been re-let. The landlord was represented by Rachel Goodwin, ESPC Lettings.

8. Following upon the inspection the Tribunal held a hearing at 126 George Street, Edinburgh. Rachel Goodwin, ESPC Lettings on behalf of the landlord was present.

9. Works to the property had been undertaken.

   a. There was an up to date Electrical Installation Condition Report.
   b. The heater in the livingroom had been replaced.
   c. Work identified in the Legionella Risk Assessment had been undertaken and completed.
   d. There was no smell of damp.
   e. Work had been undertaken to remove a heater from the bathroom.
   f. Smoke detectors were interlinked.

Summary of Issues

1. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the landlords have complied with the duty imposed by Section 14(1)(b).

Findings in Fact

The Tribunal made the following findings in fact:-

1. That the tenant has entered into a lease with the landlord for the rent of the house at 314 Websters Land, Edinburgh EH1 2RU. The tenant who had referred the matter was no longer the tenant and the property had been re-let.
2. The property was entered by a ground floor entrance. There are multiple properties within Websters Land. Although the entry to the property is at ground floor level there are in fact two levels of floor below that. The property consists of kitchen, bathroom and bedroom/livingroom. It is referred to as a studio flat.

3. The weather at the time of the inspection was cloudy and dry.

4. The inspection revealed the following:-

   a. The presence of smoke alarms and carbon monoxide alarms compliant with current regulations.

   b. The heater in the livingroom had been replaced.

   c. There was a new Electrical Installation Condition Report which showed compliance with all matters.

   d. There was no smell of damp within the property although condensation appeared on the windows at the front (livingroom). This was entirely acceptable.

   e. The electrical heater in the bathroom had been removed.

   f. Issues raised within the Legionella Risk Assessment had been undertaken and completed.

Decision

The Tribunal, in considering the terms of Section 13(3) of the Act, determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act. Accordingly the Tribunal proceeded to dismiss the application.

The decision of the Tribunal was unanimous.

Right of Appeal

A landlord or tenant or third party applicant aggrieved by the decision of the Tribunal may apply to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the First Tier Tribunal. That party must seek permission to appeal within 30 days from the date the decision was sent to them.

Where such an appeal is made, the effect of the decision will be treated as having effect from the date on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the four preceding pages are executed by Mark Thorley, Solicitor, 51 South Bridge, Edinburgh EH1 1LL, Chairperson of the Tribunal at Edinburgh on the Seventeenth Day of March Two Thousand and Seventeen before this witness:-

M Thorley

A Gibson

_____witness chairperson

_____name in full

_____Address

_____

Legionella Edinburgh

Legionella Risk Assessment

314 Websters Land, Edinburgh EH1 2RU

Risk Assessment Date – 07 December 2015
Recommended Review Date – December 2017

Prepared for – ESPC Lettings

Disclaimer

This survey was carried out only on the parts of the building which were made accessible to the risk assessor. Any water services found in any part of the building, which was not made available, are not included in this report. The exclusion of these systems does not indicate absence.

Legionella Risk Assessor – Kevin Dempsey

Introduction
Legionella Edinburgh has been commissioned by the Responsible Person to prepare a report, which identifies and assesses potential risk from legionella at the above address.

Legionellosis and Legionnaires' disease
Legionellosis is the collective name given to the pneumonia-like illness caused by legionella bacteria. This includes the most serious Legionnaire's disease, as well as the similar but less serious conditions of Pontiac Fever and Lochgoilhead Fever. Legionnaire's disease is a potentially fatal form of pneumonia and everyone is susceptible to infection. The risk increases with age, but some people are at higher risk, including;

- People over 45 years of age
- Smokers and heavy drinkers
- People suffering from chronic respiratory or kidney disease, diabetes, lung and heart disease
- Anyone with an impaired immune system

The bacterium *Legionella pneumophila* and related bacteria are common in natural water sources such as rivers, lakes and reservoirs, but usually in low numbers. Since legionella bacteria are widespread in the environment they may also contaminate and grow in purpose-built water systems such as hot and cold water systems.

