

Health and Safety Executive Board Paper		HSE/07/55	
Meeting Date:	2 May 2007	Open Gov. Status:	Fully Open
Type of Paper:	Above the line	Paper File Ref:	
Exemptions:	None		

## HEALTH AND SAFETY EXECUTIVE

### The HSE Board

#### Revised complaints handling procedure

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#### Issue

1. Future HSE policy on the handling of complaints against duty holders

#### Timing

2. For decision at the May Board meeting.

#### Recommendation

3. That the Board agrees:
  - a. Implementation of interim measures 'Option 1' by Summer 2007, as set out in paragraph 10, including the publication on HSE's website of guidance to the public on resolving health and safety concerns; and
  - b. Development and trial of 'Options 1A and 2', set out in paragraphs 11-17 as part of work to explore and potentially implement a "single point of entry", including further work with local authority bodies to explore how similar approaches might work for them.

#### Background

4. In 2005/06 HSE received approximately 19,500 complaints against duty holders, around 98% of which were handled by FOD (HID received just over 320 complaints and NSD 3). About 70% of the logged complaints are dealt with by complaints officers, by telephone or correspondence and 30%, those assessed to be the most serious, are investigated by inspectors (all HID and NSD complaints are investigated by inspectors). In addition staff handle an estimated 10,000 to 15,000 calls raising concerns that are not for HSE or do not amount to complaints as defined, these are not formally logged or actioned. A further breakdown of the types of complaints handled is at **Annex A**.
5. The process for deciding action and handling complaints is set out in the complaints handling procedure (see Annex C) that is applied in all operational directorates and for all complaints, including those relating to domestic gas safety. The procedure works from the assumption that all complaints should result in some action, unless specifically excluded. The procedure was first introduced in 2001 and last updated in October 2006. In FOD the decision-making process is operated in local offices by Band 6 Complaints Officers, supported by Band 5s, who report to operational Principal Inspectors.

6. A look at the current procedure and its operation identified three drivers for a review:
  - a. Contacting dutyholders on trivial complaints points them in the wrong direction – and away from the risks on which they should be concentrating.
  - b. Pursuit of trivial issues damages the reputation of HSE in particular and health and safety in general – health and safety should always be about practical steps to control real risks.
  - c. Greater prioritisation means we could release some resource that would be better spent on other front-line activities.
7. Therefore in October 2006 a complaints handling review project was set up with the aim of revising HSE policy so that our responses to complaints against duty holders are prioritised to a greater extent. The stated aims of the project were to:
  - a. Agree a new complaints policy that includes a threshold of risk test that sifts out trivial and low risk complaints - to achieve a policy that discharges the requirement in the Enforcement Policy Statement that all H&S enforcing authorities should select complaints on both risk and enforcement priorities;
  - b. Achieve high-level sign up and put in place measures so that those handling complaints will be effectively supported in rejecting those not selected for investigation; and
  - c. Work with CIEH and LACORS to see if there is a potential for this approach to be mirrored by local authority partners (bearing in mind that they have a much wider remit that does include general public safety issues).
8. The project excluded gas complaints (which represent 13% of all complaints received by FOD) as this is under separate review. Findings from this project have been communicated to those carrying out the gas review as it may well provide useful insight.

## **Argument**

9. The review and proposed options are aimed at improving the selection and handling only of those complaints dealt with by complaints officers, where the current assumption is that all will be actioned in some way unless specifically excluded. There is no proposal to change the way in which the 30% of complaints investigated by inspectors are dealt with as these are already selected on the basis that they present a serious risk. This paper recommends that some straightforward interim changes are implemented by August 2007, whilst further work is carried out to develop other specific options by Spring 2008 to fit with the proposed single point of entry to HSE. The range of basic options for consideration are set out diagrammatically at **Annex B**

### **Interim action – ‘Option 1’**

10. Incremental change, in the form of Option 1, can and should be implemented quickly as an initial step. Testing suggests that by addressing anomalies and improving consistency of application, up to 15% of currently-actioned complaints would be filtered out. This would include up to 10% of complaints that currently slip through the procedure incorrectly. Option 1 goes some way to meeting the aims set out in para 7, though it would not bring HSE’s procedures in line with HSC’s Enforcement Policy Statement. A 15% reduction in the number of complaints followed up would save around 100 staff days work. Proposed changes are set out in some detail in **Annex D**, in brief they are:

- a. Reword the current policy to make clear that we **will not** investigate where there are no reasonably practicable precautions or it is impractical to investigate;
- b. Make clear that a complaint as defined does not include purely technical or theoretical breaches of the law or harm;
- c. Carry out work to improve further consistency of implementation between offices;
- d. Provide complaints officers with examples and illustrations to assist them with common borderline decisions; such an approach is already used in some offices; and
- e. Publish a guide to resolving health and safety disputes / concerns on the HSE website. This would discourage / re-route inappropriate complaints and assist those who have significant concerns as well as supporting complaints officers in their work.

