

An Effective, Integrated Complaint Resolution System

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Probably everyone who is concerned with harassment complaints begins by looking for an "ideal" way to deal with harassment and discrimination. I believe, however, that there is no one best way. Each possible procedure for dealing with harassment has important disadvantages as well as important advantages. I believe this fact requires an institution to take a systems approach, one which looks at the organization as a whole, taking into consideration the interrelationships among its parts, rather than relying on just a single way to deal with harassment.

There are a number of reasons why there is no one perfect procedure. Different institutions have different missions. They exist within different and constantly changing legal systems, cultures, histories, and value systems. Different people have widely different views on what is moral and effective, especially with respect to the extent to which complainants should be allowed options for dealing with an offense. In a conservative, relatively homogenous school, senior administrators may believe, as a matter of principle, that all sexualized conduct must be reported. They may require mandatory reporting from every supervisor, and formal investigation of all rumors, concerns, and complaints. Some administrators believe all sexualized behavior should be outlawed — if necessary by expulsion of those involved in any kind of sexualized conduct. In a large, diverse university, administrators may believe in an educational approach, rather than punishment, at least for noncriminal offenses. They may encourage people who are offended—and bystanders—to consider speaking up in a civil and effective fashion, to deal directly with offensive behavior on the spot, at least for noncriminal offenses.

Probably the most important reason why there can be no one perfect procedure is that people who feel harassed are very different one from another. In particular, people who have been harassed typically have strong feelings about what they think should happen as a result of offensive behavior—and these strong feelings vary from person to person. For example, there is a small but significant minority of offended people who will only be satisfied with formal processes oriented toward punishing offenders. This group of people may not understand or want, and will usually distrust any attempt at reconciliation or "alternative" dispute resolution. They may ask for "one simple, clear process with clear, mandatory sanctions." On the other hand, a large majority of offended people will not choose and cannot be persuaded to try formal grievance procedures, and they will not enter into a process they think will disrupt their relationships at work or in school. In particular, they may refuse to use a process where they think "someone might get into trouble," and may quit or suffer in silence rather than use a process oriented toward sanctions.

In addition, because harassment, discrimination, and workplace mistreatment are so disruptive and damaging, it may be difficult to find positive solutions once harassment has occurred. Finally, because the evidence of offense is often minimal, it may be difficult to prove an offense occurred. Thus, many complainants find harassment procedures—perhaps especially

formal procedures—unsatisfactory. The alleged harassers also typically feel great dismay. Bystanders often do not know all or even most of the facts about an alleged act of harassment and its after-math; they also have strong but varied feelings about what is or is not a desirable complaint procedure, and they may be unhappy with whatever procedures they encounter.

In short, where there is only one procedure, even it is followed in a completely faithful and competent fashion, many people touched by harassment may emerge dismayed. On the other hand, sometimes good or very good resolutions can be found. I believe a systems approach is most likely to permit and foster good solutions. This chapter presents some ideas about an effective, integrated systems approach.

The Process of Design or Review of Harassment Policy and Procedures

All effective designs begin with the needs and interests of those who will use a given procedure or policy, a point constantly emphasized by quality management experts. In the case of a complaint system, design must begin with the first group whose interests are at stake—the complainants. Other groups also matter and must be considered, especially respondents, bystanders, and supervisors. But the first group of "customers" are those who feel offended. What do we know to be the interests of complainants? Common concerns and characteristics of complainants have been widely studied and are relatively well known. People who feel harassed and mistreated typically fear loss of privacy and dignity in the eyes of family, relatives, coworkers, or fellow students. They fear reprisal or other bad consequences for bringing a complaint. They hate the idea of risking their reputations at school and at work for the sake of a "single issue." For these reasons they may hate the idea of doing anything that will lead to an institutional record with their name in it.

Many are afraid they have insufficient evidence to be believed and that formal complaints will therefore be indeterminate and pointless. Many people who feel harassed say they "just wish to have the harassment stop, they do not want to rock the boat." Many say they fear they will be thought disloyal to the work unit or living group—that they will be found lacking in humor or be considered a poor sport. A number of people who feel harassed by words or expressions are very sensitive to the concepts of free speech and academic freedom and, therefore, do not wish to bring a complaint—or believe there is nothing they can do—where the offense is "only" a matter of expression.