Legionnaires' disease is normally contracted by inhaling tiny droplets of water (aerosol) which are contaminated with the legionella bacteria. Person to person spread of the disease has not been documented.

Legionella bacteria require certain conditions to multiply including moderate temperature, adequate food supply and shelter. Therefore the main aspect of legionella control is to ensure that you do not have suitable conditions within your water system to potentially allow the legionella bacteria to multiply.

Legislation
Landlords in the private rented sector have a duty of care under the Health and Safety at Work Act and Control of Substances Hazardous to Health (COSHH) Regulations to ensure that the risk of exposure of tenants to legionella is properly assessed and controlled. This is done through carrying out a formally recorded risk assessment and implementing measures to control any identified risk.

Accordingly, the Responsible Person should ensure that the property's water supply, storage and distribution services comply with the best practice guidance given in the HSE's Approved Code of Practice and Guidance "Legionnaires' disease – The control of legionella bacteria in water systems" (also known as ACOP L8) and HSG 274 "Legionnaires' Disease – Technical Guidance".

Responsible Person – ESPC Lettings

Property Type – Studio Flat

Are people within the high risk health category exposed to the water system in this property? Unable to confirm so must assume "Yes"

Significant aerosol generators present ie showers – Yes (electric shower)

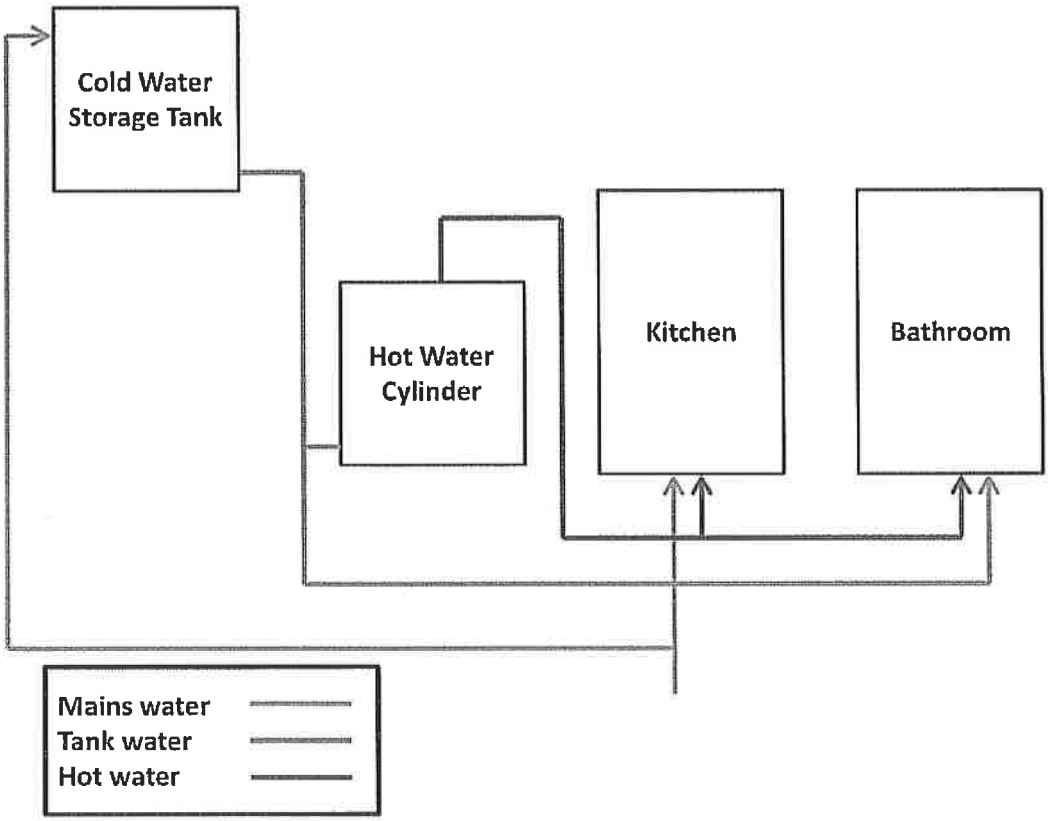
Other Risk Systems present (please specify) – No

Cold Water Supply
Mains Water and Cold Water Storage Tank – The property has a direct mains supply of wholesome water which is chlorinated and will be of good microbiological quality.