### **Longer term options for development**

11. These options are put forward on the assumption that 'a single point of entry' into HSE's services project is agreed. It is envisaged that calls concerning complaints against duty holders would be routed from the main call centre to a central complaints handling team, with access to specialist support, who would triage the complaints and then either, transfer them to the appropriate organisation outside HSE, deal with them to completion or pass them on to an inspector. Centralisation offers the following benefits:
  - a. consistency of approach could be more effectively managed and monitored in a single team;
  - b. dedicated staff would develop best practice call handling skills and experience of how to deal most effectively with commonly raised issues;
  - c. it would allow a simple call transfer process from the main call centre to a single point, rather than to a large number of local offices, minimising the transfer time for the caller
  - d. after initial set up it is expected that economies of scale would be achieved; and
  - e. development and delivery of a more sophisticated risk based triage system (Option 2) would be easier to do in a single closely managed team.
12. The success of centralisation is dependent on having ready access to good quality duty holder details and other contact information. COIN now provides this for businesses HSE has previously dealt with and enables checks of any ongoing action to be made. A lot of use is also currently made at a local level of contacts with the LAs, particularly the planning and building control departments, and other organisations to both pass concerns onto and to identify unnamed duty holders. Arrangements to develop and maintain a similar network of contacts for the central team to use would need to be established.
13. Two distinct options for a centralised approach have been identified; this paper recommends that further development, testing and costing work is carried out on both, under the leadership of FOD HQ, before a final Board decision is made in spring 2008. If the single point of entry is pursued, a reasonable amount of time before implementation would be required. Development should therefore begin in September 2007 (after the interim changes have been implemented) and be completed by spring 2008. The two options to be worked on are outlined in brief below.

### **Option 1A: Centralisation of interim option**

14. The policy set out in 'Option 1', as described in paragraphs 10 above, would be applied on a centralised basis. This provides some gains and improvements, whilst avoiding the need for a significant change of policy. However, implementation of this option alone would not bring HSE's policy in line with the spirit of HSC's EPS as complaints handled administratively would not be selected on a specifically risk and priority basis. In addition savings delivered would be relatively limited.
15. As a first step in developing this option it is proposed to trial the use of a centralised team in one FOD Division (ESE have already expressed an interest), to test its implementation and effect.

### **Option 2: Development of a risk / enforcement priority based procedure**

16. This option relies upon a combination of a risk test and identification of fit with specific enforcement priorities. The 'risk test' would be achieved using the Enforcement Management Model to identify the gap between the reported conditions and the level of control required by law. Concerns that did not pass the risk gap test would still be checked against some specific enforcement priorities to ensure that they were not missed. A suggested outline policy for option 2 is at **Annex E**.
17. Option 2 directly addresses the aims set out in para 7 and would also bring HSE's complaints handling procedure fully into line with the spirit of HSC's Enforcement Policy Statement and the criteria used by HSE to prioritise other interventions (e.g. the accident selection procedure). Desk top testing suggests it would filter out around 34% of complaints where HSE intervention would be able to make little difference to the level of risk. However, it would need to be operated by staff with a greater level of training and expertise than the current procedure or the other Options as an understanding of the EMM and legal standards is required. This would tend to offset savings from reducing the number of complaints acted upon.

### **Consultation**

18. At an early stage in the project E-express and FOD Briefing were used to raise awareness of the issues being considered and comments were invited from staff. Subsequently, a paper setting out 4 broad options was circulated for comment to OPSD, HID, NSD, FOD Head of Operations working group, the complaints procedure user group and HSE Trade Unions. It should be noted that the project consulted upon the policy options and did not venture into discussion of a potential single point of entry as this was seen as an issue that involves a number of processes and issues and upon which consolidated consultation would be required. A summary of comments received from staff is at **Annex F** and at **Annex G** for the Trade Unions.

### **Presentation**

19. Inquiries into trivial and purely administrative issues send a message that such issues are what concerns HSE. Improved targeting of inquiries into complaints would significantly assist the positioning of HSE as an organisation that focuses on practical steps to manage real risks – not bureaucratic back-covering.
20. The main presentational issues relevant to the implementation of interim changes relate to internal guidance and briefing. The proposed guidance for the public will articulate our complaints policy and provide practical guidance on how to resolve complaints reflecting advice already given by complaints officers and Infoline. It is proposed the guidance would be web based and designed to be easily downloadable so it can be made available to members of the public as required. Presentational

issues relating to the implementation of 'a single point of entry' to HSE's services and any consequential centralisation of services will need to be addressed as part of this project's implementation plan. The internal communications manager will need to be involved from an early stage and consideration will need to be given to timing to minimise risks of overloading staff with change.

