

Non-official translation in English; the Regulations in Dutch are official and decisive.

TU Delft Regulation on Complaints about Undesirable Behaviour

The Executive Board of Delft University of Technology

Considering it desirable that rules be established for combating undesirable behaviour and for dealing with complaints about undesirable behaviour within Delft University of Technology, and thus wishes to replace the existing Regulation on complaints about undesirable behaviour with a new regulation;

and

Having regard to Article 1.12 of the Collective Labour Agreement for Dutch Universities (CAO NU) (1 September 2007 to 1 March 2010);

In view of the recommendations on the code of conduct regarding intimidation, sexual harassment, aggression, violence and discrimination made by the parties to the CAO NU from 2 February 2000 (VSNU/WG/00.0165U);

In view of Section 7.57h of the Higher Education and Research Act;

Following consultation with the employee organisations in the Local Consultation Body (letter to the Works Council of 8 April 2009);

As well as the Central Student Council (letter to the Executive Board of 27 May 2009, consultation meeting of 4 June 2009);

With the consent of the Works Council (97th consultation meeting of 9 April 2009 and letter to the Executive Board of 28 May 2009);

adopts the following regulation:

I. GENERAL

Article 1. (definition of terms)

1. The following definitions apply in this Regulation:
 - a. *complainant*: the person referred to in Article 3, who turns to the confidential advisor or the complaints committee with a complaint about undesirable behaviour;
 - b. *accused*: the person referred to in Article 3, who is accused of undesirable behaviour;
 - c. *confidential advisor*: the person referred to in Article 4;
 - d. *committee*: the complaints committee as referred to in Article 11;
 - e. *employee*: person who is employed by TU Delft or who otherwise performs academic work on behalf of the university;
 - f. *student*: person who is registered as such at TU Delft;

- g. *code of conduct*: the code of conduct regarding intimidation, sexual harassment, aggression, violence and discrimination, as recommended by the parties to the CAO NU, of 2 February 2000 (VSNU/WG/00.0165U).
- 2. Undesirable behaviour is defined thus in the scope of this regulation: behaviour exhibited by an employee or student that is related to work or study at Delft University of technology and that causes psychological or physical harm to another employee or student and that can be regarded in a societal and objective sense as inappropriate, annoying, harassing, threatening or unacceptable, including and as specified in the code of conduct:
 - intimidation or sexual harassment
 - discrimination
 - aggression and violence
 - threats
 - bullying
 - gossip

Article 2. (code of conduct)

1. The code of conduct, taken together with this regulation, is the code of conduct for TU Delft in accordance with Article 1.12, paragraph 3 of the CAO NU.
2. Employees or students shall refrain from engaging in undesirable behaviour and shall adhere to the code of conduct.

Article 3. (general)

Anyone who experiences undesirable behaviour from an employee or student in a work or study situation at the university may turn to a confidential advisor or the complaints committee.

II. THE CONFIDENTIAL ADVISOR FOR UNDESIRABLE BEHAVIOUR

Article 4. (appointment)

The Executive Board shall appoint one or more confidential advisors for undesirable behaviour from among the staff of the university. Complainants may turn to these individuals. Appointments are for three years with the possibility of renewal.

Article 5. (tasks)

The confidential advisor's tasks include:

- a. counselling and advising a complainant who turns to him/her;
- b. attempting to resolve the complaint through intervention, if necessary by appointing a mediator;
- c. assisting a complainant in submitting a complaint to the complaints committee, if requested to do so.

Article 6. (accountability)

The confidential advisor is accountable to the Executive Board for the execution of his/her duties.

Article 7. (confidential file)

The confidential advisor shall keep a file on each complaint for their own use and for reporting purposes as referred to in Article 8. The confidential advisor shall divulge no information from the file other than with the express consent of the complainant. The file shall be destroyed two years after conclusion of the complaints procedure.

Article 8. (report)

The confidential advisor shall report annually to the Executive Board on the number and nature of the reported complaints, and how they have been dealt with.