See cold water storage tank survey sheet for more details

Hot Water Supply
See hot water cylinder survey sheet for more details.

Water System Schematic



Down Services Asset Register and Temperature Measurements

LOCATION	WASHING MACHINE	DISHWASHER	SINKS/WASH HAND BASINS	SHOWERS	BATHS	WCs	HOT TEMPERATURE °C	HOT FED BY	DOES HOT WATER TEMP CONFORM?	COLD TEMPERATURE °C	COLD FED BY	DOES COLD WATER TEMP CONFORM?
Kitchen	1		1				80	HW1	Yes	9	Mains	Yes
Bathroom			1	1	1	1	80	HW1	Yes	14	CW1	Yes

Findings from Water System Inspection

Dead Legs
Dead legs allow water to stagnate in the pipe work and potentially allow suitable conditions for bacteria to multiply. Dead legs can be sections of old pipe which are no longer used or a system design which results in low or no flow through water

Dead legs were observed in the following areas - unused hot water feed underneath kitchen sink

Little Used Outlets
A regularly used water system is important in maintaining good water quality. Where any outlet is not used at least once a week it should be flushed for a period of five (5) minutes to prevent water stagnating in the pipe work. Aerosol production should be minimised during flushing ie by cracking outlet open so water does not run at full force.

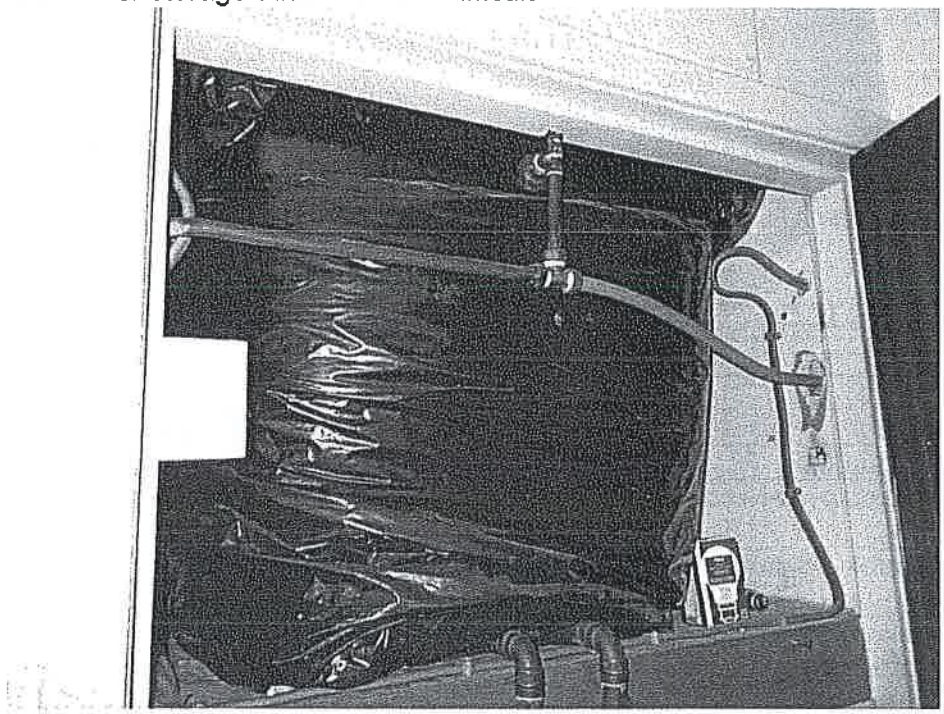
No little used outlets were observed during the risk assessment