21. There is a potential for the options to be seen by HSE staff and stakeholders as reducing worker protection by filtering-out complaints about significant risks. Testing indicates that this is not the case; it will be important to share statistical breakdowns and examples of the kind of complaints that would be excluded to demonstrate this point.

### **Costs and Benefits**

22. The proposals are designed to improve the quality and targeting of our complaints handling procedure to sift out trivial and low risk complaints to better support HSE's wider objectives. Better targeting of which complaints are pursued should release resource to do other frontline work. A potential risk of adopting a more robust, selection approach is an increase in the number of complaints by members of the public to HSE, in the form of CE cases etc, about our failure to address their concerns. However this would be more than offset by a likely reduction in resource occupied dealing with cases and media stories alleging that HSE is being over-zealous. The proposed trial will be designed to look at how public expectations can best be managed and to monitor any change in the level of complaints against HSE raised.

### **Financial/Resource Implications for HSE**

23. There is an incomplete picture of the current cost to HSE of receiving, sifting and making enquiries into complaints, particularly in terms of non-contact time by complaints officers. The figures should therefore be regarded as guidelines and not firm figures.
24. The present cost of receiving, handling and making inquiries into complaints is estimated to be of the order of £449k, which breaks down as follows:

577 days contact time by complaints officers:	£73k
577 days non-contact time by complaints officers (est):	£73k
Inspector contact time resulting from complaints:	<u>£303k</u>
<b>Total</b>	<b>£449k</b>

25. Work to implement the interim changes outlined in option 1 would cost in the order of £11k (0.25 x Band 3). Sifting out up to 15% of the complaints currently actioned by complaints officers could save up to £31k. However this saving would be offset to a degree by the time taken to explain to complainants why their concerns had not been selected for action.
26. Work to develop the longer-term options for a Board decision in Spring 2008 would cost £17.5k (0.25 x Band 3 and 0.1 x Band 2). As part of this process costings for the two options would be developed.

### **Environmental Implications**

27. None

### **Other Implications**

28. None.

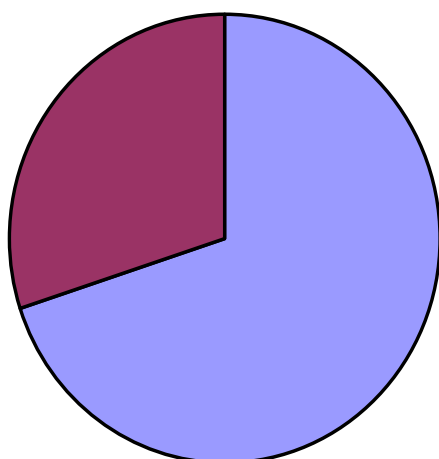
## **Action**

29. Board members are asked to agree:

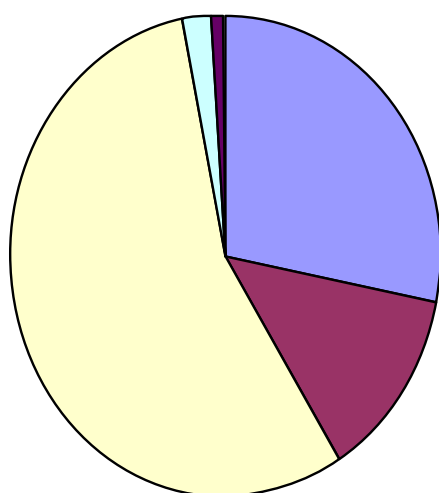
- a. Implementation of interim measures 'Option 1' by Summer 2007, as set out in paragraph 10, including the publication of guidance to the public on resolving health and safety concerns on HSE's website; and
- b. Development and trial of 'Options 1A and 2', set out in paragraphs 11-17 as part of work to explore and potentially implement a "single point of entry" to HSE, including further work with local authority bodies to explore how similar approaches might work for them.