Many people dislike going to a third party and many have strong feelings about which people they are or are not willing to trust with a concern or grievance. For example, they may be willing to talk about the problem only with a person of a particular race, ethnic group, gender, or background. They may feel better if they can be accompanied, for example, by a peer, although some will not want anyone to know they have had a problem. They often fear they lack the skills to deal with an offensive situation effectively, and many feel they are "losing concentration and are afraid their work is deteriorating." Perhaps most important of all, many people who feel harassed see their situation to be complicated, and, in particular, they may have a concern for maintaining a good relationship with the harasser, and with other colleagues, which they think will be damaged if there is an investigation.

There also are complainants with less common characteristics. Some of these speak about total distrust of the employer, the line of supervision, and staff offices. Some completely reject the notion of due process for the alleged offender and some just want revenge. Some appear to enjoy the dispute, or say they hate the dispute, but resist ever letting it go. Some are unwilling to take any action but believe the employer should "just handle the whole thing." Some feel so strongly about having an adversarial option that they ask for a formal advocate even for informal "problem, resolution."

Overall, I estimate that 75 to 95 percent of all men and women in a given institution or workplace will not willingly choose, or even cooperate with, a formal polarized grievance process when they feel harassed. These proportions vary greatly for reasons of cultural values, the context of an offense, the type of complaint, and so on. They simply do not see such procedures to be in their overall interest, even if they feel quite dismayed or angry about the harassment. On the other hand, probably 5 to 25 percent of men and women will ultimately only be satisfied by having a win-lose option oriented toward their rights—toward investigation and justice.

In short, offended people differ greatly from each other; however, many people who feel harassed share two characteristics—they fear loss of control over what will happen and most people strongly desire a choice of options. It is for these and the other reasons cited before that I suggest consideration of an integrated, systems approach in order to provide alternatives for dealing with harassment. In the following sections, I discuss providing options (and in most cases a choice of options), the review process itself, the coverage of an effective system, some characteristics of a fair process, and issues of accountability and support.

Provide Options and Choices

Although institutional systems will differ, an integrated dispute-resolution system might reasonably include five major sets of dispute resolution options, as well as other characteristics described in the sections on coverage of an effective system and on accountability and support. I present here a simplified version of a system that might well be presented somewhat differently in different organizations. Providing options for complainants can encourage effective, direct, personal action when appropriate, both to stop harassment and to prevent reprisal. Providing options will also provide alternatives that do not infringe on free speech; which may provide a greater possibility of protecting the privacy and other rights of complainants and respondents; which may foster personal responsibility on the part of supervisors, complainants, respondents and bystanders; and which help to emphasize education and prevention. Each of the following options is actually a set of possible actions, which might differ from place to place, or be configured in various ways. Each set of options has advantages and also disadvantages (see Chapters 8, 9, and 11).

The Direct Approach

In this informal choice, person-to-person negotiations are permitted and encouraged on a purely voluntary basis for most offenses that are not too serious in nature. This option can only work well where mandatory reporting and investigation of all rumors, concerns, and complaints is not required. The direct approach may be from complainant to respondent or from bystander

to respondent, in person, or by letter, alone or with a colleague. The direct approach is only appropriate where the complainant or bystander prefers this option.

This option is especially appropriate for issues of offensive speech and expression. Using the direct approach is not an infringement on free speech because an offended person has the same right to protest that the original offender had to speak in the first place. The direct approach usually keeps more control in the hands of the offended person, usually provides more privacy, and often helps affirm the offended person's sense of efficacy. This option does not result in punishment, but rather responds directly to the commonly expressed wish that "all I want is for the harassment to stop." The direct approach will not result in an institutional record being made, which will seem like a disadvantage to those in the community who want the institution to keep a record of every act of harassment. On the other hand, the lack of recordkeeping will seem like an advantage to those complainants who do not wish the institution to have a record with their name.

The direct approach is an option that requires no investigation or evidence beyond the complainant's own word, because the disputing parties already know "what happened" —there is therefore no problem of needing further evidence. This fact may be especially important if the complainant believes it would not be possible to discover evidence other than his or her own word and is therefore worried about letting any third party know of the offense, lest they fail to believe the story. Moreover, a direct approach on paper may actually help to provide extra evidence if needed. If the offended person writes a note or letter and keeps a copy, the copy of the note or letter delivered to the offending person may later be used as evidence if the harassment does not stop. This possibility may also help where there is a real or perceived power imbalance, because the offended person will be in a stronger position after writing a letter—both in having more evidence and in having proof that he or she found the described behavior unwelcome. For a discussion on how a letter may be used to stop harassment see Chapter 3.

