

## NOTES ON OPTIONS FOR MANAGERS

### A. Plan and Prepare:

- Estimate your time constraints — **is this an emergency?** Do you have time to give the complainant a little time to compose his or her thoughts?
- Consider whether you are the right person to deal with this complaint;
- Determine whose interests are at stake and what those interests are;
- Determine who “owns” this question. Who is responsible for this subject or problem? Who in management would think they have a right over this subject? What about the original source of the complaint — does that person feel he or she “owns” the complaint or ought to be able to do so?
- Consider seeking advice, making certain that you have permission\* to do so. Seek advice from people who might understand some aspect — the technical points or the racial context or the policies and laws at stake — better than you. Ask for unforeseen issues, precedents, etc.;
- Gather any facts that are cost-effective and ethical — and, perhaps unobtrusively available — to gather in the time you have. Depending on the situation this might be done by you or for you or for some other manager;
- Brainstorm — with someone else if possible — all the constructive and unconstructive options open to each actor. This will lead you to doing an analysis of the sources of power\*\* for each of the actors. Be sure that you have thought through the covert and “acting out” options open to each actor;
- Brainstorm a second time if the situation is very serious — feelings, interests, positions, options and the policies and principles and laws that should govern this situation;
- Make notes — figure out a plan for action, and a plan for follow-up. (This is **essential** in harassment, safety and ethics cases).

### B. General Principles

- Help the complainant pick an option — or if necessary in an emergency, you pick an option — that you think may really work. One wants to avoid half-hearted measures and escalation, so plan to expend 101% of the effort that will be required for the option that is chosen;
- Other things being equal, offer options that resolve the problem at the lowest possible level. “Delegate” as much complaint-handling as you effectively can — empowering others is probably efficient for you and may produce better answers in the short and long run;
- Protect people's privacy in every responsible way you can.

## C. Help the Complainant Choose an Option

### 1. Helping People Help Themselves:

#### a) How to do it:

- Ask the complainant to consider all the other options as well, and consider them again before any action is taken. Be sure that if this option is chosen, that the complainant knows other options exist and has freely chosen this one. This is **essential** for harassment, safety and ethics complaints;
- Explore facts and feelings with the complainant — take enough time! Listen, listen, listen.....;
- Explore with the complainant, what the Other would or will think, say, do and feel. You may wish to role-play: “I’ll be you — you be the Other”;
- Consider re-reading Drafting — and Perhaps Sending — a Private Letter to a Person Who Has Harassed or Offended You;
- Encourage your complainant to draft a letter to the Other, writing several drafts if necessary, with facts, feelings, and recommendations in separate sections. Characterize this step as a preparation step that might help with any option, not as a commitment necessarily to send the letter;
- Help your complainant choose an option for handling the complaint. If the option is to be that the complainant will handle the problem directly, help him or her to choose whether to handle the problem in person or on paper, or both — for example, by delivering the letter in person. The complainant should keep a copy of a letter, if any, but usually should not send open or covert photo-copies to anyone;
- Prepare for all logical outcomes on the part of the alleged offender, so the complainant will not be surprised by the outcome, whatever it is;
- Follow-up with the complainant. This is **essential** with harassment, safety and ethics complaints.

#### b) Why to choose this option:

- The complainant wants this option;
- This option helps to support peoples' control over their own complaints. For many people, handling a problem directly, if it is effective, may be a preferred process — because they maintain control — no matter what the substance of the complaint;
- This option may be the only reasonable option if there is not enough evidence and when it is impossible or too expensive for the complainant or the employer to get all the facts;
- In addition, direct action by a complainant is frequently the most effective option, in terms of “just stopping” offensive behavior, where there is no evidence for the offense beyond the complainant's own statements;
- In most cases handling a problem directly is less likely to provoke attempts at reprisal, since reprisal is often provoked by intervention by a third party — dealing directly does not “rock the boat” and is often preferred by the Other;
- This option is likely to take less time and cost less;
- This option is sometimes better in terms of timing and other psychological variables, due to the complainant's superior knowledge of the situation;
- This option usually permits the widest variety of “next steps,” if this step does not work, and if more action is desired;
- This option may prevent mistakes based on insufficient data and/or different perceptions of the facts — this choice makes it much more likely that the complainant will learn what should be learned about the facts and the Other’s perceptions of the facts;

