

TU Delft Regulations for Complaints Concerning Undesirable Behaviour

Based on its general responsibility for health, safety and welfare in relation to the work and study activities at the university, the Executive Board does not consider it desirable that students, staff members or other users of or visitors to the university campus exhibit undesirable behaviour as described in these regulations. The Executive Board has therefore laid down these regulations in order to combat such behaviour.

I. GENERAL

ARTICLE 1 (definitions)

1. The following terms are to be defined thus:
 - 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 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: a 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 Collective Labour Agreement of 2 February 2000 (VSNU/WG/00.0165U).
2. Undesirable behaviour is defined in the scope of this regulation as behaviour exhibited by an employee or student that is related to work or study at TU Delft and that causes psychological or physical harm to another employee or student and that could 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 Collective Labour Agreement.
2. Employees and 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 (duties)

The confidential advisor's duties include:

- counselling and advising complainants who contact him;
- attempting to resolve complaints through intervention, if necessary by appointing a mediator;
- assisting complainants in submitting complaints 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 is shown to be clearly unsuitable for the position, if he has acted beyond his remit, or if the Executive Board has other compelling reasons for removing him from office.
2. The confidential advisor may be relieved of his duties at any time at his own request.

III. COMPLAINTS COMMITTEE

ARTICLE 11 (appointment)

1. The committee advises and rules on complaints about undesirable behaviour as referred to in this regulation.
2. The committee is composed of a chairman and a deputy chairman, both of whom are 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. Advice on a complaint will be given by three members, including the chairman or deputy chairman, and at least one women. 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 chairman or deputy chairman or a member who is not a member of the Executive Board nor who works under the auspices of the Executive Board, if the chairman, deputy chairman or one or more members is at the last minute unable to be present on the date of the hearing.
5. The chairman, deputy chairman, 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 chairman and deputy chairman may not be employed by or study at TU Delft.

ARTICLE 13 (dismissal)

1. The chairman, deputy chairman and members may be dismissed from the committee by the Executive Board after a hearing if they are shown to be unsuitable for the position, or if the Executive Board has other compelling reasons for removing them from office.
2. The chairman, deputy chairman and members may be discharged from the committee at any time at their own request.

ARTICLE 14 (secretary)

1. The Executive Board appoints a secretary and one or more deputy secretaries, who assist the committee.
2. The secretary and deputy secretary shall not be members of the committee.

ARTICLE 15 (remuneration)

The chairman, deputy chairman and members have the right to appropriate remuneration, to be determined by the Executive Board, if they are not employed by TU Delft.

ARTICLE 16 (duties of the committee)

1. The committee takes cognisance of complaints as referred to in 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 or other action taken accordingly.
4. The committee reaches its judgements independently.
5. The committee submits an annual report on its activities to the Executive Board.
6. The members and deputy members of the committee and the secretary shall maintain confidentiality in all matters related to the complaints procedure.

ARTICLE 17 (powers of the committee)

1. The committee is authorised to obtain information from all university bodies and employees. The committee may view all documentation and correspondence it deems necessary for assessing a complaint.
2. The committee may consult experts, from inside or outside the university. Reports shall be written on these consultations.
3. The committee shall keep a file on all the complaints it deals with. No information in the file that was disclosed in confidence will be shared except with 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 of time 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 regarding any information they come into contact with during the 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 in order to be able deal with complaint effectively, then the complainant must provide one.

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:
 - the complaint relates to behaviour that has already been the subject of a complaint that has been addressed by the Executive Board;
 - the complaint relates to behaviour that took place more than five years before the complaint was filed;
 - if the nature of the alleged undesirable behaviour is clearly not very serious.
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 any omissions have been rectified 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 not involved in any way with 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 of this 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. Reports of hearings are produced.
6. Each party has the right to be apprised of any proceedings held in their absence.

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 recommendations, along with a report of the hearings.
2. The period shall be suspended from the date on which the complainant is requested to correct any omission as referred to in Article 20, second paragraph, until the day on which the omission has been corrected or the specified period has elapsed.
3. The committee shall report on the merits of the complaint and offer advice on any disciplinary or other action to be taken.

ARTICLE 26 (ruling by the Executive Board)

1. Within four weeks of receiving the committee's report, the Executive Board shall rule on the complaint and any disciplinary or other 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 student or a confidential advisor who has been involved in a complaints procedure as laid down in these regulations, will not be in any way disadvantaged in his position within the university as a result of being involved in a complaint, insofar as he has acted in good faith.

ARTICLE 28 (revocation)

The TU Delft Regulations for complaints about undesirable behaviour is revoked.

ARTICLE 29 (entry into force)

These Regulations enter into force from the first day following the date on which the President of the Executive Board signs these Regulations.

