

THE AOG - PART 16

COMPLAINTS PROCEDURE



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1 Introduction

WUAS aims to provide a pleasant working environment for its students and staff, which promotes safety, inclusiveness, respect and consideration. WUAS expects all members of staff to behave ethically towards its students, colleagues, contractors and other stakeholders and to comply with regulations concerning expected behaviour. These regulations are laid down in several parts of the Academic and Operations Guide (AOG), and specifically in the:

- Part 8-WUAS Staff Research Guidelines
- Part 8a-Code of Ethics
- PART 10-Code of Ethical Behaviour
- PART 11-Diversity and Inclusion Policy

WUAS has formulated this complaints procedure to ensure an appropriate response to any unacceptable behaviour or misconduct, including complaints against WUAS's staff regarding bullying, discrimination, harassment or sexual harassment, perceived unfair decisions or treatment, or other workplace conflicts.

The WUAS Complaints Procedure is applicable to all staff members at WUAS, regardless of your employment status or position.

2 General

2.1 Definitions and the Right to Lodge a Complaint

2.1.1 Definitions

In this regulation, the following definitions will apply:

1. Complainant: the person lodging a complaint with the confidential advisor or the complaints committee concerning unacceptable behaviour or academic misconduct,
2. Respondent: the person to whose behaviour the complaint relates,
3. Confidential advisor: the person referred to in article 2.3,
4. Committee: the Complaints Committee referred to in article 2.4,
5. Secretary: member of the Complaints Committee taking care of all administrative tasks,
6. Authorised representative: a person representing the complainant or respondent,
7. Aide: a person who is accompanying a party to a hearing for support and who may not speak,
8. Witness: a person who has observed certain behaviour and testifies about this,
9. Informant: a person providing information with regards to the complaint based on involvement or expertise on the matter,
10. Unacceptable behaviour: the unacceptable behaviour as outlined in PART 10-Code of Ethical Behaviour. This concerns unacceptable behaviour such as (sexual) harassment/bullying, aggression and violence, discrimination. But also includes illegal activities, misuse of WUAS property and other unethical behaviour.
11. Academic integrity: research according to the 5 principles of honesty, scrupulousness, transparency, independence, responsibility. Outlined in the Code of Ethics (PART 8a).

2.1.2 The Right to Complain

1. All staff members at WUAS, regardless of the employment status or position have the right to complain if they experience unacceptable behaviour during, or in relation to their work at WUAS. This includes interns, a temporary employee, a freelancer, a guest lecturer.
2. This complaint should relate to the behaviour of a staff member of WUAS, regardless of where and when the unacceptable behaviour took place.

2.2 Principles

In all matters, WUAS will act and make decisions in a way compatible with human rights, as defined in the Human Rights Act.

2.2.1 Procedural Fairness

Complainants have the right to have their complaint dealt with in a fair, constructive, efficient, and confidential manner.

Procedural fairness includes:

1. This procedure applies equally to all staff.
2. It encourages staff to raise their complaint, without fear of victimisation or reprisal.
3. Timely resolution of the complaints and at an appropriate level with regards to the seriousness and nature of the complaint.
4. Respondent is being informed of any allegations made in a complaint against them.
5. All parties to the complaint are being informed of the procedure to follow in this complaint, as well as the people involved and responsible for the handling of the complaint.
6. All parties have the right to their say and to be heard.
7. All allegations are being thoroughly investigated.
8. Relevant submissions by involved parties to the complaint are being fully considered in the decision-making process.
9. The complainant and the respondent are being informed of the outcome of the investigation and the decision of the Complaint Committee.
10. The respondent is provided with the opportunity to respond.
11. The members involved in the Complaints Committee are impartial and without prejudice.

2.2.2 Early Notification and Expedious Process

The complaint should be raised as early as possible following, but must be submitted within one year, of the occurrence of the unacceptable behaviour or non-compliance with WUAS's regulations. Complaints should be dealt with expeditiously to minimize the disruption to the workplace.

2.2.3 Confidentiality

Complaints and information arising from the investigation and handling of the complaint must be treated confidentially. There should be limited disclosure of information relating to a complaint and only to those who are legitimately involved in the process of resolving the complaint.

Any breaches of confidentiality, careless or otherwise, on the part of any of the parties involved in the management of the complaint, may be considered as misconduct or serious misconduct and may be subject to further action by WUAS.

2.2.4 Good Faith Participation by All Parties

All parties are expected to participate in the complaint procedure in good faith. Where a staff member refuses to participate, the Executive Board or HR Department may direct the staff member to participate in the process, as necessary.