Cold Water Storage Tank Survey Sheet

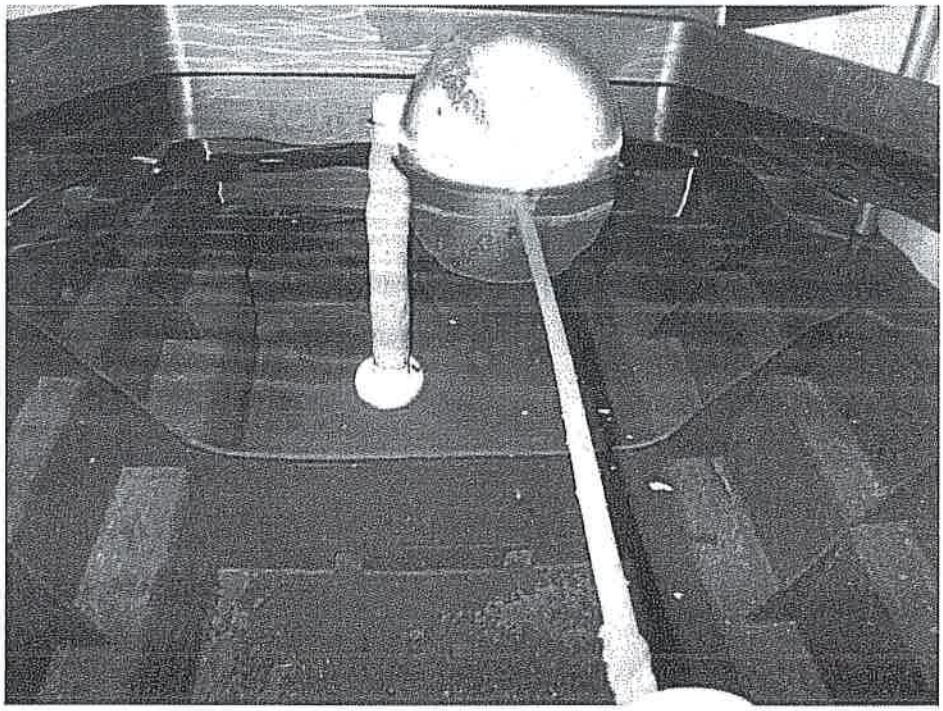
Tank Reference	CW1
Tank Location	Hall Cupboard
Accessibility to tank and internal surfaces	Poor
Connected directly to other tanks?	No
Services supplied	HW1, Bathroom
Construction material	Plastic
Lid material	Plastic
Fitting of lid	Good
Screened air vent present	No
Overflow fitted	Yes
Overflow screened	No
Insulation details	Plastic bags containing insulation
Suitability of insulation	Good
Are isolation valves present on the inlet pipe/s?	Yes
Are isolation valves present on the outlet pipe/s?	Yes
Is there an expansion vessel?	No
Is there an open vent from a Hot Water Cylinder over tank?	No
Signs of discharge from open vent?	Na
Position of mains inlet and outlet/s	Poor - not on opposite sides
Internal coating	No
Bacterial growth	No
Sediment	Yes
Scale Present?	Yes
Rust Present?	No
Water Appearance	Clear
Flotsam	No
Clean and disinfection	Yes
Residence time of stored water	1 Day