Article 9. (facilities)

1. Confidential advisors perform their duties in addition to their regular work. Confidential advisors shall confer with their supervisors on the coordination of their tasks. The Executive Board shall ensure a reasonable balance between regular duties and the tasks required of the confidential advisor.
2. The Executive Board shall ensure that confidential advisors have sufficient means to do their duties properly, including fulfilling the requirements of confidentiality.

3. The Executive Board shall ensure that students and employees are aware of the purpose of the confidential advisors and how to reach them.

Article 10. (dismissal from office)

1. The confidential advisor may be dismissed from office if, after a formal hearing, he or she is shown to be obviously inadequate for the task, if he or she abuses the powers of the office of confidential advisor or if the Executive Board has other compelling reasons for removing him/her from office.
2. The confidential advisor may be relieved of his/her duties at any time at his/her own request.

III. COMPLAINTS COMMITTEE

Article 11. (appointment)

1. The Executive Board appoints a committee which advises and rules on complaints about undesirable behaviour as referred to in this regulation.
2. The committee is composed of a chair and a deputy chair, both also members of the committee, two staff members and two students. At least one of the members and at least one of the student members shall be a woman. At least one member shall have a law degree.
3. A complaint shall be advised on by three members of the committee, one of which shall be the chair or deputy chair, and in any case one woman. If the complaint involves a student, then a student member will also sit on the complaints committee for the case in question.
4. The hearing may be conducted by the chair or deputy chair or a member who is not a member of the Executive Board nor who works under the auspices of the Executive Board, if the chair, deputy chair or one or more members is at the last minute unable to be present on the date of the hearing.
5. The chair, deputy chair and the members are appointed by the Executive Board for a period of no more than three years after which time they may be reappointed.
6. Members of the Executive Board, the Supervisory Board, the faculty deans, the departmental directors, education and research institute directors, service department directors, and confidential advisors may not be appointed.

Article 12. (appointment requirements)

The chair and deputy chair may not be employed by or study at TU Delft.

Article 13. (dismissal)

1. The chair, deputy chair and members may be dismissed from the committee by the Executive Board after the hearing if shown to be obviously inadequate for the task, or if the Executive Board has other compelling reasons for removing them from office.
2. The chair, deputy chair and members may be dismissed from the committee at any time at their own request.

Article 14. (secretary)

1. The Executive Board shall appoint a secretary and one or more replacement secretaries to assist the committee.
2. The secretary and replacement secretary shall not be members of the committee.

Article 15. (remuneration)

The chair, deputy chair and members, insofar as they are not employed by TU Delft, have the right to appropriate remuneration, to be established by the Executive Board.

Article 16. (duties of the committee)

1. The committee inspects complaints as referred to under Article 3.
2. The committee advises the Executive Board on the admissibility of complaints.
3. The committee advises the Executive Board on the merits of complaints it has dealt with and any (disciplinary) actions taken pursuant to the complaints.
4. The committee is an independent body.
5. The committee submits an annual report on its activities to the Executive Board.
6. The members and deputy members of the committee shall maintain confidentiality in all matters related to the complaints procedure.

Article 17. (powers of the committee)

1. The committee is authorised to gather information from all university agencies and employees. The committee may inspect all documentation and correspondence it deems necessary for assessing the complaint.
2. The committee may consult independent or university-affiliated experts. Reports shall be written on these consultations.
3. The committee shall keep a file on all complaints it addresses. All information in the file shall be kept in the strictest confidence and will only be disclosed with the express consent of the parties concerned.

Article 18. (employee cooperation and confidentiality)

1. All individuals are required to cooperate with the committee within a reasonable period set by the committee to a degree that can reasonably be expected for the committee to properly exercise its powers.
2. All individuals who are involved in a complaints procedure shall maintain strict confidentiality concerning all aspects of the complaints procedure.

IV. COMPLAINTS PROCEDURE**Article 19. (admissibility requirements)**

1. The committee shall address complaints that meet the following requirements:
 - a. the complaint must be submitted in writing;
 - b. the written complaint must be signed and include at least:
 - the name and address of the person submitting the complaint;
 - the date;
 - a clear description of the undesirable behaviour.
2. If the complaint is submitted in a foreign language and the committee requires a translation to properly address the complaint, the complainant is responsible to provide a translation.