- This option may help to teach offended people a method for dealing with problems and offenses. Moreover, teaching a **method** for dealing with problems — rather than just solving the specific problem — appears to make it less likely that the complainant will be offended in the future — possibly because it may help such a person to learn how to prevent interpersonal problems;
- Delegating complaint-handling makes a more efficient enterprise, (as with any other effective delegation of responsibility);
- Handling problems directly appears to some people more moral and more fair. In particular many offenders hate to have some one go around them;
- This option helps to preserve the privacy of all;
- This option helps to protect the rights of the Other;
- This option will usually provide more leverage for management, if management action is needed later on, because of the evidence provided by a complainant's letter, or by the complainant's direct attempt to get the situation resolved.

**c) Caveats:**

- This option has only limited goals — there is not likely to be much system change, or consciousness-raising of others from the use of this option, unless the option becomes widely known and used in the company;
- Follow-up may be essential if a manager knows about the complaint;
- “Justice” may or may not be served;
- If a complainant sends a letter, that letter then belongs to the recipient and can be used by that person. This can be damaging if the letter is inaccurate or embarrassing;
- There is usually no central record, created by a direct approach, which is a drawback in the case of repeat offenders. In choosing the direct approach, the "system errors," if any, will be errors of omission — too little being done — rather than errors of commission — too much being done.

**2. Shuttle Diplomacy and Mediation:**

**a) How to do it:**

- Consider all other options, with the complainant and by yourself. Be sure that you have permission\* to talk with everyone with whom you will need to talk. Remember that in most situations formal mediation should be voluntary for all parties, though shuttle diplomacy need not be;
- Seek advice, from counsel, EO, ER, mentors, superiors, etc. if appropriate. Consider reading Christopher Moore's Mediation Process;
- Consider how and when to enter the dispute. Can you enhance your credibility? Is there trust and rapport — is there anyway you can build trust? Think about timing and place, etc. Is there an understanding of third-party intervention of this type? (Most people understand shuttle diplomacy. Fewer people understand mediation.) What are each party's expectations of you?
- Investigate a little if you can do so at no cost. Are there records? Will the parties have data they can prepare for you? (In a formal mediation, the parties should come to their own settlement — you should not act as a judge — but you as a third party will be better off with as much data as you can get, in either shuttle diplomacy or mediation);
- Prepare and plan for all logical outcomes — beginning with the standard analysis of feelings, interests, positions, options, policies, laws and principles that may pertain or should pertain;
- Choose a mode for how you will enter the dispute, remembering that — within hierarchies — shuttle diplomacy works better for most people than does mediation. (See

also point "c", below.) If mediation appears to be a good choice, then consider using shuttle diplomacy first, to prepare people for the mediation;

- Follow the basic steps. Prevent emotional withdrawal if possible. Save face for everyone if you can. Protect and support conciliatory feelings if possible. Seek out all the interests again and again, and deal with the “positions” that come up. Brainstorm if possible — expand the pie if you can — wait for the parties’ own solution if it will come. Then help narrow the issues; help in assessing and choosing an option; come to a conclusion; state the conclusion; write the settlement if appropriate;
- Follow up if appropriate.

**b) Why to choose this option:**

- The parties want this option — and you have been asked to conciliate or mediate;
- You feel comfortable with this option — you know you are good at it and you know you are reasonably impartial;
- This kind of complaint-handling is consistent with your employer's “culture” — the norms support each side giving a little and the norms support cooperation;
- The timing seems right. For example, they have tried to settle this themselves unsuccessfully, but they are not yet hopelessly polarized;
- You believe that you will be able to problem-solve, to help them come to their own solution, to help them exchange information and perceptions, to build trust;
- The parties are inter-dependent and this is not a win-lose situation;
- The parties each perceive that they have weak BATNAs; there is reasonably equal power in the situation;
- Your employer has a high investment in a good outcome for each person involved;
- The right people are actually available to deal with.
- It is acceptable or even preferable in this situation for there to be no organizational record of the dispute. (Note: the parties as a condition of settlement may want the settlement on the record, but many disputants choose mediation precisely because no record will be kept.)

