

## Research Integrity Complaints Procedure Open Universiteit

*These model regulations have been drawn up by the joint Dutch universities to serve as a starting principle and example for the complaints procedure that every university determines individually. They may also be used by other institutions that have adopted the Netherlands Code of Conduct for Research Integrity.*

*The objective of the joint model regulations is to – insofar as possible – see to it that all supposed breaches of research integrity are treated equally. It ensures that – insofar as possible – the starting principles, terminology and procedures are the same for everyone facing complaints about breaches of integrity or supposed breaches of integrity. This uniformity is important, as the institutions consider themselves responsible for the behaviour of each researcher who performs or has performed academic research under their responsibility. The institution undertakes to investigate substantiated alleged breaches of research integrity.*

*These regulations have been drawn up with due observance of the provisions of Chapter 9 of the Dutch General Administrative Law Act (Algemene wet bestuursrecht), as this law may apply to complaints submitted to public institutions and also because the act forms a good guideline for a careful handling of complaints.*

### Preamble

The 2018 Netherlands Code of Conduct for Research Integrity sets out the guiding principles of good and ethical scientific practice and the resulting standards for good research practices, which the institution subscribes to as well and apply for a university as guidelines within the meaning of Section 1.7 of the Dutch Higher Education and Research Act (Wet op het hoger onderwijs en wetenschappelijk onderzoek – WHW).

Within the institution, everyone who is involved in research has a personal responsibility for maintaining academic and research integrity. Everyone must ensure that the standards are carefully complied with. In the event of a breach of research integrity, a complaint about this can be submitted. The institution will ensure that a careful and honest procedure for the handling of the complaints and the decision-making that follows it is in place. To that end, the Board of the institution has adopted the following regulations.

These regulations will be applied by analogy insofar as possible to any investigation into a possible breach of research integrity that is conducted at the request of the Board of the institution without a complaint having been submitted.

### Section 1. Definitions

- 1.0 Code of Conduct: The 2018 Netherlands Code of Conduct for Research Integrity.
- 1.1 Violation of research integrity: Action or failure to act that results in a violation of research integrity as referred to in sub-section 5.2 under (a) 1, 2 or 3 of the Code of Conduct.
- 1.2 Complaint: A written report pertaining to a failure on an employee's part to comply with the standards set out in chapter 3 of the Code of Conduct for Research Integrity.
- 1.3 Complainant: The individual who submits a complaint to the Board or the Committee.

- 1.4 Defendant: The employee whose conduct is referred to in the complaint submitted, or whose conduct is being investigated by the committee at the request of the Board.
- 1.5 Employee: The individual who has or had an employment contract with the institution, or who has otherwise carried out work under the institution's responsibility. This also includes persons who have no or only part-time affiliation with the institution in the event they participate in the institution's research and/or publish their own research under the name or responsibility of the institution. An exception to this is individuals whose involvement with the research is limited to a supporting role.
- 1.6 Confidential adviser: The person appointed by the Board to serve as a confidential adviser in connection with research integrity.
- 1.7 Committee: the Committee established by the Board to handle complaints in connection with potential violations of research integrity.
- 1.8 Board: the Executive Board of the institution.
- 1.9 Supervisory Board: the supervisory board of the institution.
- 1.10 Institution: the Open Universiteit