Informal Third-Party Resolution

In this choice there is informal intervention or shuttle diplomacy by a third party who could be a supervisor, dean, bystander, ombudsperson, or other appropriate person. This option can only work well where mandatory reporting and an investigation of all rumors, concerns, and complaints is not required. However, the institution should make clear to the whole community that what happens after the use of this option may depend on the complainant's choice of who handles the complaint.

If the complainant asks a supervisor or another staff person to intervene informally, supervisors and most staff people must retain the ultimate right to decide in appropriate cases that there will be a formal investigation even if the complainant does not wish it. Cases of this sort might include allegations regarding known repeat offenses, egregious offenses, and concerns about reprisal. As the following further notes, I also believe the institution should provide a few people—religious counselors, ombudspersons, counseling deans, and health care practitioners—who are not required to act without permission, unless a life is at stake or there is a specific professional requirement to do so. This is because a great many people will not seek any third-party help at all unless they can be assured of privacy under all conditions except those of imminent serious harm. Informal resolution and shuttle diplomacy could include action

by a supervisor, which falls within the ordinary scope of management responsibilities, such as reassignment of the duties of the offender, or counseling an offender, but does not include formal disciplinary action. Informal resolution also could include reassignment of the complainant, if the complainant requests such action.

For reasons of fairness, informal resolution should not result in formal disciplinary action against an offender. At many institutions, this also means that informal resolution will not result in an institutional record, which may be considered an advantage or disadvantage by the complainant, and is a factor that the complainant should think about in choosing an option. Informal resolution may, however, be appropriate when the complainant "only wants the harassment to stop." When the third party is an agent of the institution (e.g., not a bystander), he or she may be required or encouraged to write what happened for a confidential file; the name of the complainant would be omitted.

Many complainants prefer the informal third-party approach to either a direct approach, or a formal grievance procedure, both of which may be seen by them as too confrontational. If a supervisor is involved, this option permits the institution to take responsibility for getting the harassment to stop, for the institution to help prevent reprisal, and for the institution to help rearrange work responsibilities or other duties in such a way as to help the complainant get back to normal. It may be a good option when the offended person does not feel able to take action on his or her own. If a supervisor or other staff person intervenes informally to settle a concern about harassment, that person should also follow-up to see if the harassment has stopped or if another option will also be needed.

Classic Formal Mediation

This option is provided by a trained, neutral person who helps the parties in a relatively formal process—off the record—to come to their own settlement. This option too can only work well where mandatory reporting and investigation of all rumors, concerns, and complaints is not required. Classic mediation is only appropriate where both the complainant and respondent prefer this option—it should be purely voluntary for all parties who may opt out of the process at any point. Settlements, if any, may be on or off the record at the choice of the parties, but they usually are off the record. Settlements typically are not kept or monitored by the institution.

Classic mediation does not result in formal punishment of the offender. It does, however, provide a chance for the complainant to express his or her feelings and to ask for specific, custom-designed remedies. It gives the offended person a chance to try to explain the nature of the offense and its effects. Mediation is an option that will work even with "he said/she said" evidence because the disputing parties already know "what happened" and there is therefore no problem of needing further evidence. It provides an advantage for the complainant who wants to maintain control over a complaint, as well as maintain privacy. It may be a good option for complainants who think the offender needs a chance to take responsibility for changing his or her behavior. Mediation usually will not provide a chance for the institution to help unless the offender is a supervisor who is in a position to change work conditions as a condition of the settlement, and it will not result in an institutional record unless it is put on the record as a condition of settlement (see Chapter 11).

Generic Approaches and Systems Interventions

This informal choice provides generic responses for individual complaints. Again, this option can only work well where mandatory reporting and investigation of all rumors, concerns, and complaints is not required. In a generic approach, a quietly alerted department head might: introduce a video training program, disseminate striking harassment posters to local bulletin boards, conduct a "routine" departmental staff discussion about harassment, and/ or send a policy letter to each member of a department without mentioning or addressing any individual but including common examples of behavior that is unacceptable. Generic approaches are usually appropriate if the complainant prefers this option or when a supervisor hears fragments of rumor and wishes to take action without investigating individual behavior.