Article 20. (processing the complaint)

1. The Committee shall acknowledge receipt of the written complaint, indicating that the committee will advise the Executive Board. The committee shall advise the Executive Board, the accused and the Dean of the faculty or director where the accused is employed or studies of the complaint.
2. If any of the requirements in Article 19 are not met, the Executive Board will not be able to address the complaint upon the advice of the committee, as long as the complainant has been given the opportunity to correct the omission within a pre-determined time.
3. After being advised by the committee, the Executive Board may rule that the complaint cannot be addressed if:
 - a. the complaint relates to behaviour that has already been the subject of a complaint that has been addressed by the Executive Board;
 - b. the complaint relates to behaviour that took place more than five years before the complaint was filed;
 - c. if the alleged undesirable behaviour is clearly benign.
4. The committee (or the Executive Board in the case of rulings in accordance with the second and third paragraph) shall inform the complainant whether the complaint will be addressed as soon as possible but no later than four weeks after receipt of the complaint, or after the omission has been corrected or at the conclusion of the period referred to in the second paragraph. The accused and the Dean of the faculty or director where the accused is employed or studies shall also be notified.
5. If the complaint concerns a member of the Executive Board, the Supervisory Board will take the place of the Executive Board with regard to the rulings as referred to in the second and third paragraphs.
6. If the complaint is admitted by the committee, then a copy of the written complaint and the related documents will be sent to the accused.
7. The complaint shall be handled only by committee members who are in no way involved in any aspect of the factual circumstances of the complaint.

Article 21. (amicable settlement)

1. The committee, after consultation with the parties involved, may attempt to ascertain whether an amicable settlement is possible.
2. If an amicable settlement is reached, then the committee shall immediately terminate the complaints procedure. The complainant, the accused, the Executive Board and the Dean of the faculty or director where the accused is employed or studies shall also be notified by the committee.

Article 22. (withdrawal)

1. The complaint may be withdrawn at any time.
2. If the complaint is withdrawn, the committee shall immediately terminate the complaints procedure. The accused, the Executive Board and the Dean of the faculty or director where the accused is employed or studies shall also be notified by the committee.

Article 23. (concession) As soon as the accused has responded to the complaint to the complainant's satisfaction, the committee shall immediately terminate the complaints procedure. The complainant, the accused, the Executive Board and the Dean of the faculty or director where the accused is employed or studies shall also be notified by the committee.

Article 24. (hearings)

1. The committee shall give the parties involved a hearing. In any event, the committee provides both complainant and the accused with the opportunity of a hearing.
2. The hearing may be waived if the complaint is manifestly unfounded or if the complainant or the accused have stated their wish not to exercise the right to a hearing.
3. Hearings shall be held individually and in person. In certain special circumstances the committee may decide that the complainant and the accused will be heard in each other's presence.
4. Hearings shall not be held in public.
5. A report of the hearing shall be made.
6. Each party has the right to be apprised of any proceedings outside their presence.

Article 25. (reporting to the Executive Board)

1. The committee shall, within ten weeks of receiving the written complaint, send a report to the Executive Board detailing its findings in respect to the complaint. The report will be accompanied by advice and any potential recommendations, along with a report of the hearing.
2. The period shall be suspended as of the date on which the complainant is requested to correct an omission as referred to in Article 20, second paragraph, until the day on which the omission is corrected or the specified period has elapsed.
3. The committee shall report on the merits of the complaint and offer advice on any (disciplinary) action to be taken.

Article 26. (ruling of the Executive Board)

1. Within four weeks of receiving the committee's report, the Executive Board shall rule on the complaint and any (disciplinary) measures to be taken. The Executive Board shall inform the complainant, the accused, the committee and the Dean of the faculty or the director where the accused is employed or studies of the ruling in writing. A copy of the committee's report shall be included.
2. If the ruling of the Executive Board differs from the advice of the committee, then the ruling will contain an explanation for this.
3. If the complaint concerns a member of the Executive Board, then the Supervisory Board shall take the place of the Executive Board with regard to the ruling as referred to in the first paragraph.