## **Section 2. General**

- 2.1 Everyone has the right to consult the confidential adviser if they suspect there has been a failure to comply with the standards laid down in chapter 3 of the Code of Conduct.
- 2.2 Everyone has the right to submit a complaint to the Board or the Committee. The Board or the Committee will then inform the dean that a complaint has been submitted. The complaint must include sufficient evidence as to why the complainant believes that the defendant has violated the standards laid down in chapter 3 of the Code of Conduct.
- 2.3 Even when no complaint has been lodged, the Board may decide – based on its own suspicions or on information it has received – to submit a justified request to the Committee, asking it to commence or continue an investigation into a suspected failure to comply with the standards laid down in chapter 3 of the Code of Conduct for Research Integrity. In such cases, this procedure will be applied by analogy to the furthest possible extent.
- 2.4 An anonymous complaint will only be handled if the Board and/or the Committee sees cause to do so, as the Board and/or the Committee is of the opinion that:
  - a. Substantial public interest or a substantial interest of the institution exists that compels the parties to do so; and
  - b. The investigation into the facts can be conducted without input from the complainant.
- 2.5 If the complaint pertains to a member of the Board, the Supervisory Board will assume the role and exercise the powers that are attributed to the Board by this procedure.

- 2.6 If the complaint pertains to an individual who is or was an employee of multiple institutions that have adopted the Code of Conduct and the complaint could therefore potentially be investigated at multiple institutions, the institutions in question may either commence a joint handling procedure for the complaint or make other agreements with regard to handling the complaint. In such cases, the Board will take the decision on how to handle the complaint.
- 2.7 Everyone is obliged to render the confidential adviser or the Committee every assistance these may reasonably ask for in the exercise of their authority, within the reasonable term set.
- 2.8
- a. Everyone who is involved with the processing of a complaint has a duty to preserve confidentiality with regard to the substance of the complaint and the knowledge that has come into their possession in connection with the complaint or procedure.
  - b. The members and the secretariat of the Committee are required to treat as confidential any information to which they gain access in the performance of their duties for which they know (or could reasonably be expected to know) that a duty of confidentiality applies. The duty of confidentiality referred to in the previous sentence also applies to experts and other third parties who are involved in processing the complaint. Exceptions are possible only with the express permission of both complainant and defendant.
  - c. Parties will in any case maintain confidentiality from the time the complaint is submitted until the definitive opinion is made public. This confidentiality will apply to the complaint, the Committee's recommendation, the preliminary opinion of the Board, any documentation exchanged via the LOWI and any other documents that may be shared. This duty of confidentiality will remain in effect after the procedure has ended, with the exception of the anonymised reporting on the Committee's recommendation, the definitive opinion of the Board and (if applicable) the LOWI's opinion in annual reports published by the Committee or on the websites of the university and the Association of Universities in the Netherlands. Exceptions are possible only with the express permission of both complainant and defendant.
  - d. In the event the duty of confidentiality laid down in this section is breached, the Committee or the Board may draw such conclusions as it deems appropriate. A breach of confidentiality on the complainant's part may be considered grounds for dismissal of their complaint.
  - e. The duty of confidentiality referred to in this section does not apply to confidential information that:
    - i. was already publicly accessible at the time it was obtained;
    - ii. has since become publicly accessible through no action or negligence of the parties themselves;
    - iii. was obtained from third parties who are entitled to publish or distribute the information;
    - iv. may be released with the written permission of the relevant parties; and/or
    - v. a party is required to disclose by or under any provision of law, by virtue of a final judgement of the competent governmental court or an otherwise binding and final decision of any governing body (other than the institution concerned). In such instances, only that portion of the confidential information will be disclosed that is described in the relevant provision or decision, and then only to the bodies, authorities and persons or legal entities named therein.
  - f. Furthermore, the duty of confidentiality referred to in this section does not apply in the event that:
    - i. the situation concerns an exchange within the context of the legal relationship between a party and their employer under employment law;
    - ii. the disclosure is made in the interest of protecting a legitimately compelling public interest.

### **Section 3. Confidential adviser**

#### **3.1 Appointment**

- a. The Board appoints one or more confidential advisers for a term of four years. Reappointment for a consecutive term of another four years is possible.
- b. The confidential adviser will possess a scientific background and an impeccable academic reputation and will be able to cope effectively with contradictions and conflicts. The confidential adviser may not have an ancillary position that could stand in the way of their functioning as a confidential adviser.
- c. The members of the Supervisory Board, the members of the Board, the deans and vice-deans of the faculties and the members of the committee are not eligible for appointment.
- d. The Board may terminate an appointment in the interim
  - at the confidential adviser's own request;
  - due to failure to meet the requirements for appointment;
  - due to unsatisfactory performance as a confidential adviser.

