

Health and Safety Executive Board		Paper No: HSE/09/10	
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<b>INTRODUCTION OF A RISK BASED APPROACH FOR SELECTING COMPLAINTS ABOUT DUTYHOLDERS</b>			

## Purpose of the paper

1. This paper asks the Board to support a change to HSE's policy for dealing with complaints about dutyholders, so that complaints are selected for investigation on the basis of the health and safety risk they present. A change to a risk based approach will better align with the Strategy, the Enforcement Policy Statement, Sensible Health and Safety and reduce time spent on low risk or trivial issues where investigation does not result in an improvement in health and safety.

## Background

2. In 2007/08 HSE dealt with just under 16.5K complaints about duty holders. The current policy, first introduced in 2001, is that all complaints should result in some action unless specifically excluded, the details are provided in Annex 1. The majority of complaints into HSE, approximately 98%, are handled by the Field Operations Directorate (FOD) in our regional offices. In FOD about 75% of the complaints received are followed up by administrative staff and 25% are investigated by inspectors.

3. In October 2006 a complaints handling review was set up with the aim of revising HSE's policy so that our responses to complaints against dutyholders were prioritised to a greater extent. The review identified 3 drivers for change:

- a. Contacting duty holders on trivial (low risk) complaints points them in the wrong direction – away from the risks they should be concentrating on.
- b. Pursuit of trivial issues damages HSE's reputation in particular, and health and safety in general – health and safety should always be about practical steps to control real risks.
- c. Greater prioritisation would mean some resource could be released that would be better spent on other frontline activities.

4. In May 2007 the HSE Board considered the conclusions of the review, set out in the Board paper, Revised Complaints Handling procedure, HSE/07/55 and agreed the recommendations, summarised below:

- Test more risk/enforcement priority-based selection criteria.
- Trial a centralised complaints handling team in one FOD division, to test the risk-based selection approach and the effect of centralising the complaint handling process; and

- Interim measures to 'tighten up' HSE's current procedure, addressing anomalies and improving consistency of application. Early in 2008, the definition of a complaint was tightened to make it clear to the public and staff that HSE only deals with complaints about significant harm.

5. In September 2007, FOD set up a Project to take the HSE Board recommendations forward. A six month trial ran from February 2008, centralising complaint handling in the East Grinstead office, and taking complaints from Ashford, East Grinstead, Manchester and Northampton offices.

6. The trial handled 1520 calls of which 624 were complaints as defined, 287 were matters the caller was concerned about and wanted more information, the rest were non-relevant or advisory calls.

7. The trial tested a risk-based model and is described in Table 1 below. It is based on the principles of the Enforcement Management Model (EMM), the decision making tool applied by HSE inspectors when making enforcement decisions. The EMM is published on HSE's website.

Table 1. Risk categories as used during the complaints handling trial

Category	Definition	Action Required
RED	Serious Risk	To be followed up as a priority & within 24 hours of receipt by the Bd5 (or passed to an inspector to investigate)
AMBER	Significant Risk	To be followed-up within 10 days of receipt by the Band 5
GREEN	Considered low risk	No follow-up with duty holder & not recorded on COIN
MOC	Matters of Concern which did not meet the definition of a complaint including green complaints where details of the dutyholder could not be found; no follow-up with duty holder & not recorded on COIN	
OTHER	Not falling within the above e.g. calls referred to other enforcing authorities	

8. The risk-based model was applied by trained and NEBOSH qualified Band 5 staff. The full risk-based model is attached as Annex 2. Example complaints falling into each category are in Annex 3.

9. An appeal process was set up as part of the trial. The appeal manager was an independent Band 2 inspector located in the same office as the trial.

10. The principal conclusions were as follows:

- The risk-based model successfully selected complaints that presented real health and safety risks and prioritised these into the most serious (red) and those that presented a significant risk (amber). The risk-based model identified 27% of the complaints as low risk (green), here the complainant was informed that we would not be making further enquiries with the duty holder.
- The use of the risk filter was largely accepted by complainants as reflected by the low number (10) of 'appeals'. Of the 10 appeals, six appealed against the decision to allocate the complaint to the low risk 'green' category, in the remaining four the complaint had been assigned to 'amber' but the complainant was dissatisfied with the duty holder's action. The appeals procedure resulted in the matter being closed effectively.

### **Argument**

11. Risk-based selection of complaints provides for a better fit with the Strategy, in particular our goals: (i) to encourage strong leadership in championing the importance of, and a common sense approach to, health and safety in the workplace; and (ii) to motivate focus on the core aims of health and safety and, by doing so, to help risk makers and managers distinguish between real health and safety issues and trivial or ill-informed criticism.