**c) Why to choose shuttle diplomacy rather than mediation:**

- This is the option that the parties want, or that one person wants, or that you prefer;
- Trust is a major problem;
- “Face” is a major problem;
- Privacy is a major problem;
- This is the best way to get the data that are needed;
- A single text option is going to work best with these people;
- This option is much more convenient;
- This is the only way to substitute for someone who cannot be there for face-to-face mediation;
- This is the only way to deal with the situation because you cannot discuss all the relevant data with one person or the other;
- This is the best way you can think of to deal with an imbalance of power.

**d) Caveats:**

- Do not use mediation or let others do so where what is really intended is to lay down the law or otherwise adjudicate, or arbitrate. People will quickly come to distrust the process if they were brought together to find (or to help to find) their own solution and the “mediator” provides and insists on his or her own solution;

- Do not let mediation be used as a tool for formal investigation or where the employer believes it will learn facts that will force it to adjudicate;
- “Justice” may or may not be served;
- If the settlement is not kept by the employer there will be no organizational record of the dispute;
- Mediation may not provide good “precedents”.

### 3. Investigation and Adjudication or Arbitration

#### a) How to do it:

- The complainant should consider all other options. The investigator should if possible have permission\* to use the information that it acquires, (except in the unusual circumstance that there must be a truly clandestine investigation;)
- Under ordinary circumstances the employer should not take adverse administrative action against an employee without a fair process\*\*\* beforehand. Emergencies may occasionally pose a problem in this respect, but the employer should consider carefully whether a fair process can occur, before it fails to initiate such a process;
- Should advice be sought from counsel, EO, ER, mentor, a superior, etc.?
- The employer should consider who should be the investigator(s). For example, it may wish to insulate a decision-maker from any bias or perception of bias, or from backlash. It may wish to find special, perhaps technical, expertise in fact-finding, or persons of a given race or gender.
- The employer should consider separating fact-finding from decision-making so a different person does each task.
- The employer should consider what should be the charge to the fact-finder, and what should be the limits or scope of the investigation;
- The employer should consider whether the investigation should be formal or informal, and whether the investigator should or should not be asked for formal recommendations. It should not ask a junior person to make formal recommendations;
- The employer should consider the timing of the investigation, which should typically be “fair, prompt and thorough.” (Note that an **expeditious** investigation will not necessarily be possible);
- The employer should consider carefully all the non-invasive sources of data, for example, records, reports, etc., before going to disruptive sources of data;
- The employer should consider very carefully who should know about the investigation, beginning of course with whether it will inform the subject of the investigation. The employer should consider who will be informed about the process of an investigation if it takes a long time, and on what schedule;
- The employer should prepare and plan for all the logical outcomes, beginning with the standard analysis of feelings, interests, positions, options, policies, laws and principles that may be relevant. It is particularly important to do a careful analysis of the sources of power of each of the people involved, and a careful analysis of unconstructive as well as constructive options open to each of these people;
- The employer should arrange for appropriate review of the results of any formal investigation — for example by legal counsel — before administrative action is taken;
- The employer should anticipate and plan for follow-up steps after investigation and adjudication have occurred.

#### b) Why to choose this option:

- Where the employer is required by law or policy to investigate, and/or adjudicate;
- Where an investigator is willing and able to undertake a fair process; (for example having no serious conflict of interest);

- Where one or both parties wish an investigation and decision-making, and you approve, for example for the reasons above;
  - Where both or all parties refuse to negotiate or mediate; where the parties cannot learn how to negotiate fast enough to deal with the problem that must be resolved;
  - Where a win-lose decision is the right decision — for example it is a hopelessly distributive problem — there is an emergency — or it is clear that one or both parties are lying about something serious;
  - In lose/lose situations where the goal is to minimize the maximum feasible loss;
  - Where you can easily see a win/win adjudication;
  - Where there is a hopeless power imbalance, or a desperate problem of saving face;
  - Where the future relations of the parties are not a concern or might actually be enhanced by adjudication, or satisfaction of the real interests of the parties is not dependent on their future cooperation;
  - Where the stakes for the parties are low, but they are high for your employer.
- c) **Caveats:**
- Investigations are often very expensive in time and feelings, and money, and investigations often make people fear and dislike the investigator and decision maker;
  - Expect that the results of the process and outcome of the investigation may be made public, possibly in a disconcerting way;
  - Be prepared for people “voting with their feet” or expressing other dissatisfaction with the outcome of investigation and adjudication. This is especially difficult in situations where the employer will not be able to give information to the public, and where it therefore cannot defend itself and the process. In such situations it may need to continue to deal with peoples' feelings, and to try to maintain respectful relations with disputants and bystanders, for some time. This may be especially true with people who are — or who see themselves as — “whistleblowers”.
  - Too frequent adjudication of disputes may result in inefficient management and loss of motivation — or willingness to speak up — by those involved.