In addition to providing the chance for generic approaches, an institution can pursue wider systems change to prevent harassment problems. For example, many institutions are now training all supervisors about how to deal with harassment they may observe and how to deal with complaints. Such training should require that all supervisors who observe or hear of harassment are responsible to see that some appropriate person—the complainant or supervisor or other person—stops the harassment, takes reasonable steps to prevent reprisal for complaints raised in good faith, and helps the offended person get back to normal.

Stopping harassment by means of a generic approach does not result in formal punishment of the offender. Generic approaches, however, can be used in a fashion that will protect the privacy of the complainant (and the respondent); for example, if the complainant alerts an ombudsperson who alerts the department head without using names. This approach is also appropriate if the complainant is especially concerned about having insufficient evidence of the offense or if the complainant is especially concerned about reprisal. In my experience, generic approaches work well to stop an (alleged) individual offense more than half the time at very little cost to anyone; and this option rarely results in reports of reprisal. However, anyone who knows of the original complaint should follow-up to see if the alleged harassment has, in fact, stopped and to see if other options are appropriate. Although records may be kept, a generic approach will not result in an institutional record of a specific alleged offender, and usually it does not provide a chance for an institution to help the specific complainant unless she or he was the one who raised the issue.

Formal Grievance Channels

This option includes formal investigation, adjudication, and appeal mechanisms, which should be provided by reasonably impartial persons within specified time frames and with appropriate opportunities for each side to be heard and to respond to the other side. This kind of formal process may be offered by disciplinary committees and hearing officers and also by campus police. Formal disciplinary action should require fair, prompt, and thorough investigation; impartial adjudication; and an opportunity for appeal. Formal grievance procedures are appropriate for situations where a supervisor knows of previous complaints against the same person, especially if the alleged offender has been previously warned, where the alleged offense is especially serious, where there is evidence or serious concern about reprisal, and in all appropriate cases where the complainant or respondent chooses this option.

The formal grievance process has these disadvantages: the institution cannot completely protect the privacy of all concerned, the complainant must give up control over how

the complaint will be handled, and it may be difficult for the institution to find enough evidence to take the action it would like to take. In addition, many people think that formal disciplinary procedures are not appropriate with respect to matters of free speech and academic freedom. Finally, many people simply dislike all formal disciplinary procedures on principle, or for reasons of ethnic custom, and will try very hard not to use them.

There are, however, important advantages. Many people will trust a complaint system more if there is known to be a fair formal process as the "skeleton" holding up the system. This is especially true for the small but significant proportion of the population who believe formal grievance processes are the only appropriate way to deal with harassment, and for the small group of complainants who want revenge, but it is also true for many people who would never use a formal process themselves. Most people believe that formal disciplinary processes for serious offenses should exist. Formal procedures may be the only way to protect people who are unfairly accused, and the only way to end a complaint where the complainant finds it impossible to "let go." A formal disciplinary process may be the only way to provide an option for people who have been harassed and are unable or unwilling to act. A disciplinary process provides an option for an institution to track repeat offenders—a consideration that should be taken seriously by any complainant who is choosing an option and believes the offender may have offended others before.

An effective system provides for the possibility in suitable cases for "loops forward or loops back" —that is, from less formal to more formal options, or from more formal to less formal options. For example, a person, who has tried to deal directly with an offense in person or in mediation, might decide that a formal grievance would make better sense if earlier attempts at resolution were not satisfactory. Conversely, a person who brought a formal complaint through a grievance procedure might learn of other facts in the case and prefer thereafter to settle—in person, with the help of an informal third party, or in classic mediation—in cases where the institution finds this option appropriate. In some situations, the loops-forward or loops-back approach requires the approval of the institution or of all parties.

The Design and Review Process

The systems I have observed that appear to work most effectively are explicitly grounded in the core values of the institution. They typically were developed with widespread input from the relevant community, and they are periodically reviewed with input from the community. It may be, in fact, that processes of wide-spread discussion and review are the most effective harassment prevention mechanisms. Effective systems are designed and reviewed with an orientation toward prevention of unprofessional interpersonal behavior—ideally, with as much emphasis and resource allocation on prevention as on dealing with complaints. Given the apparently high correlation of alcohol abuse with harassment and other unacceptable behavior, it is not surprising that several effective complaint systems explicitly coordinate with programs on preventing abuse of alcohol. In addition, many effective systems are positively oriented toward building a climate of respect, as well as "negatively" oriented against harassment and discrimination.