## Complaints handling – statistical highlights

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**Who takes action at present?**

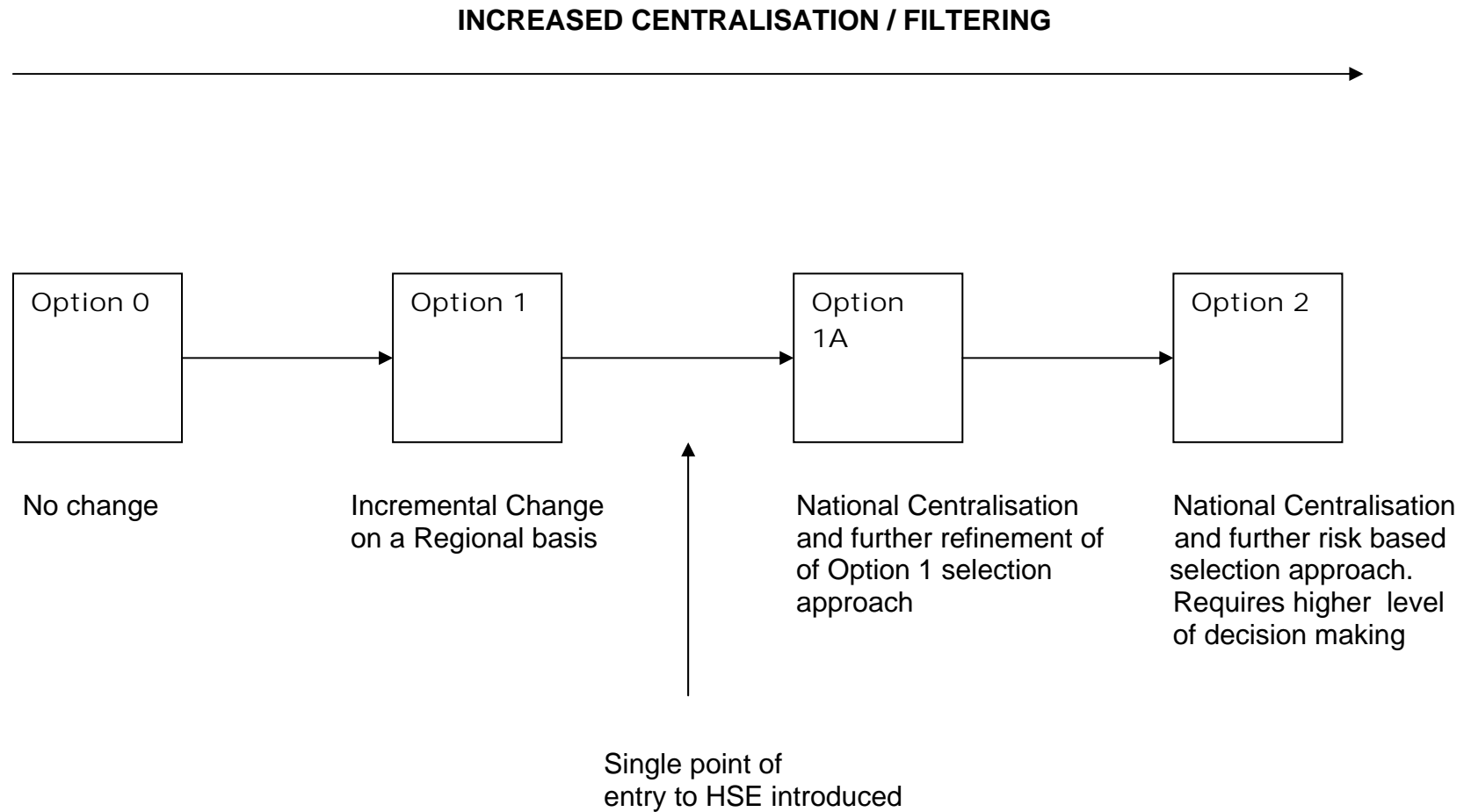
- handled administratively by Complaints Officer 70%
- Investigated by Inspector 30%

**Logged complaints by sector**

- Construction 28%
- Domestic gas safety 13%
- Manufacturing & services 56%
- Major Hazards installations 2%
- Other 1%

**Annex B**

**OPTIONS FOR CONSIDERATION**



## Overview of the current complaints policy 'Option 0'

HSE's policy is to investigate every 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 duty holder 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 duty holder cannot be identified