V. FINAL PROVISIONS**Article 27. (legal protection)**

A complainant or a confidential advisor who is involved in a complaints procedure as referred to in this regulation shall not be impaired in his/her position at the university as a result of his/her involvement with a complaint, insofar as he/she has acted in good faith.

Article 28. (revocation)

The TU Delft Complaints Regulation on undesirable behaviour (Klachtenregeling Ongewenst Gedrag TU Delft) is revoked.

Article 29. (entry into force)

This Regulation enters into force with effect from the first day following the date on which it is signed by the President of the Executive Board.

Article 30. (short title)

This Regulation shall be referred to as the TU Delft Regulation on Complaints Concerning Undesirable Behaviour.

This Regulation will be available for inspection at the HR departments of the administrative units and the student administration for two months from the date it enters into force. This Regulation shall be published on the TU Delft website.

Notification of this Regulation, its publication on the website, and the fact that it can be viewed as described above will be given in Delta, TU Delft's weekly news journal.

Adopted at the Executive Board meeting of 23 June 2009.

D.J. van den Berg
President

EXPLANATORY NOTES

General

Background

The TU Delft Regulation on complaints about undesirable behaviour came into force on 1 September 2001. A TU Delft Confidential Advisors' Protocol has been added to the regulation. The value of the regulation has been established time and again: many employees and students have turned to the confidential advisors, making them an invaluable part of the TU Delft community. Complaints have been sporadically filed and processed in recent years. The Executive Board fully agrees with the need for, and objectives of a regulation on undesirable behaviour (as expressed in the Collective labour agreement for Dutch universities), but acknowledges that the current regulation needs to be updated.

Collective Labour Agreement and Working Conditions Act

Article 1.12 of the Collective Labour Agreement for Dutch Universities of 1 September 2007 to 1 March 2010 (CAO NU) expresses the objective of eliminating undesirable behaviour. Undesirable behaviour is taken to include: intimidation or sexual harassment, aggression, violence and discrimination. To meet this objective, employers are obliged to appoint a confidential advisor as the first line of defence in the case of undesirable behaviour. Furthermore, the employer must establish a code of conduct to combat undesirable behaviour, as recommended by all the parties to the CAO NU. This recommendation is from 2000, and has been designated as the applicable code of conduct for TU Delft by the Executive Board (see Article 2).

In a 2007 amendment to the Working Conditions Act, Article 3, para. 2, employers are required to implement policies aimed at preventing or limiting the psychosocial burden on employees, including exposure to undesirable behaviour that may cause stress. Article 1.12 of the CAO NU and the TU Delft Regulation on Complaints Concerning Undesirable Behaviour may be seen as an acknowledgement of Article 3, para. 2 of the Act. Neither the Act nor the CAO NU require the establishment of a complaints procedure, but it can be regarded, in addition to the establishment of a code of conduct and the appointment of a confidential advisor, as one of the measures that an employer can take to combat undesirable behaviour.

Both the old and the new regulations apply to students – not only because the Act has a broader scope than just employees, but also because the Executive Board is committed to combating undesirable behaviour among staff and students alike.

Comparison of the old and new regulations

The old Regulation on Complaints about Undesirable Behaviour contained some less than desirable elements:

- Its scope extended beyond the TU Delft community and the regulation also applied to visitors or users (e.g. third parties who perform work on campus) on the grounds of TU Delft. However, the jurisdiction of the Executive Board does not allow this body to handle complaints against third parties. Obviously, visitors and users must also behave properly on TU Delft property, but this must be ensured through other means, e.g. through contractual obligations.
- The composition of the advisory board (complaints committee) was cumbersome: a case had to be handled by five people, representing various groups. Under the new regulation, a case is handled by three people, including at least one woman and, if a student is involved in the complaint, one student.
- The coordination between work of the confidential advisor and the committee was unclear. The new regulation is far more explicit about the confidential advisor's function as first point of contact.
- The complaints regulation was not written with the General Administrative Law Act (Awb) in mind, nor the subsequent TU Delft Regulation on Academic Integrity.