ARTICLE 30 (official title)

These Regulations shall be referred to as the TU Delft Regulations for Complaints Concerning Undesirable behaviour.

EXPLANATORY NOTES

GENERAL

BACKGROUND

The TU Delft Regulations for Complaints Concerning Undesirable Behaviour came into effect on 1 September 2001. A Confidential Advisor Protocol has been added to the regulations. The value of the regulations 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 filed and processed sporadically in recent years. The Executive Board fully agrees with the need for, and the objectives of, regulations on undesirable behaviour (as expressed in the Collective Labour Agreement for Dutch Universities), but acknowledges that the current regulations need 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 1 2010 expresses the objective of eliminating undesirable behaviour. The definition of undesirable behaviour includes the following: sexual or other forms of intimidation, aggression, violence, and discrimination. To implement 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 Collective Labour Agreement. 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, paragraph 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 Collective Labour Agreement for Dutch Universities and the TU Delft Regulations for Complaints Concerning Undesirable Behaviour may be seen as putting Article 3, paragraph 2 of the Act into action. Neither the act nor the Collective Labour Agreement 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 Working Conditions Act has a broader scope than just employees, but also because the Executive Board is committed to combating undesirable behaviour among employees and students alike.

COMPARISON OF THE OLD AND NEW REGULATIONS

The Regulations for complaints about undesirable behaviour contained some less than desirable elements:

Its scope extended beyond the TU Delft community: they also applied to visitors to or users (e.g. third parties who perform work on campus) on the grounds of TU Delft. The jurisdiction of the Executive Board does not allow it to deal with complaints against third parties, however. Obviously, visitors and users must also conduct themselves appropriately on TU Delft property, but this must be ensured by other means, such as contractually.

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, cases are dealt with by five people, including at least one woman and, if a student is involved in the complaint, one student.

The way in which the work of the confidential advisor and the committee was coordinated was unclear. The new regulations are far more explicit about the confidential advisor's function as the first point of contact.

The complaints regulations were not written with the General Administrative Law Act (AWB) the TU Delft Regulations on Academic Integrity in mind.

Other than being an improvement on the points mentioned above, new elements in the amended regulations include:

A norm or code of conduct as prescribed by the Collective Labour Agreement for Dutch Universities. This refers to the little-known recommendations for a code of conduct by parties to the collective labour agreement in 2000. The new regulations include 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.

The regulations are in fact completely new, giving rise to the need to change the title: Regulations for complaints concerning undesirable behaviour.

As it largely concerns a complaints procedure, the approval of the Works Councils was required in accordance with Article 27, paragraph 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 2000 code of conduct as recommended by the parties to the collective labour agreement (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 serves as the code of conduct for TU Delft employees, and students are expected to adhere to it as well (Article 2).

The scope of the regulations is restricted to employees in their capacity as employees and students in their capacity as students (Article 1, paragraph 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 regulations. 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 regulations. Student conduct that is not study related (such as in student accommodation) is not covered by these regulations. Any 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 have to be the first point of contact. However, it is certainly helpful if people turn to the confidential advisor first, and experience has shown that this tends to be the case.

Articles 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 his/her own use. Information from this file is provided to others only with the express consent of the complainant (Article 7).

Articles 11-18: the complaints committee

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

ARTICLES 11 AND 12

The complaints committee for undesirable behaviour consists of six members, including the chairman and deputy chairman 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 chairman or deputy chairman 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 chairman and deputy chairman may not be employed by TU Delft nor may they be students at the university (Article 12). Furthermore, investigating members may not be, or have been, 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, although all names are anonymised.

ARTICLE 17

The committee is authorised to gather information from anywhere in the university. 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.

ARTICLE 18

The obligation to lend cooperation 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 (see Article 17, paragraph 3 for the committee members).

Articles 19-26: the complaints procedure

ARTICLES 19 AND 20, PARAGRAPHS 2 AND 3, ARTICLES 24 AND 25 PARAGRAPH 1, AND ARTICLE 26 PARAGRAPH 1

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

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 out 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, paragraph 3a, 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. 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. 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 AWB (ten weeks, with possibility of an adjournment of four weeks). The maximum duration of the procedure in the Academic Integrity regulation of TU Delft is two weeks longer because of 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 may be terminated using Article 23. A hearing is required if there are doubts about the motives of the complainant.

ARTICLE 24, PARAGRAPHS 3, 4 AND 6

Hearings shall be confidential and the parties are not normally heard in each 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 specify 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 public servants and employment law that cover 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 therefore be in compliance with this law. This means that appeals and objections may be lodged against the conclusions of complaints procedures involving employees or students. Objections may not be submitted against rulings on complaints themselves. Other complaints procedures may be available, such as 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, the Executive Board will inform the parties about other existing procedural options.

ARTICLE 27

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.