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

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

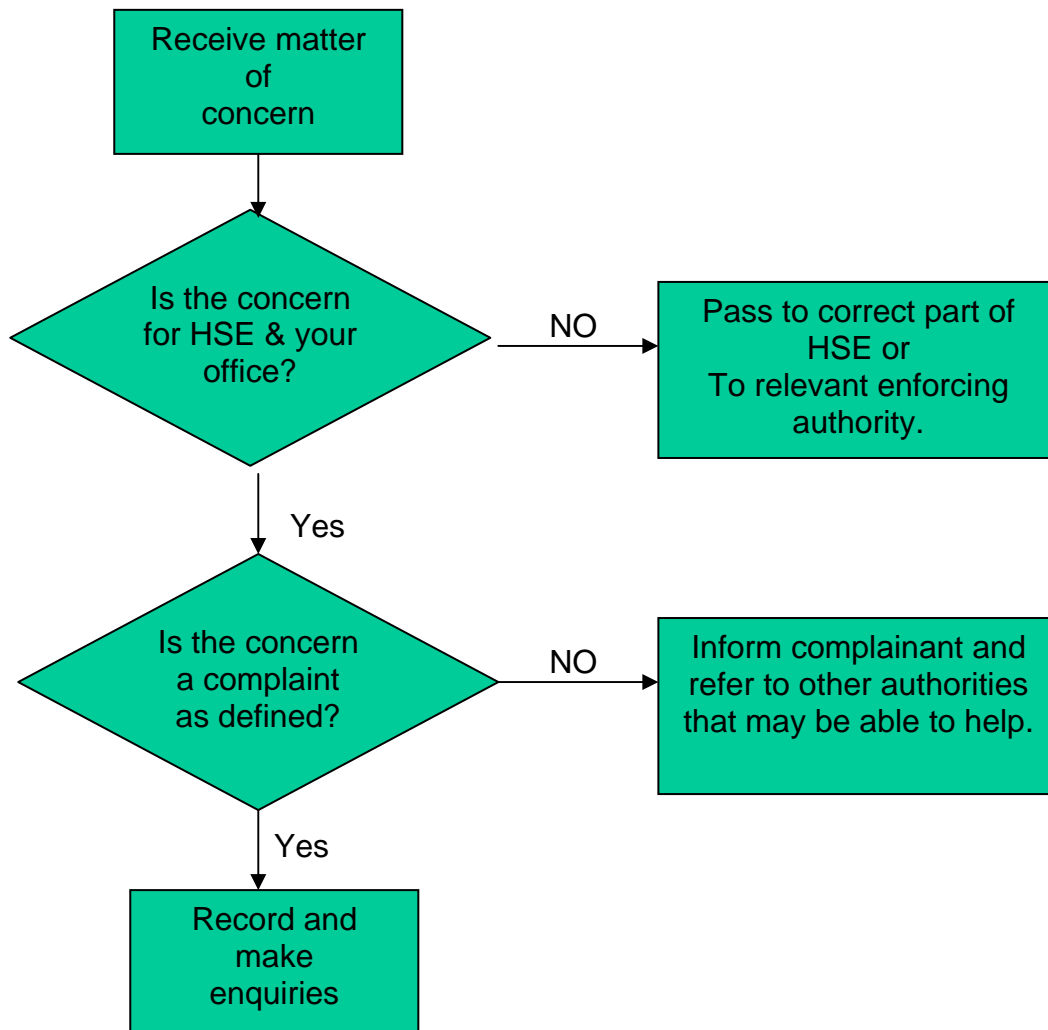
A decision not to follow up / investigate must be made by a Band 2 or above; a decision not to investigate because of inadequate resources or other emerging priorities must be made by a Band 1 or above.

### Definition

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 duty holder and/or location and that either:

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

In simple terms, the current procedure, 'Option 0' looks like this:



### Option 1 – Incremental Change

The current procedure should be amended (changes shown in **bold red**)

HSE's policy is to investigate every 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 duty holder 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

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.