Cold Water System Photos

Cold water storage tank – access difficult



Sediment inside cold water tank

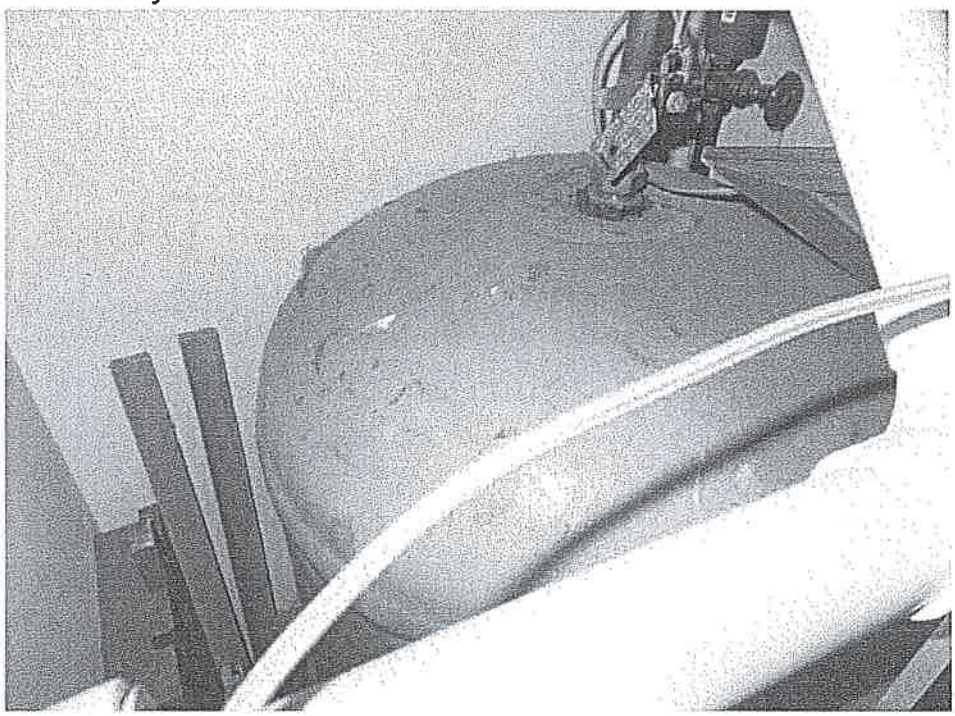


Hot Water Cylinder Survey Sheet

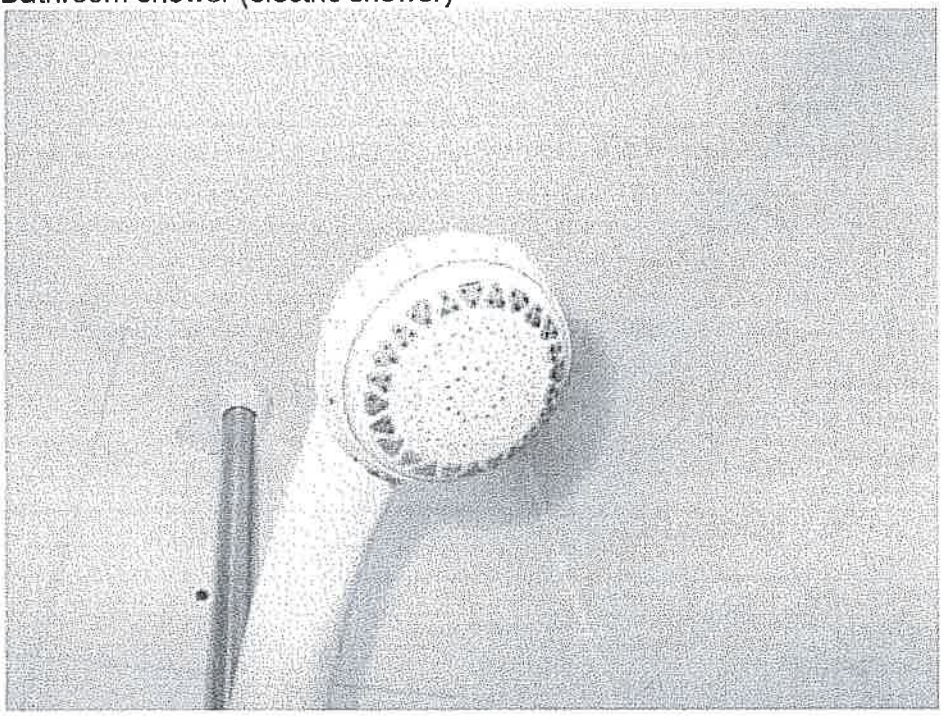
Cylinder Reference	HW1
Cylinder Location	Hall Cupboard
Accessibility to Cylinder	Good
Connected directly to other cylinder?	No
Supplied from	CW1
External Expansion vessel?	No
Services Supplied	Kitchen, Bathroom
Make and model	Unknown
Age	Unknown
Orientation	Vertical
Method of heating	Electric Immersion
Access to internal surfaces?	No
Drain valve present?	Yes
Drain valve accessible?	Yes
Temp. Gauge present – reading (°C)	No
Secondary Pumps	No
Destratification Pump	No
Insulation Details	Hard Foam
Suitability of Insulation	Good