12. More precisely, the benefits of adopting the risk-based model for selection of complaints, along with the appeal mechanism are:

- a) The model considers complaints about dutyholders in line with the Enforcement Policy Statement.
- b) It demonstrates a proportionate response by HSE to issues raised by workers and the public.
- c) The model prioritises complaints so those presenting the highest risk are dealt with first, while filtering out complaints at the low risk end.
- d) The risk-based model provides consistent and justifiable decisions.
- e) The appeal mechanism provides members of the public with an effective 'second hearing' for dealing with decisions they consider to be inappropriate, unjustified or unfair.
- f) It helps to increase the professional quality of our dealings with complainants creating a suitable model for implementing the Easier Access to Services (EASe) Programme.
- g) Currently, by following-up low risk complaints, we raise the expectations of complainants beyond what the health and safety law and our enforcement policy can deliver.
- h) Some of these low risk complaints can be very time-consuming, produce little if any health and safety benefit and distract the focus of staff from dealing with higher risk complaints. The proposed model provides a means to manage these better and more consistently.

i) An analysis of the complaints received during the trial showed that 76% of those classed as Green or MOCs (ie for no further action) came from members of the public; 7% from ex-employees and 17% from employees.

j) It is recognised within the model, that although welfare does not lend itself to risk assessment, it is a real workplace risk and such complaints automatically fall into amber (see Annex 2 part 2). During the trial, 47 complaints raising welfare concerns, including basic matters like there being no working toilets or hot water.

13. However, it is recognised that adoption of the risk-based model carries a degree of business risk because application of the risk filter requires judgement and these are not simple black/white decisions.

14. There is a safeguard in that complainants will be informed that HSE does not propose to follow-up their complaint, provided with reasons why and where appropriate how to follow-up via a different route. Then the planned appeal process enables complainants to voice their concerns if they feel the nature of their complaint has not been properly understood or considered. For example, during the trial an enquiry from Angela Eagle, MP, concerning a complaint that had not been pursued was received. It was dealt with to her satisfaction by explaining the matter raised was low risk and in the first instance it was better the individual brought the matter directly to the attention of the dutyholder in an attempt to secure an amicable resolution and that it would be disproportionate for HSE to intervene in such circumstances. In practice, selecting complaints in this way is little different in principle from the way we already select incidents to investigate using the Incident Selection Criteria.

15. Although not the main driver, adoption of the risk-based selection of complaints does provide the potential for considerable efficiency benefits. Using the 07/08 figures: 16.5K complaints were actually followed up by FOD and use of the risk model would be expected to reduce this by at least 20% (3.3K). In addition, using specialised staff to follow-up complaints in the trial reduced the complaints passed to inspectors to investigate from 25% to under 10%. There was clear evidence that the time per transaction is reduced by using dedicated staff in divisional complaints teams.

**16. HSE Board is requested to support the adoption of the risk-based model described in this paper to select complaints for investigation.**

## **Presentation**

17. Information on resolving complaints about dutyholders and finding the appropriate enforcing authority will be posted on the website to accompany the revised complaints handling policy and procedure.

18. The new procedure will not apply to complaints on working time as HSE has a separate agreement with BERR on the investigation of such complaints.

19. It is possible there will be external interest in the policy change. This could be positive in that HSE is better reflecting the messages of sensible health and safety, or negative, alleging that HSE is no longer concerned about worker's complaints about their workplace.

20. An internal communications plan will be developed to ensure that all relevant frontline staff are aware of and understand the reasons behind the change in policy.

21. Lord McKenzie will be briefed about the changes.

### **Costs/Benefits**

22. Although the delivery model for adopting the risk based approach is still being developed, FOD confirms that the cost of applying the risk-based model will at worst be cost neutral. Using dedicated staff will significantly reduce the overall number of administration staff involved in complaint handling, while increasing individual expertise levels and the risk-based selection will reduce the number of complaints followed up.

23. Retaining the status quo would not incur any additional costs, but would prevent the organisation from realising some of the benefits described above.

### **Consultation**

24. Other Directorates which operate the Operations Group wide procedure for dealing with complaints about dutyholders (HID and ND), have been consulted. They support the implementation of the risk based model but do not plan to set up formal administration arrangements to use the model because of the relatively low number of complaints they deal with and the major hazard component of risk.