#### **3.2 Task**

The confidential adviser

- acts as an informal point of contact for questions and complaints regarding research integrity;
- attempts (when presented with apparent opportunities to do so) to mediate or to amicably resolve the complaint by other means;
- guides the complainant through the process of lodging a complaint with the Board;
- may not assist both the complainant and the defendant at the same time;
- will act on behalf of the complainant or the defendant only with their consent.

#### **3.3 Accountability**

The confidential adviser will render account of the work to the Board after the fact in the form of an annual report to be included in the institution's annual report. This report will contain a general account of the cases handled and the activities carried out. The report must contain no information that may be traced to individuals. In addition, the confidential adviser is bound to confidentiality with regard to all that which has come to their attention in that capacity. Exceptions are possible only with the express permission of both complainant and defendant.

### **Section 4 Research Integrity Committee**

#### **4.1. Appointment and composition**

- a. The Board is establishing a Research Integrity Committee, to consist of a chair and at least two other members. Ideally, at least one member will be a lawyer.
- b. The chair and the members are appointed by the Board.
- c. The provisions of Article 3.1 apply by analogy, on the understanding that the confidential adviser is not eligible for appointment as the chair or as a member of the Committee.
- d. When appointing members to the Committee, the Board will strive for a balanced representation of the various scientific disciplines.
- e. For the purpose of investigating a specific complaint, the Committee may be temporarily expanded to include ad hoc experts, who may or may not be affiliated with the institution.
- f. The Committee is assisted by a secretary.

#### **4.2. Task**

The Research Integrity Committee investigates complaints, evaluates whether a violation of research integrity has occurred and, in response, issues recommendations to the Board. At the request of the Board, it can also conduct an investigation and provide a recommendation without a complaint having been submitted.

#### **4.3. Powers**

- a. The Committee is authorised to obtain information from all staff and bodies at the institution. It may request access to or copies of any and all documentation and correspondence it deems relevant to its investigation, and may confiscate or order these to be sealed when it perceives such action to be necessary.
- b. The documentation referred to in the previous paragraph also includes the data from the research to which the complaint pertains.
- c. The Committee may consult experts or other third parties, regardless of whether they are attached to the institution. A report of that consultation is subsequently drawn up. Complainant, defendant and involved parties will be informed as to the identities of any experts or third parties consulted.
- d. The Committee may invite a representative of the Board to attend any hearings and may ask that representative to provide information on the standards and guidelines in effect at the university.
- e. The Committee will present its opinion to the Board.

#### **4.4. Working method**

- a. The Committee may set out additional guidelines for its working method. In this working method, they may further elaborate these regulations by specifying details with regard to how the hearing is conducted, the involvement of experts and the establishment of committees.
- b. To the extent that the working method of the Committee is not laid down in these or further regulations, the method will be determined by the chair.
- c. Unless article 2.6 applies, a complaint will be handled by the chair of the Committee and two other members, potentially assisted by one or more experts or ad hoc members. The Board will appoint these experts or ad hoc members for that purpose at the Committee's request.
- d. Members of the Committee who are involved in any way with the persons or circumstances to which the complaint pertains, or who have any other interest in the case, are ineligible to participate in handling the complaint.