Hot Water System Photographs

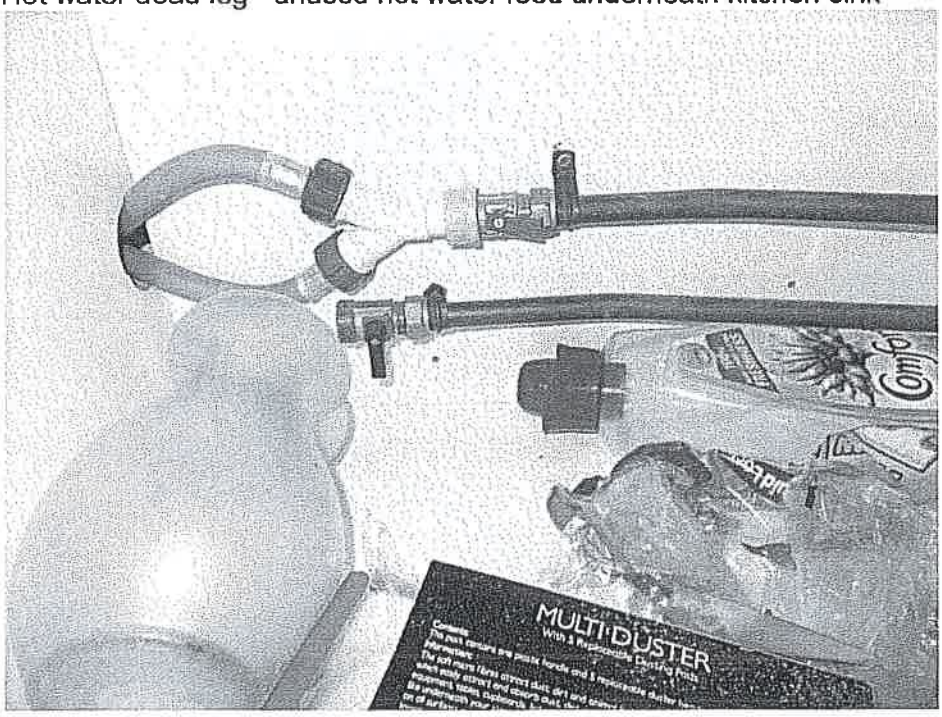
Hot water cylinder



Bathroom shower (electric shower)



Hot water dead leg - unused hot water feed underneath kitchen sink



Recommendations

Priority Rating

	High Priority Issue – Urgent remedial action required to control a serious risk
	Medium Priority Issue – Action is required in the near future to achieve compliance with ACOP L8 standards/guidance
	Low Priority Issue – Minor action or remedial work that is beneficial but may not be directly linked with compliance to ACOP L8

High
Unused hot water feed under the kitchen sink is a dead leg where legionella bacteria could multiply in stagnant hot water. Recommend the dead leg of pipe is removed by a WaterSafe approved plumber in compliance with the current Scottish Water Byelaws.

Medium
1. Cold water tank does not meet current regulations; sediment and scale in tank, overflow pipe not screened, no screened air vent, inlet and outlet pipes not on opposite sides of the tank. Recommend remedial works be carried out by a WaterSafe approved plumber to ensure the tank complies with the current Scottish Water Byelaws and that the tank be cleaned and disinfected. 2. Temperature of the hot water in the property was very high, and poses a risk of scalding. Recommend a thermostat be fitted to the hot water cylinder and the temperature be set to 60°C.

Low
No low priority issues

Legionella Control Programme

The following control programme is proposed for the water services in this property and is based on Table 2.1 of HSG 274, Part 2.

Cold Water Services
The cold water temperatures were recorded below 20°C at the time of assessment and are considered unlikely to increase above this value therefore no further measures are required until the recommended review date unless specified below.