Besides being an improvement on the points mentioned above, new elements in the amended regulation include:

- A norm or code of conduct as prescribed by the CAO NU. This is an acknowledgement of the little-known recommendations for a code of conduct by parties to the CAO NU in 2000. The new regulation includes the norm-complaint-penalty trio, as is the case with the Regulation on Academic Integrity.
- The two regulations have been made as uniform as possible.

As this regulation is in fact completely new, its name has been changed to: TU Delft Regulation on Complaints Concerning Undesirable Behaviour. As this regulation largely concerns a complaints procedure,

the approval of the Works Council was required in accordance with Article 27, para. 1, part j, of the Works Councils Act.

Article by article

Articles 1-3: general, scope

With regard to the code of conduct, the definition of terms refers to the code of conduct from 2000 as recommended by the parties to the CAO NU (VSNU publication). This code of conduct is more explicit about the definition of undesirable behaviour, which is described in Article 1, second paragraph. The VSNU code of conduct applies as the code of conduct for TU Delft employees, and students are also expected to adhere to it (Article 2).

The scope of the regulation is restricted to employees in their capacity as employees and students in their capacity as students (Article 1, para. 2, and Article 3). The concept of 'employee' covers more than just those who have a position of employment at the university: those who work on a different basis for TU Delft, such as guest lecturers, retired professors or fellows, are also subject to the provisions of the regulation. These individuals will generally have a courtesy privileges declaration (also known as a hospitality declaration), which is a good indicator for whether someone is covered by the regulation. Student conduct, such as activities in student accommodation, that is not study-related, is not covered by this regulation. An employee or student who is confronted by undesirable behaviour may turn to a confidential advisor or the complaints committee. The confidential advisor does not necessarily need to be the first point of contact. However, it is desirable if people turn to the confidential advisor first, and experience has shown that this tends to be the case.

Article 4-12: The confidential advisor

The confidential advisor is appointed by the Executive Board, is accountable to the Executive Board and may be removed from office by the Executive Board (Articles 4, 6, 8 and 10). The confidential advisor enjoys legal protection (see Article 27) and is provided with all necessary facilities for executing his/her duties (see Article 9).

The confidential advisor is the first point of contact for the complainant if the complainant feels that he/she has been the victim of undesirable behaviour. The confidential advisor may assist the complainant, contact a mediator if necessary and help the complainant to submit a formal complaint to the complaints committee. The confidential advisor's role does not extend to mediating between employee/student and supervisor/faculty (Article 5). The confidential advisor keeps a file on the complaint for their own use. Information from this file is provided to others only with the express consent of the complainant (Article 7).

Article 11-18: the complaints committee

The complaints procedure is consistent with the provisions of Chapter 9 of the General Administrative Law Act and the TU Delft Regulation on Academic Integrity. The explanatory notes below are taken from the notes on the latter regulation.

Articles 11 and 12

The complaints committee for undesirable behaviour consists of six members, including the chair and deputy chair and two student members. Some of the committee members should be women, given the nature of the issues the committee deals with. Cases are handled and recommendations made by three members, including the chair or deputy chair and at least one female member. If the complaint involves a student as the complainant or the accused, then one of the three members of the investigating committee shall be a student. One of the members must have a law degree.

The committee's independence is assured by the provision that the chair and deputy chair may not be employed by TU Delft nor may they be students at the university (Article 12). Furthermore, investigating members may not be involved in the alleged undesirable behaviour. The committee's independence is also assured by Article 16, paragraph 4, which prohibits the Executive Board from interfering in a complaints procedure in any way whatsoever.

Article 16 paragraph 5

The report must contain the number and nature of complaints and a description of how they were processed. The report may also contain recommendations for preventing undesirable behaviour. The annual report is made public, however all names of individuals are anonymised.

Article 17

The committee is authorised to gather information from all university agencies and employees. Individuals are obliged to cooperate with the committee (Article 18).

The committee is authorised to remove privacy-sensitive data, either at the request of the complainant or otherwise, as long as this does not compromise the right of the accused to a fair hearing. Complaints may only be anonymised if the right to a fair hearing is not violated. The retention of records is subject to the Personal Data Protection Act (Wbp).