#### **4.5 Start of the procedure**

- a. After receiving a complaint, the Committee will notify the complainant and defendant in writing within two weeks that it has received a complaint and will inform the complainant and defendant of the procedure the Committee will follow, as well as of the substance of the complaint.
- b. The Committee will determine whether it can commence processing a complaint based on the following requirements:
  - i. the complaint must contain a clear description of the supposed breach of research integrity by one or more employees and must come with any relevant written documentation or other evidence;
  - ii. the complaint must be dated and must include the name, job title and contact information of the complainant. This requirement does not apply if Section 2.4 is in effect.
- c. If the complaint is incomplete, the Committee will give the complainant the opportunity to supplement the complaint within a set term. In that event, the term referred to in Section 4.5 (f) will be extended by the term specified in the previous sentence or the period within which the supplement was provided.
- d. The Committee is authorised to advise the Board not to commence processing a given complaint if
  - i. too much time has elapsed since the suspected violation or if the complainant has waited an unreasonably long time to lodge the complaint. As a rule, a term of ten years is considered acceptable in this regard;
  - ii. the complaint has previously been investigated by the Committee itself or by a similar committee;
  - iii. the complainant has breached the duty of confidentiality laid down in Section 2.8.

- e. The Committee is also authorised to advise the Board not to commence processing a given complaint if, based on an initial evaluation, the Committee has concluded that
  - i. the complaint is patently unfounded,
  - ii. the complaint is patently frivolous or trivial;
  - iii. the complaint relates to nothing more than a difference of professional opinion;
  - iv. the complaint can be traced back to a labour dispute;
  - v. the complaint cannot lead to a determination that the actions of the defendant constitute a violation of research integrity.
- f. If the Committee is of the opinion that it should not commence handling of the complaint, it will submit this opinion to the Board within four weeks' time.
- g. The Board will then – at the earliest possible opportunity – decide whether or not to begin processing the complaint and will notify the complainant and the defendant of this decision. If the Board decides not to deal with the substance of the complaint, this will be an initial opinion as referred to in Article 5.1.
- h. If part (f) does not apply or, pursuant to part (g), the Board decides that it will deal with the substance of the complaint, the Committee will proceed to investigate the substance of the complaint. The guiding principle here is that the defendant will be presumed innocent until proven otherwise.

#### **4.6 Substantive handling of a complaint**

- a. The Committee will investigate whether, in addition to the complainant and defendant, there are any other stakeholders who should be involved in the procedure. The Committee will hear all those involved in the complaint. It will in any case provide the complainant and defendant with an opportunity to speak.
- b. The stakeholders will be heard in each other's presence, unless there are compelling reasons to hear them separately. In such case, each of them will be informed of what was revealed during the hearing held in their absence and will be given an opportunity to respond to the other's remarks.
- c. A written report of each hearing will be drafted; this report will contain an impersonal account of what was said. The Committee is permitted to make audio recordings of the hearing. These are intended solely for use as a reporting tool and will be destroyed once the Board has rendered a definitive opinion. Only the Committee may make audio recordings of a hearing.
- d. During the hearing, the complainant and the defendant (as well as other parties involved) may have someone assist them, but may not have someone represent them.
- e. The Committee may call on witnesses and experts to speak and may ask experts to supply a written expert report.
- f. In the interest of fair treatment, all relevant information gathered by the Committee will be made available to all stakeholders, unless the Committee feels there are serious reasons compelling it to deviate from this rule. The reasons why certain information is not being made available will be included in the Committee's opinion.
- g. Neither the hearing nor other meetings of the Committee are open to the public.
- h. Within ten weeks of receiving the complaint, the Committee will present an opinion to the Board, along with a report of its findings and a verdict with regard to the validity of the complaint. In evaluating the validity of the complaint, the Committee will apply the weighting criteria included in sub-section 5.2 (c) of the Code of Conduct. The Committee can extend this ten-week term by four weeks. All parties involved will receive written notification that the term has been extended. Further extension is possible if the parties involved agree to this in writing.

#### **Article 4.7 Careful handling and confidentiality**

- a. In the interest of careful handling, all relevant documentation gathered by the Committee will be made available to both the complainant and the defendant.
- b. The Committee may decide not to provide certain information to the complainant and/or defendant if there are compelling reasons not to. The Committee will record these compelling reasons and will report this decision and its underlying reasoning to the Board.