Coverage of an Effective System

The United States—and all nations—are experiencing increasing diversity of values and opinions in the workforce and in academe. All groups, including white males, are seeking support in dealing with unacceptable unprofessional behavior. Looking forward to the twenty-first century, I believe that the most effective and efficient systems will be those that deal with a wide spectrum of concerns—from inquiry through serious offenses—and with all forms of unacceptable interpersonal behavior, including harassment on the basis of race, gender, religion, nationality, color, sexual orientation, disability, and age; and harassment that is simply plain human meanness and workplace or interpersonal mistreatment. Treating all forms of harassment as unacceptable may help reduce backlash from one group or another and may help an institution build a climate of respect. It may also permit complainants to define their concerns in a variety of reasonable ways. For example, a woman of color, complaining of sexual insult, might reasonably complain based on a matter of race, of gender or of "unacceptable unprofessional behavior."

An effective system should deal with all categories of personnel, including managers, as complainants and respondents, and that it must be able to handle groups as complainants or respondents. In addition, because many complaints about harassment are linked to other kinds of concerns and grievances, such as defamation, conflict of interest, nepotism, favoritism, incompetent supervision, academic dishonesty, and misconduct, and so on, an effective system must be integrated appropriately with all other dispute-resolution procedures at the given institution. I believe that many institutions will move toward adopting single integrated systems that can and will deal with any kind of dispute or complaint, while continuing to explicitly define certain forms of proscribed behavior like harassment.

Elements of Fair Process

There is much discussion among those who design internal complaint systems about the necessary elements of fair process. I believe that a fair process provides reasonable notice to all relevant persons of the kinds of concerns which will be handled, and how they are defined. There must be a clear policy about what is harassment and what is not. Policy should include many examples of unacceptable behavior. There should also be clear specification of management responsibilities such as work assignment or negative performance evaluation, which in and of themselves are not harassment. Malicious claims of harassment should be specified as serious offenses.

A fair system should treat reprisal for raising a concern in good faith at least as seriously as harassment. Policy should proscribe reprisal against any disputant and against witnesses for either side. Supervisors and specialized staff who handle formal complaints should be required to plan and take reasonable action to prevent reprisal and then follow-up with the complainant after the complaint is apparently settled to see if all is reasonably in order and that there is no known reprisal. The basic tasks for these complaint handlers should be seen to have several parts—to stop harassment, to prevent reprisal for complaints that are raised in good faith, and to put things back to normal for the complainant as well as is reasonably possible.

A fair system should provide for reasonable protection of the rights of both sides in formal grievance procedures. It should, where possible, include appropriate protection for privacy of complainants, respondents, and witnesses. It should encourage prompt complaints and prompt and thorough complaint handling. There should be an expectation that a respondent will have a chance to know the major elements of the charges against him or her, be given a fair chance to respond to the evidence and witnesses presented by others, and to present his or her own evidence and witnesses. The standard of proof and an expectation of thoroughness should be explicit for formal investigations. There should be no formal disciplinary action taken against a respondent without a fair and thorough investigation. If a fair investigation shows that harassment caused damage, the institution should take reasonable steps to put things back to normal for the complainant.

Accountability and Support

An effective system should be designed and oriented toward at least four separate roles: the complainant, the respondent, the bystander, the supervisor. The complaint system and the topics that will be covered by the system should be presented in common terms to each member of the relevant community or workforce so that each party—the complainant, the respondent, the bystander, the supervisor—knows his or her options and responsibilities and those of others, and that they have access to the same information about the system that is being given to other parties. An effective system has explicit special expectations about leadership in harassment prevention by senior administrators. In addition, having said that all four roles should be addressed, I believe the responsibilities of senior administrators and supervisors are, in many ways, the most important. With respect to harassment and illegal discrimination, everyone in the line of supervision should be held individually accountable to take reasonable action to prevent such behavior; to see that any such behavior that is observed or reported is brought to a stop by an appropriate person, including possibly the complainant or the supervisor; and to plan and take reasonable steps to prevent reprisal and bring things back to normal.