25. The views of FOD staff involved in the trial were collected and considered as part of the evaluation of the Project. In addition, HSE TUs have been consulted. In summary, there is widespread support for the risk-based model to select complaints but staff are concerned that new complaint handling arrangements, such as specialised dedicated teams will reduce the number of and job quality for Band 6 posts in the field offices. This is being separately addressed.

26. The evaluation report of the trial has been shared with the South East Regional Strategy Group which comprised Chairs of Local Authority County Groups. The Group have expressed a wish to explore potential roll out for Local Authorities for 2009.

### **Action**

27. That HSE Board agrees to the proposed change in HSE's policy for dealing with complaints about dutyholders by the adoption of a risk based approach as outlined in this paper

### **Paper clearance**

28. The proposals in this paper were cleared by the SMT at its meeting on 7 January 2009.

# ANNEX 1: HSE'S CURRENT POLICY FOR HANDLING COMPLAINTS ABOUT DUTYHOLDERS

(extracted from the Operations Group Complaints Procedure published on HSE's Website)

## Definitions

A **complaint** is a concern, originating from outside HSE, in relation to a work activity for which HSE is the enforcing authority, that is sufficiently specific to enable identification of the issue and the dutyholder and/or location and that either:

- has caused or has potential to cause significant harm, or alleges the denial of basic employee welfare facilities, or
- appears to constitute a significant breach of law for which HSE is the enforcing authority.

## Policy

HSE's policy is to investigate every such complaint received unless:

- the complainant wishes to remain anonymous, will not allow HSE to disclose that a complaint has been received and a vulnerable person is not involved
- it is from a serial complainant and Band 2 or above decides no further action is required
- it has been made by an employee and has not been taken up with the dutyholder or trade union (unless it involves a vulnerable person)
- it is outside the scope of section 3, (except for pesticide complaints) see: Health & Safety at Work, etc Act 1974 section 3: enforcement
- it is a gas complaint that is not "serious" (as defined) and the dutyholder cannot be identified

HSE will not investigate where:

- there are no reasonably practicable precautions
- it is impracticable to follow up / investigate

In the following exceptional circumstances HSE may decide not to investigate where:

- there are inadequate resources to follow up / investigate

A decision not to investigate because of inadequate resources or other emerging priorities must be made by a Band 1 or above.