2.2.5 Representation

At any time during the handling of the complaint procedure, the complainant or respondent may seek assistance from, or be accompanied by, a representative or an aide.

2.2.6 Record Keeping

Records of formal complaints, including all investigation reports, will be maintained by the HR Department, and in accordance with GDPR regulations (Part 14).

2.2.7 WUAS's Duty of Care

Whenever possible, the wishes of the complainant in relation to the resolution of the complaint are taken into account. However, this may not be possible in some circumstances, for example, where the complaint is of such a serious nature that formal action is required beyond the wishes of the complainant. For example, a complaint may involve allegedly unlawful behaviour and/or WUAS's duty of care may be compromised if no action is taken.

2.2.8 Protection from Victimisation

Victimisation or reprisal of the complainant because of reporting misconduct, or unacceptable behaviour, is not tolerated and can be treated as serious misconduct itself.

2.2.9 Vexatious and Malicious Complaints

Complaints should always be motivated by genuine concern about perceived unacceptable behaviour or misconduct. Complaints that are made to annoy or harass, to cause delay or detriment, as retaliation, or for any other wrongful purpose, may be subject to disciplinary processes, and the matter may be dealt with as misconduct or serious misconduct. This means that a staff member who makes a false allegation may be subject to disciplinary processes.

2.3 The Confidential Adviser

WUAS has appointed a confidential adviser on unacceptable behaviour. The confidential adviser can function as the first point of contact for staff members who experience or have experienced unacceptable behaviour from other members of the organisation. Within the scope of the Complaints Procedure the confidential adviser has the duty to:

- Support the complainant during the complaints procedure and provide them with advice,
- Inform the complainant of possible ways to resolve the problem, report the problem and file a complaint,
- Treat all reports and complaints strictly confidential, and only report to third parties with the consent of the complainant.

2.4 The Complaint Committee

2.4.1 Composition and Appointment

WUAS's Complaints Committee consists of three members:

- One member of senior staff/ direct manager

- One member of the Executive Board
- One external member (not employed by WUAS)

The members of the Committee may have no personal interest in the handling of the complaint and may not be involved in the complaint. In case a conflict of interest exists, the member will declare this at the soonest and disqualifies for the handling of the procedure.

The complainant or respondent can request disqualification of a member of the Committee if there is valid reason to believe the member cannot act impartial. The request for disqualification has to be done in writing, within three days of being informed of the names of the Committee members. The other two members, in consultation with the Executive Board, will decide on the request. In case the request is granted, the member will be replaced with another member.

2.4.2 Duties

It is the duty of the Committee to:

- Investigate complaints concerning the unacceptable behaviour of staff members of WUAS, regardless of whether this behaviour was exhibited during work or in another context,
- Investigate incidents that have come to the attention of the Executive Board in another manner and that relate to unacceptable behaviour of a member of staff,
- Decides on the legitimacy and admissibility of the complaint,
- Register the number and the nature of complaints and reported misconduct and send an annual anonymous report to the Executive Board,
- Ensure the fairness of the procedure, and treat all information received as strictly confidential.

3 WUAS Complaints Procedure

Reporting any sort of misconduct or complaint, including academic misconduct and unacceptable behaviour, can in first instance be done informally. The direct supervisor, confidential adviser, or any other staff member can be asked to advise and support the complainant. This procedure is outlined in the Code of Ethical Behaviour (Part 10).

If the informal procedure does not lead to a desired result, or if the unacceptable behaviour is of a nature that is too serious for the informal procedure, a formal complaint procedure may be necessary to understand whether the complaint is justified or not. This requires a careful investigation into the accounts of both parties.

3.1 Complaints Related to Misconduct and Unacceptable Behaviour

If a complainant is comfortable doing so, and depending on the seriousness of the behaviour, the complainant should attempt to resolve the issue directly with the person(s) concerned. The complainant should identify the specific misconduct, explain the impact of that conduct on them, and request the respondent to stop behaving in such a way. It may be that the respondent was unaware of the impact of their conduct. The confidential adviser can support the complainant in this attempt.

If the complainant is not comfortable attempting to resolve the issue directly with the person(s) concerned, or if self-resolution is not successful, they should submit a formal complaint.