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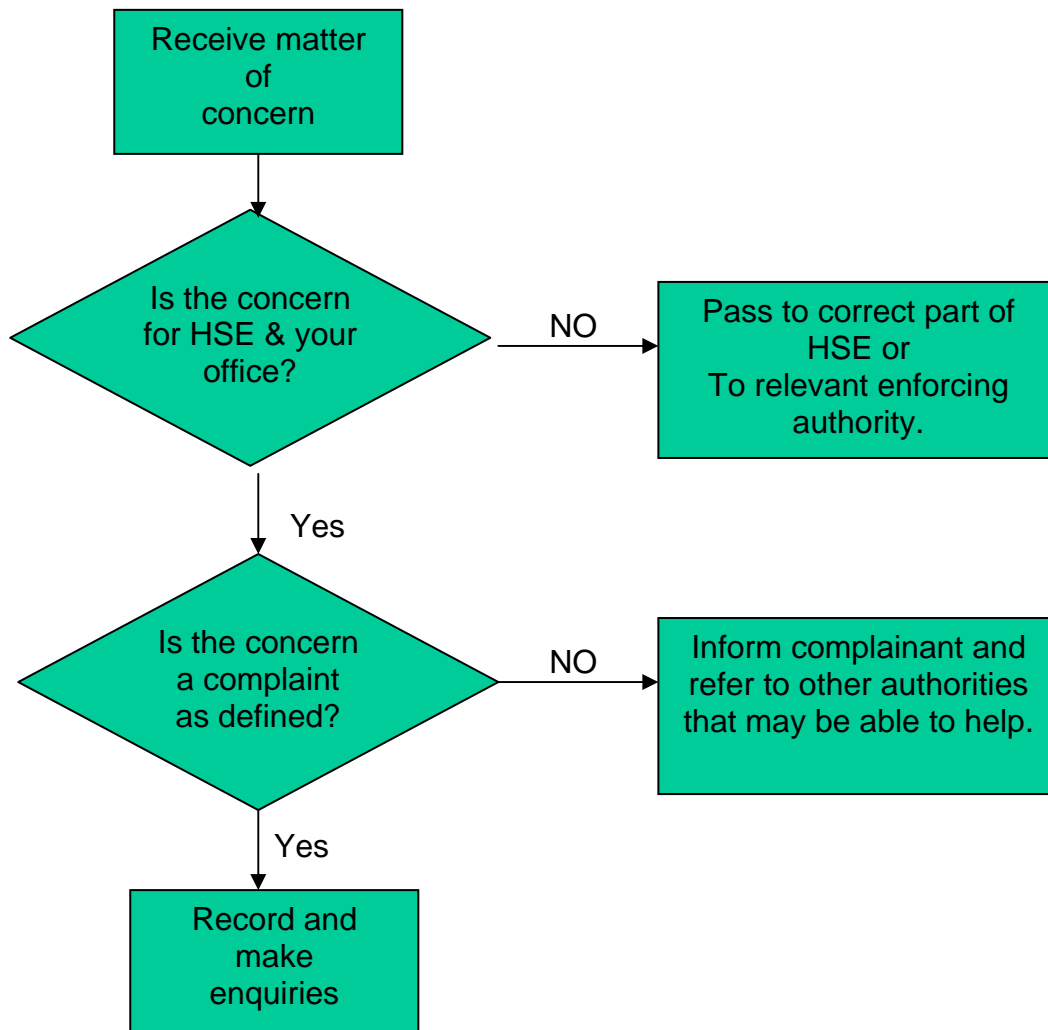
- has caused or has potential to cause **significant** harm, or alleges the denial of basic employee welfare facilities, or
- appears to constitute a **significant** breach of law for which HSE is the enforcing authority.

**'Significant' should be defined as having more than purely theoretical or technical impact.**

Action to improve consistency:

It was apparent that there are variations in application of the current procedure; this contributed in our sampling exercises to 10% of concerns incorrectly resulting in action. The use of non-trained staff to take down complaints before passing to a complaints officer for a decision was a particular concern. Action should be taken to ensure that complaints are received by a fully-trained complaints officer in all offices. The first contact is vital to the quality of the process and there is inconsistency at present between offices.

In simple terms, option 1 (like option 0) would look like this:



## Option 2 – risk test + enforcement priorities

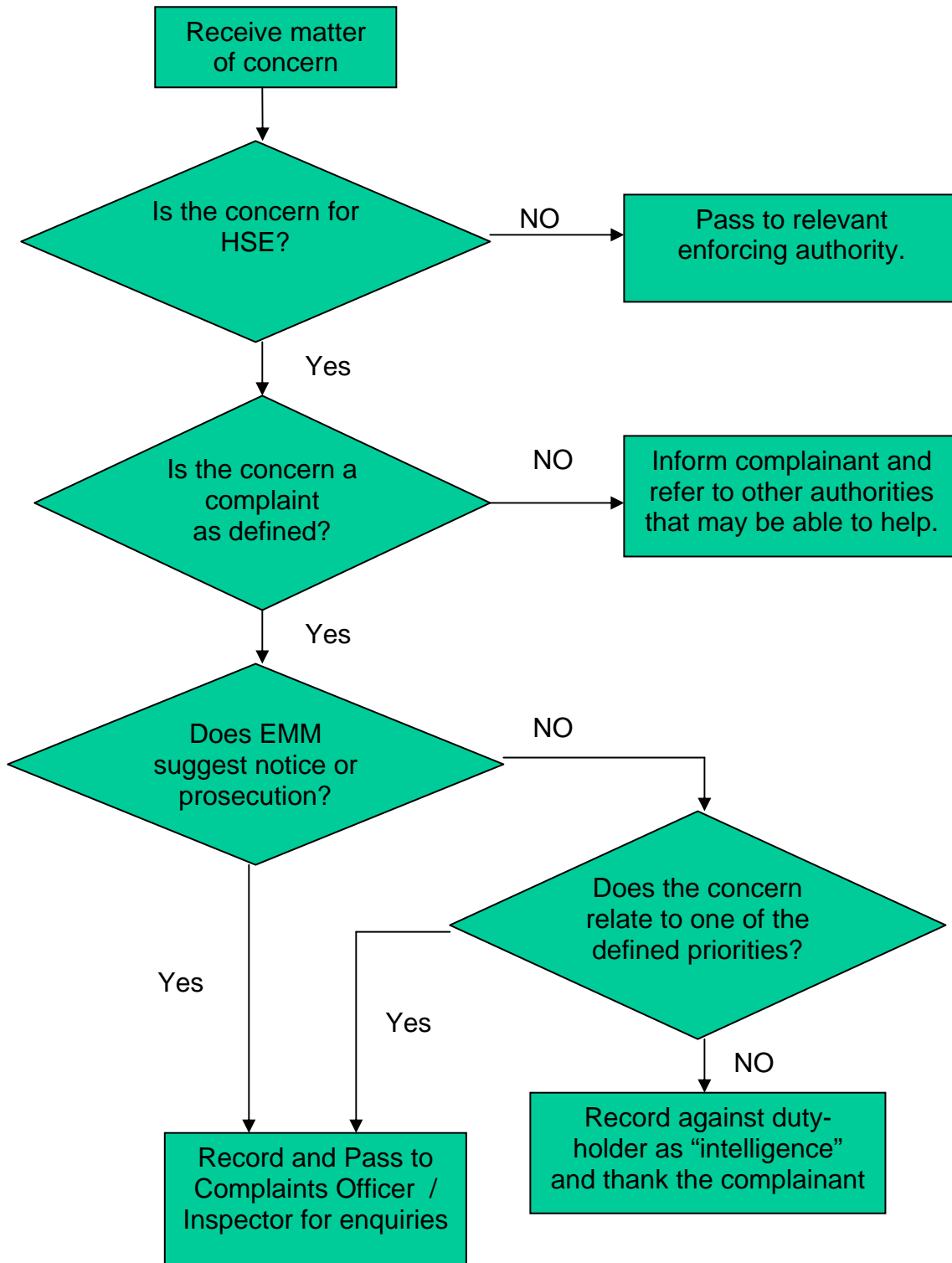
Option 2 requires further development alongside work on a potential “single point of entry” to HSE. However, a selection policy would look something like:

“concerns will be selected for investigation, either in person or administratively, if they fulfil one or more the following criteria:

- i) On the facts reported, the initial enforcement expectation of the EMM would be a Notice or prosecution;
- ii) The circumstances relate to one of the following specific areas of a strategic priority area:
  - falling off a roof edge (just an example);
  - slipping in a food manufacturer (just an example); or
- iii) The circumstances suggest that welfare provision falls significantly below that required by law; or
- iv) The circumstances relate to the integrity of a major hazards site.”

Rather than simply ignoring the complaints that are not selected, we could perhaps treat them as “intelligence” for future contacts. Where the details of the organisation are known, it might be possible to record the details against that client, for use by operational staff at future visits.

In simple terms, Option 2 would look like this:



## Comments from staff

Firstly staff were consulted on the current procedure and changes they would like to see being made. The questionnaires were advertised internally through express and the news centre and also distributed through various FOD user groups.

We had 27 responses from a wide range of participants within the procedure. Although this may be a small response, (considering the large amount of people that work with the Complaints Procedure), the quality of responses was very high and offered a good level of insight.

Generally people were in agreement that the procedure takes too long and allows for too many complaints to be investigated. However, people are positive about the system as it takes much of the initial work away from inspectors (freeing them up to do other tasks)

- *“Very effective at reducing the reactive burden on Inspectors in investigating complaints, and has provided a robust, formal structure by which complaint handling can be administered and held accountable”*

The current system allows Bands 5/6 to do some worthwhile investigation work. But if HSAOs are to do this work then they should be trained appropriately to be able to make the relevant decisions.

- *“Staff are not adequately trained nor do they have the knowledge on how to extract information from complainants or how to deal with matters not for HSE”*

Another issue raised is the effect of public expectation.

- *“The majority of the public think we have a batmobile to send an inspector out instantly”.*
- *“Members of the public do not understand the role HSE plays and what we can or can't do”*

This is difficult to overcome, as by just explaining to people they won't necessarily accept this. By having the support of managers, acting as an instant appeal process, CO's will have more confidence. By having a generic letter to send out to disgruntled members of the public we will hopefully overcome many of the complainants bouncing back.

HSE often gets *“drawn into disputes between rival parties using health and safety to antagonise the other”*. By having an approach whereby the CO looks into what the main concern is, this could be overcome. This links to the issue that Complaints Officers need to be adequately trained for the task and supported by their managers.