#### 4. Generic Options and Systems Change

##### a) How to do it:

- Consider all other options with the complainant to be sure this one is appropriate. Be sure that you have permission<sup>7</sup> or a right to use any information you will need to use. Alternatively you could try to work with the complainant to devise a method whereby an appropriate office (like Safety or Audit or Environmental Hazards) can be alerted to collect the information that is needed — on an unobtrusive or apparently routine basis — without your having to break anyone's confidence;
- Ask yourself, whose interests are at stake? (Make a list). Ask yourself, who “owns” this problem — who would feel a right to dispose of or prevent this type of problem? (Make a list). Consider these lists carefully before you decide where and how to intervene;
- Consider the time constraints. Is this urgent? Is this a problem that needs careful study?
- Do a quick and practical cost-effectiveness analysis in your head about whether and when and how a systems approach might help;
- Consider whether to design a way to find out later if the systems change is working.

##### b) Why to choose this option:

- Where the complainant chooses this option;
- Where a systems change is required by policy or law;
- Where you personally are willing and able to pursue a generic approach;

- Where many people are likely to have the same problem, the costs of not fixing it are high, or for any other reasons the cost-benefit analysis is favorable;
- Where the workplace culture is, or should be, tilted toward preventive measures as well as complaint resolution;
- Where for confidentiality reasons you cannot address the alleged problem of an individual (e.g. sexual harassment or unpaid overtime required of a non-exempt employee) but a “generic” address to the problem (e.g. a training program on harassment or a departmental reminder on the overtime laws) is likely to resolve the problem of a known individual who will not otherwise come forward;
- Where the complainant or the offender is unknown (e.g.. the complainant is anonymous or an anonymous person is making obscene calls);
- Where you have picked up a problem new to the company, that will need to be thought through, or where the ramifications of a problem are as yet unknown and should be considered at top management levels;
- Where the only satisfactory approach will require cooperation between the company and outside persons or entities.

**c) Caveats:**

- A systems approach may not satisfy the feelings of individual complainants, especially if a problem is taken out of individual hands, or the solution takes a long time, or a “vanilla” solution must be adopted to placate strong competing interests;
- “Justice” may or may not be served in the individual case that is dealt with on a “generic” basis;
- If a systems approach is used to deal with an individual case, follow-up with the individual who complained may be essential, to be sure that the individual problem does not recur;
- Some managers will complain that a systems approach was not needed, for a problem that they never knew existed, or thought to be trivial, or very rare;
- One must approach the system in the right manner, at the right time and at the right level. If you think this is not possible at the moment, this may not be a good option.

---

\* Confidentiality and Privacy: Always get permission, if you can, to use the information given by a complainant. Typically one can get permission to consult with others, to use the information on an anonymous basis, or to use the information after a certain period of time has passed (if this is acceptable to you). If all else fails, a complainant will often give you permission to tell a person very high in management, for example, a CEO. It is usually better to spend the time to work very hard to get permission to use information than to expose someone as an informant. When in doubt, (and when an investigation is not clandestine), work hard to get explicit permission before quoting a complainant by name, and in general always protect people's privacy in any responsible way that is open to you.

\*\* Sources of Power in Negotiation include: Legitimate Authority; Rewards; Sanctions; Force; Commitment to a Position; Charismatic/Moral Authority Power; Information or Access to Information; Expertise or Skill; an Elegant Solution; Good (or Bad) Relationship — for building (or losing) power; a BATNA (or fall-back position).

\*\*\* A Fair Process requires, at a minimum, that the alleged offender know the charges against him or her, (or all the major elements of the charges), that he or she have a reasonable opportunity to respond to those charges and to bring his or her own witnesses, and that the matter will be investigated and adjudicated by a reasonably impartial person or persons.