3.1.1 Submitting a Complaint

1. The complainant should submit a written complaint addressed to the Committee. The complaint letter can be sent to the confidential adviser who will ensure the timely delivery to the Committee. The complaint should be written in the English language.
2. The written complaint must at least contain:
 - a. the name and address of the complainant,
 - b. the name and position of the person to whom the complaint refers,
 - c. a description of
 - i. the incident of unacceptable behaviour, stating the date, time, place and circumstances,
 - ii. the nature of the unacceptable behaviour,
 - iii. a description of the steps already taken by the complainant,
 - iv. the names and addresses of possible witnesses,
 - v. any other evidence such as emails, pictures, print screens of social media, etc.,
 - vi. the date and signature.
3. If a complaint is submitted by an authorised representative, the complaint must be accompanied by a written authorisation or the complainant must sign the complaint as correct. If the complaint is submitted by a lawyer, written authorisation is not necessary.
4. Once a complaint has been received, the secretary will confirm receipt in writing to the complainant.

3.1.2 Decision about the Admissibility of the Complaint

1. The chairperson of the Committee will decide on the admissibility of the complaint.
2. If the chairperson judges that the complaint does not meet the stipulations of paragraph 3.1.1, the complainant will be requested to rectify the omission.
3. The chairman is not obliged to consider the complaint if:
 - a. the complaint does not (sufficiently) meet a request as referred to in 2.1.2.,
 - b. the complaint does not meet the stipulations of 2.2.2, and there are no valid reasons for the exceeding of the one-year time limit,
 - c. the complaint evidently does not relate to a form of unacceptable behaviour as written in the Code of Ethical Behaviour (Part 10),
 - d. the complaint is of insufficient importance.
4. Within two weeks of submitting the complaint, or within two weeks of complying with any request to rectify the complaint, the complainant will be notified whether the complaint will be considered.
5. If the complaint is not admissible, the complainant will be notified in writing, with an explanation of the reason. The complainant has the right, within a week of the date of this decision, to submit a written request for the decision to be reconsidered. The full Committee will then reach a new decision within four weeks regarding the admissibility of the complaint.
6. If the complaint is admissible, the Committee will notify the complainant that it will be handling the complaint, as well as the respondent, the Executive Board, and any other involved parties.
7. The respondent will receive a copy of the written complaint and copies of all documents sent by the complainant.

3.1.3 Retracting a Complaint

1. The complainant can retract a complaint in writing (and verbally during a hearing). In that case, the secretary will immediately inform the respondent, and other involved parties. A period of two weeks is considered during which the complainant can request the Committee to continue the handling of the complaint.
2. The Committee will meet this request if there is a significant interest in receiving the verdict on the legitimacy of the complaint.

3.1.4 Submission of a Defence

1. The respondent receives the opportunity to submit a written defence to the Committee within two weeks, and the Committee will inform the respondent of the date by which the Committee must receive this written defence.
2. The chairperson can extend this deadline at the request of the respondent by a maximum of two weeks.
3. The written defence of the respondent will be forwarded to the complainant, together with the accompanying documents.

3.1.5 Gathering Information

The committee can request additional information, in writing or verbally, from the complainant, the respondent, or any other involved party, in order to prepare for considering a complaint. Both parties will be informed of this.

3.1.6 Submission and Disclosure of Documents Submitted to the Committee

1. Complainant and respondent may submit further documents to the Committee up to five working days before the hearing. Documents that are submitted too late can be admitted provided that there was a valid excuse for the late submission.
2. All submitted documents will be sent to the parties concerned by the Committee.
3. The chairperson can decide that a document is not relevant to the consideration of the complaint, and may return such a document to the person who submitted it.

3.1.7 Confidentiality of the Documents Submitted to the Committee

1. At the request of the complainant or respondent, the chairperson can determine that there are serious reasons that prevent a submitted document being provided to the opposing party. The chairperson can also do this in their official capacity. The parties will be notified accordingly.
2. If a request to keep documents confidential is rejected, the relevant documents will be returned to the person who submitted them, and they will not be included in the consideration of the Committee.
3. The above applies equally to documents and information from involved third parties.
4. If the chairperson decides to keep any documents or information confidential, this will be recorded in the written conclusion of the Committee, together with a record of the nature of the documents and the implications/consequences that the Committee attaches to this.

3.1.8 Resolving the Complaint Without a Hearing

1. Until the complainant and respondent are invited to the verbal hearing of the complaint, the Committee can close the investigation into the complaint without a hearing, if:
 - a. the Committee is evidently unqualified to consider the complaint,
 - b. the complainant evidently cannot sustain their complaint,
 - c. the complaint is evidently unfounded, or
 - d. the complaint is evidently founded.
2. The outcome of the investigation will be communicated to all parties involved and the Executive Board. In case the complaint is evidently founded, the decision may include disciplinary measures to be taken.