Inspect cold water tank on an annual basis and carry out remedial work where necessary. The tank water temperature should be checked remote from the ball valve and the incoming mains temperature during the inspection. If the temperature exceeds 20°C remedial work will be required.

Hot Water Services
The hot water temperatures were recorded above 50°C at the time of assessment and are considered unlikely to decrease below this value therefore no further measures are required until the recommended review date unless specified below.

1. Inspect the calorifier internally by removing the inspection hatch or using a boroscope and clean by draining the vessel on an annual basis
2. Where there is no inspection hatch, purge any debris in the base of the calorifier to a suitable drain on an annual basis. Collect the initial flush from the base of hot water heaters to inspect clarity, quantity of debris and temperature.

Shower Heads
Dismantle, clean and descale removable parts, heads and hoses where fitted on a quarterly basis or as indicated by the rate of fouling.

Unoccupied Property
The risk may increase where the property is unoccupied for a short period. It is important that water is not allowed to stagnate in the water system and so properties that are vacant for an extended period should be managed carefully. As a general principle, outlets on hot and cold water systems should be used at least once a week to maintain a degree of water flow and minimise the chances of stagnation. To manage the risks during non-occupancy, consider implementing a suitable flushing regime or other measures, such as draining the system if the property is to remain vacant for long periods.

PHOTOGRAPH SCHEDULE

314 WEBSTERS LAND EDINBURGH EH1 2RU

REFRENCE: HPC/RP/16/0357 DATE: 1ST MARCH 2017

STUDIO ROOM

BATHROOM

KITCHEN

ELECTRIC COSUMER UNIT

NEW RADIATOR IN STUDIO ROOM

BATHROOM –WALL MOUNTED RADIATOR

NEW BOOSTER UNIT

KITCHEN- HEAT DETECTOR

HALL- SMOKE DETCTOR

STUDIO-SMOKE DETECTOR

“DEAD LEG” PIPE REMOVED-KITCHEN SINK

NEW COLD WATER TANK

Cummings Plumbing

Invoice

Name: Roger Tarr, Eileen Tarr and Francesca Tarr
Address: 314 Webster's Land, Edinburgh
Contact: ESPC
Date: 26/2/17

11 St Peters Buildings
Gilmore Place
Edinburgh EH3 9PG

t: 0131 569 0800
e: info@cummingsplumbing.co.uk
w: www.cummingsplumbing.co.uk

Details	Cost
1. Supply and fit new cold water storage tank and associated pipework and fittings. Fit new tank mounting base. 2. Remove hot water pipe dead leg from under kitchen sink. 3. Remove all debris from site and dispose. As per estimate. £671 plus VAT.	
Total	£805.20

We accept payment in cash, by cheque (**payable to Cummings Plumbing Limited**) or bank transfer (**sort code: 80-22-60 and account number: 11873961**).

All payments must be made in full within 7 days of invoice being issued.

VAT Number: 195 9517 53

Kind regards

Cummings Plumbing

B. Bell Electrical
23 Arran Marches
Musselburgh
EH21 7DQ

Tel : 0751 501 0648
Email : bbellelectrical@hotmail.co.uk

Invoice

ESPC Ltd
107 George Street
Edinburgh
EH2 3ES

Date of Invoice: 08.03.17

Invoice Number: 2017-03-10

Work completed
Work Order No: P1832R26072 314 Websters Land, Edinburgh Completed a Pat test. Replaced the faulty kitchen light. Removed the bathroom wall heater. Install and wired a mains wired optical smoke alarm in the hall and living room and a mains wired heat detector in the kitchen. The smoke alarms are interlinked by hard wire

P.A.T.	£40.00
Parts	£160.00
Labour	£70.00
Total	£270.00

Payment required within 31 days from receipt of invoice An additional £20 fee will be added to invoices not paid within 31 days. Jobs over £100, 20% will be added on to the invoice.

Bank Transfer: Royal Bank of Scotland
Account number: 10628663
Sort Code: 83 25 43

Cheques: Payable to B.Bell