Overall the general view is that too many complaints are investigated. However, there is a great deal of support for the fact that it takes a section of work off inspectors and gives meaningful work to band 5s. This is coupled with a request for adequate training and guidance to accompany any new system to enable this balance of work to be carried out effectively.

The Second level of consultation of staff saw the 4 initial options being circulated. These were again distributed through various user groups and also to anyone who has responded to the first questionnaire. The response to the discussion paper brought in 26 responses but many of these were group responses from either user groups of FMUs.

Many people saw a lot of positive reasons to keep the current system which included, saving on the initial cost of change and highlighted that many changes have already taken place in FOD and with the complaints system, so remaining with the same procedure would be better. It was also noted that the current system allows HSE to find out where many new businesses are situated. If we discouraged people from complaining, we would lose this resource. However, there are also overriding reasons why this system would not work or implement the ideas.

One point that was highlighted for all options, with the exception of option 2, was that it would not achieve compliance with HSC's Enforcement Policy Statement. This has to be considered to keep all guidance coordinated.

Many people believed that the initial suggestions to merely focus on the enforcing authority was already been done to some extent and that it was the "*Most practical option when accompanied by better training. It can also assist in tightening up the current procedure*". But this option was deemed to have very few positive characteristics as, some Local authorities and other bodies are reluctant to take over complaints from HSE. In addition, there is evidence of some LA switchboards being un-aware that they have a health and Safety team. This option would require a lot of cooperation with Local authorities. This options also puts a lot of pressure on the CO's to explain to the callers why HSE will not take their complaint. Also, if CO's do not take on the complaint and then an accident occurs they will feel a level of responsibility. (This type of issue was bought out by FOD stress survey)

Another initial option looked at dealing with complaints that focused on priority topics and using others as intelligence for further campaigns, was deemed to have a number of failings. Some of this concerned the handling of the public as to rely on what the informant says about the risk will not necessarily gain the best information. Especially if this information would then be recorded against the company for intelligence purposes. HSE must be careful not to keep untrue data, especially in the age of freedom of information. Often perceived and real risk are close together and if incidents happen after complaints are not being followed up, HSE would be seen as failing in its duty by the public and the press.

The practicalities of this system were questioned. The current system is seen as distributing work well but this system would give more work to the principle inspectors and expect the Complaints Officers to have much more knowledge (to work with EMM) and the confidence to apply this knowledge.

Although option 2 was the most popular, people queried how the process would be implemented (big start up costs and significant change) and how it would all fit together. The main positive, as previously highlighted, is that it would achieve compliance with HSC's Enforcement policy statement and focus on targeting and proportionality. The general feeling was that the list of key priorities is workable although it will encompass many construction complaints. In addition, would the key priorities have to be examined every year?

The suggestion that the criteria should be whether a prosecution would be taken is far too extreme. Actions have always been based on prevention, leaving prosecution as a last resort.

There were many generic issues highlighted that did not relate to one option or another but to the system as a whole. The one that came up most frequently was that; "*A Considerable*

*amount of training and discretion would be needed if any were to be successful.”* This training would not only relate to how to work the new system, but also so the people carrying out the procedure have the correct amount of knowledge, and so they can deal effectively with the public on the phone (getting good information from them but minimising aggression from them)

It is more difficult to discourage members of the public from complaining than employees. An employee complaining can be diverted to Trade Unions, management etc, but the public have no other means of pursuing the complaint.

Some felt that if CO Officers worked in a dedicated team with a dedicated manager, this could be seen as a step backwards. However, it would give staff an easier advice line whilst also making it easier for managers to know what their staff are doing. If managers continually overturned decisions, it would have a large effect on morale.

One group also highlighted that concerning implementing a new system. Most divisions are currently budget planning well into 2008 and it would be difficult to implement new priorities or systems until this time.

## Annex G

### Comments from HSE Prospect Trade Union

- The TUs can see why we are looking at this area; it would bring complaints handling in step with other processes, particularly RIDDOR selection. They have no objection in principle to this line of thinking.
- TUs have concerns about who would operate the process if a model based upon the EMM were to be employed. There are obvious training and management issues, but in addition Prospect identified that the EMM is currently operated by warrant-holders and their initial reaction is that this should continue to be the case. The accident selection procedure is operated by Band 2 Principle Inspectors and they would favour mirroring this for complaints.
- It would be important to ensure that initial information is recorded by appropriately trained staff.
- The EMM appears to provide an appropriate mechanism for sifting complaints on the basis of risk. However they question whether the threshold for inquiries should be set at “formal enforcement”. Would it be more appropriate to set the threshold to include circumstances where a letter or verbal advice would be used?
- They recognised that thinking is currently at a policy rather than procedure level. They would ask to be involved in discussions at an early stage about the implementation of any option.