- c. If and to the extent that the complainant or defendant has stipulated in the design (or corresponding data management plan) of the research to which the complaint pertains that research information and/or research data may not be made public, and has included valid reasons as to why not, the Committee may – at the request of the complainant, the defendant or other stakeholders – decide to avoid disclosing all or part of the research information and/or research data in the information shared by the Committee and in the formulation of its opinion.
- d. If and to the extent that the complainant or defendant has stipulated in the design (or corresponding data management plan) of the research to which the complaint pertains that, in the event of an investigation into a suspected violation of research integrity, all research information and/or research data will be made available for review only under the conditions of confidentiality established by the Board, the Committee will observe these conditions of confidentiality when:
  - i. the chair, Committee members and the secretary access the research information and/or research data in question by;
  - ii. disseminating information in connection with the handling of the complaint; and
  - iii. when formulating its opinion.
- e. In the event that no agreements have been established with regard to the limited public availability of research information and/or research data, the Committee may (provided it can supply valid reasons<sup>1</sup> for doing so) determine that, in the interest of confidentiality, portions of the scientific research that can reasonably be kept out of reach of the public and the relevant data are to be designated as confidential, at which point the Committee will establish the applicable conditions of confidentiality in keeping with those laid down in paragraph 4.

#### **4.8 Accountability**

The Committee will render account of its work to the Board after the fact in the form of an annual report to be included in the institution's annual report. This report will contain a general account of the cases handled and the activities carried out.

The report must contain no information that may be traced to individuals.

#### **Section 5 Subsequent procedure**

- 5.1 The Board will determine its initial findings as soon as possible, but in any case within four weeks of receiving the Committee's recommendation, and will immediately notify the complainant, the defendant and any other parties involved in writing. The report containing these findings and the Committee's recommendation will be submitted along with the preliminary opinion.
- 5.2 The complainant, defendant and any other potential stakeholders may request a recommendation concerning the preliminary opinion of the Board from the Netherlands Board on Research Integrity (LOWI). This must be done within a term of six weeks, beginning on the date on which the preliminary opinion is issued. The LOWI must have received the request before that six-week term has ended.
- 5.3 If the LOWI's opinion is not requested within the term referred to under 5.2, the Board will determine its definitive opinion on the complaint.
- 5.4 If the LOWI's opinion has been requested, the Board will include the LOWI's recommendation in its definitive decision. If the LOWI's opinion has been requested, the decision period referred to in Section 5.1 will be suspended until four weeks after the LOWI's recommendation is received.
- 5.5 Following the conclusion of the procedure, the opinion of the Board of the institution will be published – along with the report of the findings and the recommendation of the Committee – in anonymised form on the website of the Association of Universities in the Netherlands.

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<sup>1</sup> Valid reasons, including confidentiality, can be found in: European Council, Council Conclusions: The transition towards an Open Science system, paragraph 14 (Brussel, 27/05/2016, 9526/16, via: [data.consilium.europa.eu/doc/document/ST-9526-2016-INIT/en/pdf](https://data.consilium.europa.eu/doc/document/ST-9526-2016-INIT/en/pdf)).

### **Section 6 Protection of the parties involved**

The Board of the institution will ensure that the rights of complainant and defendant are protected and they are not unnecessarily disadvantaged in terms of their career prospects or otherwise. The same applies to any other potential parties involved, witnesses, experts, the confidential adviser and the members of the Committee.

### **Section 7 Final provisions**

This Procedure has been adopted by the Executive Board on September 19, 2023, with the approval of the works council. This procedure enters into force on September 19, 2023 and replaces all previous complaints procedures with regard to research integrity as far as complaints lodged on or after this date are concerned. Complaints submitted before the date on which this procedure enters into force will be handled in accordance with the procedure applicable at the time of their submission.

This procedure will be published on the website of the institution.