Article 18

The duty to cooperate ensures that the committee can make effective use of its powers to gather information. It is important to ensure confidentiality in these sensitive complaints procedures (also see Article 17, paragraph 3 for the committee members).

Articles 19-26: the complaints procedure

Article 19, 20 paras. 2 and 3, 24, 25 para. 1 and 26 para. 1

Complaints are always submitted to the committee, which first forms an opinion on the admissibility of the complaint.

If the written complaint does not indicate the occurrence of undesirable behaviour within the university community (see Article 3) or if it does not fulfil the requirements set forth in Article 19 or if there is a situation as referred to in Article 20, paragraph 3, then the Executive Board may rule that the complaint is inadmissible. The committee provides the Executive Board with a recommendation on admissibility. A complaint shall not be considered to be a repeated complaint as referred to in Article 20, para. 3 subsection a, if there are new facts and circumstances that shed new light on the earlier complaint.

The committee shall subject the complaint to a substantive review only if the complaint is admissible. The committee shall consider whether the complaint does in fact concern undesirable behaviour. In order to determine this, hearings will be required in these cases. If, however, the written complaint itself clearly shows that the petitioner's complaint is unfounded and there is no reasonable doubt to that conclusion, then no hearing shall be required. This also applies if the complainant or the accused has waived his/her right to a hearing. The committee advises the Executive Board on the merits of a complaint and any disciplinary or other action to be taken pursuant to the complaint within ten weeks. The Executive Board shall issue a ruling on the complaint within four weeks. The entire procedure may take up to 14 weeks, corresponding to the provisions of the General Administrative Law Act (Awb) (10 weeks, with possibility of four weeks' continuance). The maximum duration of the procedure in the TU Delft Regulation on Academic Integrity is two weeks longer due to the nature of the complaints in that regulation.

Articles 21, 22 and 23

The complaints procedure may be stopped at any time if a solution is found that is satisfactory to the complainant. This provides for a quick and informal way of handling complaints. The complainant's opinion is decisive, but the committee or the Executive Board may take the initiative. The satisfaction of the complainant may be made known informally and is not bound by any procedural rules. In case of doubt, it is recommended that the complainant be requested to provide written confirmation of his satisfaction and withdrawal of the complaint. If the complaint is withdrawn, then the complaints procedure will be terminated.

Article 24 paragraph 2

The complainant may waive his/her right to a hearing in writing or orally (including by telephone). If the complainant is otherwise satisfied, then the procedure will be terminated pursuant to Article 23. A hearing is required if there are doubts about the motives of the complainant.

Articles 24, paragraphs 3, 4 and 6

Hearings shall be confidential and the parties are not normally heard each in other's presence. However, parties will be informed of the issues that the other party has raised, so they can then respond (principle of fair hearing).

Article 24 paragraph 5

The report must contain an outline of the main points dealt with during the hearing; the report is sent with details of the committee's findings (Article 25).

Article 26 paragraph 1

The Executive Board shall indicate whether the complaint is well-founded or not. Various disciplinary or other measures may be imposed if the accused is found guilty of undesirable behaviour. These measures are subject to the labour legislation that covers the employer-employee relationship between the university on the one hand and its employees on the other, or based on the provisions that apply between the student and the university, as the case may be. Any measures to be imposed must be in compliance with this legislation. If the conclusions of the complaints investigation lead to a disciplinary or other measure imposed on an employee, the employee may initiate court proceedings at the Subdistrict Sector.

If the conclusions of the complaints investigation lead to a measure against a student, the student may lodge an objection and appeal to this, depending on the nature of the measure.

The student may not lodge an objection against rulings on complaints themselves.

Other complaints procedures may be available to the employee or student, for example by contacting the National Ombudsman, if any of the parties is not satisfied with the way the complaint has been handled by the Executive Board. When issuing its ruling on the complaint, the Executive Board will inform the parties about this further complaints provision.

Article 27: legal protection

This article provides assurances for the complainants and confidential advisors: submitting or being involved in a complaint shall not impair their legal position at TU Delft.