## Annex 2: RISK BASED APPROACH – part 1 – RISK MODEL (INITIAL DECISION MATRIX)

### RISK BASED APPROACH - part 1 - RISK MODEL (INITIAL DECISION MATRIX)

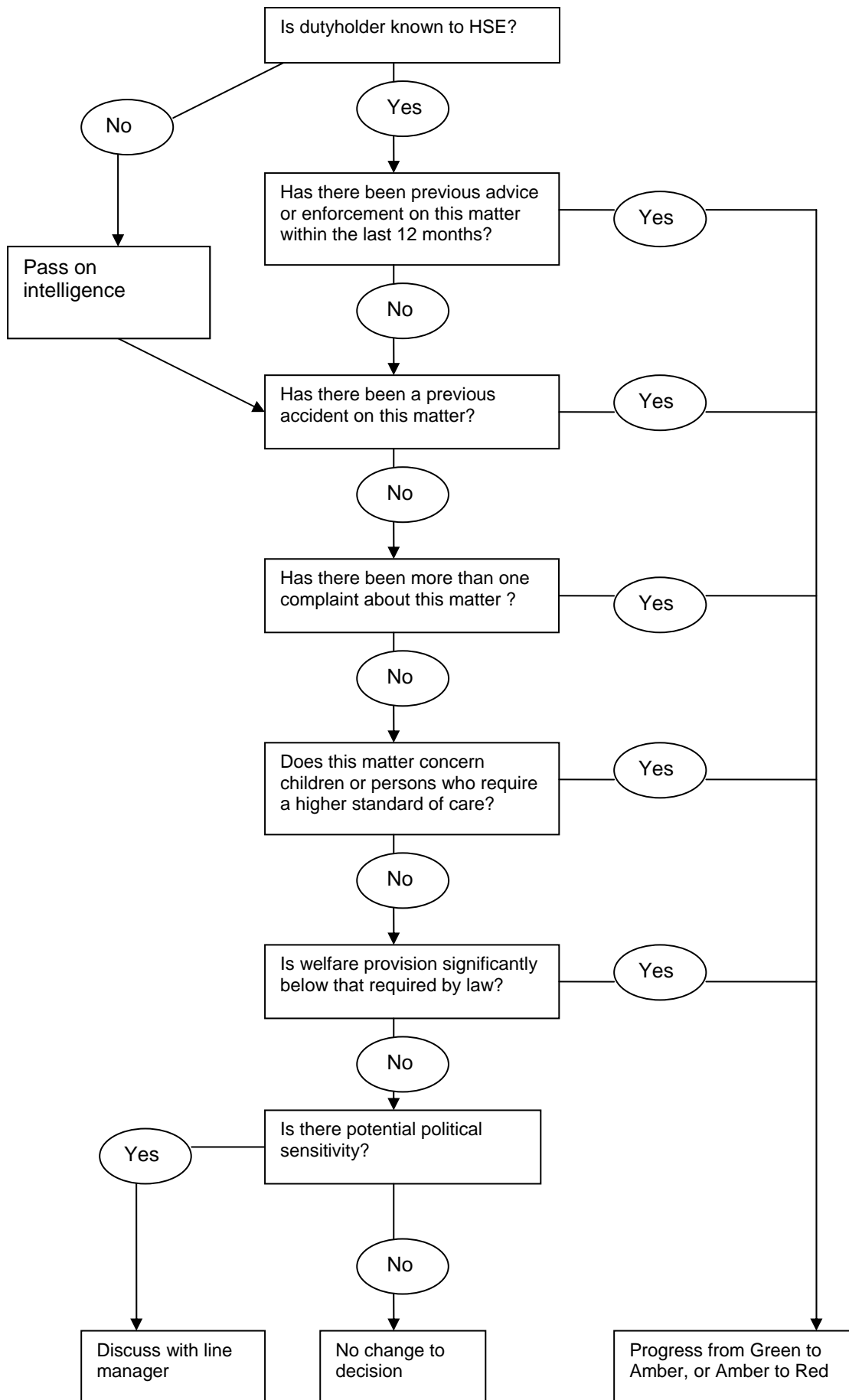
Possible injury risk/ possible health risk	Number of possible casualties at one time				
Serious Personal Injury (fatal or major) or Serious Health Effect (permanent, progressive or irreversible condition, or permanently disabling)	Multiple	Red	Red	Red	Amber
	Single or low	Red	Red	Amber	Amber
Significant Injury (RIDDOR reportable) or Significant Health Effect (non-permanent, reversible or non-progressive condition, or temporary disability)	Multiple	Red	Amber	Amber	Green
	Single or low	Amber	Amber	Green	Green
Minor Injury (non-RIDDOR, first-aid only) or Minor Health Effect (conditions not included above)	Multiple	Amber	Green	Green	Green
	Single or low	Green	Green	Green	Green
	<b>Likelihood</b>	<b>Probable</b>	<b>Possible</b>	<b>Remote</b>	<b>Nil/negligible</b>

#### Colour key

Red = follow up complaint as a priority

Amber = follow up complaint  
Green = do not follow up complaint

## Annex 2: Part 2 – local factors



**ANNEX 3: Examples of complaints in the different risk categories (taken from the Quality assurance sample)**

<b>Division</b>	<b>Risk category</b>	<b>Nature of complaint</b>	<b>Comments</b>
FOD	Green	The workplace is dusty and there are dead rats lying around.	No specific risk referred to regarding nature of dust. The issue of the rats was referred to the Environmental Health Department
FOD	Green	Yard surface at factory is beginning to break up.	No specific risk, e.g. operation of fork trucks in the yard, identified.
Con	Green	Ladder left at front of house overnight - may lead to theft	No H&S risk
Con	Green	Road damaged, vegetation cuttings left by road, site not very secure	Low risk. Issues 1 and 2 passed to local council for their attention.
FOD	Amber	No showers for employees at steelworks	Welfare provision for employees significantly below that required by law
FOD	Amber	Manual handling and work at height issues associated with refuse collection activity.	Peripatetic activity requiring a discussion with head office.
Con	Amber	Demolition of college building while site still in use – also ongoing asbestos issues	Detailed information reported by council officer already raised on site; possible risk of injury to low number of workers.
Con	Amber	Unsafe demolition site (via Building control)	Detailed information from council officer
FOD	Red	2 Pack paint - no PPE	Risk of irreversible health effect i.e. sensitisation to isocyanate in the 2 pack paint.
FOD	Red	15 year old driving Fork lift truck.	2nd similar complaint at the same premises – marked out for inspector visit.
Con	Red	Mobile Crane reversing & manoeuvring in car park without banksman while public still have access to the area	Significant risk of pedestrians or vehicles being struck by the crane.
Con	Red	Repairing & painting chimneys on 5 storey hotel - no fall protection	Risk of serious injury to workers due to fall from height.