Because of the strong feelings of the majority of complainants that they wish to have options about how harassment is handled, because most offended people will not come forward in a system with mandatory investigation, and because mandatory investigations may unfairly damage some complainants and some respondents, I do not believe in mandatory reporting and investigation of all harassment complaints. To some extent, I differentiate this idea from the important responsibility of supervisors to see that harassment stops and to take reasonable steps to prevent reprisal. As said before, supervisory responsibility may, in fact, require thorough investigation if the alleged behavior is quite serious—for example, if the supervisor knows there have been other complaints of the same kind against the same person, especially if there has been a warning; if the complaint is about serious criminal behavior; or if the complainant alleges reprisal. But, in appropriate cases, a supervisor or staff manager should be permitted to support a complainant who chooses to deal with the matter directly. A supervisor should also be able, if asked, to deal with a matter informally as a third party, to recommend the option of classic mediation, or to take a generic approach when appropriate.

In actual fact, options of this sort usually do stop harassment—at lower cost to the complainant and respondent.

The system should provide a variety of helping resources to each of the four parties or roles. Some resource persons should be available for support off the record. In my opinion, off-the-record resources should be expected not to act without permission unless there appears to be imminent risk of serious harm and no other option appears appropriate. These resources might include hot lines for people who wish to call anonymously, religious counselors, counseling deans, employee assistance, other health care practitioners, and internal ombudsmen. Calling such an office off the record should be announced in public brochures and statements as an action that does not "put an employer on notice." The system should also specify the resources-supervisors and appropriate staff offices—who will act if notified so that a problem will not fall in a crack once it has been reported. The system should clearly specify those who may be contacted off the record and those, by contrast, who are permitted and required to take action to see that harassment is stopped and that there is no reprisal. Differentiating roles in this way may permit offended people to make an informed choice about how and whether they may keep control over their concerns.

A system should provide a choice of complaint handlers (e.g., people of color, whites, both men and women) and a choice of people who especially understand issues of race and culture, gender, sexual orientation, disability, age, and religion, as sources of information and support. This is so a person seeking help may, if desired, find someone similar to himself or herself, and reasonably knowledgeable, as a helping resource. The system should also allow for information and support to a complainant or respondent in preparing or responding to a formal complaint, and accompaniment while making or responding to a formal complaint.

One of the most difficult questions in complaint system design concerns the amount of information that a complainant will be given after the institution looks into a complaint. The question is a difficult one because most institutions do not give out information about what happens in personnel actions or in dealing with complaints against students. An argument can be made that offended people are more likely to come forward if they know that prompt and fair action is taken against offenders. An opposite argument also is made that giving out information violates fair concepts of privacy, may violate certain laws, and also will discourage offended people from coming forward because other people may come to know of their complaint. In my experience both arguments are correct, albeit for different people.

On balance I usually suggest errors of omission—saying less rather than more. In general, complainants should be told the findings in the case and whether disciplinary action was taken. It is also helpful for institutions to present overall (identity-free) statistics that will help a community understand that the system is accountable. The system, thus, should provide for data collection and evaluation of the system, with summary information published in a manner that appropriately protects the privacy of individuals.

I also believe that a complaint system should be overseen by a specialized group—including, for example, appropriate persons from senior line management, personnel, security, student affairs, the medical department, employee assistance, equal opportunity officer, religious counselors, ombudspersons, legal counselors, and those responsible for housing—that meets regularly. This group should be available to talk about difficult and dangerous cases (e.g., people who stalk, who "won't let go," or who want revenge in an unreasonable way). As

appropriate, this group can link the harassment complaint system to other systems inside and outside the institution and oversee, report on, and work to improve the system on a continuous basis.

Conclusion

In conclusion, I believe in an integrated systems approach for dealing with harassment within institutions. My reasons are both philosophical and pragmatic. On the philosophic side, it is ethically important to give most complainants at least some options and some choices about those with whom they will talk—and what will happen—if they feel harassed. As a matter of pragmatism, an institution must provide option, and in most cases a choice of options, if the system is to work. In my experience, because the majority of the population will reject any one single option that can be provided, and institution must provide more than one option if the majority of those harassed are to be able to take or seek effective action.