3.1.9 Urgent Procedures

1. If the interests of the case require the complaint to be dealt with urgently, the complainant can request the Committee to treat the complaint urgently, while submitting the written complaint.
2. The chairperson will decide on this request. The complainant will be informed whether this request will be granted within 3 working days.

3. In case the request for an urgent procedure is being granted, the respondent will be informed of this at the soonest. A copy of the written complaint will be sent to the respondent and the respondent will be invited to submit a defence as quickly as possible, but no less than three working days before the hearing.
4. The Committee hearing will take place within three weeks after the receipt of the complaint.
5. The Committee will provide its decision within two weeks after the day of the hearing. Prior to this, the Committee can inform the parties verbally about the contents of the conclusion.
6. During the process of the handling the complaint the Committee could decide that an urgent procedure is no longer legitimate and that the standard procedure must be followed from that point on.

3.1.10 The Hearing

1. The Committee sets the date, location and time of the hearing. In principle, the hearing should take place within four weeks of the decision to accept the complaint for consideration.
2. The Committee will invite the complainant and respondent in writing to attend the hearing.
3. The Committee can invite third parties to the hearing as witnesses or informants.
4. The complainant and the respondent will be informed of all persons invited to the hearing.
5. The complainant and respondent can bring witnesses and informants to the hearing. The Committee must receive written notification of these persons, including the name and position, no less than five working days before the hearing.
6. The Committee can decide not to hear a witness or informant.
7. The complainant and respondent, or the authorised representative, are obliged to appear at the hearing.
8. Committee hearings are held in private and are not open to uninvited third parties.
9. The chairman will determine the procedure at the hearing.
10. The Committee hears the complainant and respondent in the presence of both parties, unless there are important reasons not to do this. In this case, a representative could be present.
11. The Committee decides on the order of hearing all parties and witnesses.
12. Witnesses and informants will only be present when being heard.
13. The complainant and respondent will both get the opportunity to speak before the closing of the hearing.
14. At the end of the hearing, the investigation is closed, unless issues were brought up during the hearing that require further investigation.

3.1.11 Request from the Executive Board to Open an Investigation

At the request of the Executive Board, the Committee can investigate an incident relating to unacceptable behaviour or non-compliance with the Code of Ethical Behaviour.

The same proceedings will be followed as when a complaint is issued by a member of staff.

3.1.12 Verdict and Recommendation

1. After finishing the hearing and closing the investigation, the Committee will privately discuss the outcome of their investigation, the verdict and the recommendation they will make to the Executive Board.
2. The Committee will decide on the basis of a majority of votes.
3. A written recommendation to the Executive Board will be formulated and sent within four weeks.
 - a. The recommendation includes a motivated verdict of the legitimacy of the complaint, or about the nature of the incident, and recommendation for disciplinary actions or measures to be taken.
 - b. The Committee can also advise the Executive Board to update its policies concerning ethical and unacceptable behaviour.
4. The conclusion of the Committee is submitted to the complainant and the respondent, the parties involved, and the Executive Board.
5. All addressees are expected to treat the decision and conclusion confidentially.

3.1.13 Decision of the Executive Board

1. In principle the Executive Board adopts the recommendations made by the Committee. In case there are justifiable reasons to deviate from this, the Executive Board will inform the Committee in writing of its considerations.
2. The Executive Board will notify the Committee, complainant, respondent, and involved third parties of its decision and following disciplinary measures, in writing, within three weeks after having received the recommendation from the Committee.

3.2 *Reporting Violations of Academic Integrity*

WUAS has formally adopted The Netherlands Code of Conduct for Research Integrity (Part 8a). This code is applicable to all WUAS staff members and students that are involved in Research at WUAS.

Chapter 5 of the code contains the standards for non-compliance with the code, regulations for dealing with research misconduct, and violations of the academic integrity. As written in the code the clearest examples of research misconduct are fabrication, falsification and plagiarism.

In principle, the procedure as described in paragraph 3.1 of this Complaints Procedure applies.

However, the composition of the Complaint Committee will differ. In this case the composition is as follows:

- Vice-President Academic Affairs/ Head of School
- One faculty member employed by WUAS (PhD qualified and scholarly active), or engaged via the Academic Advisory Board
- Secretary (to be assigned)

4 Disciplinary Measures

Appropriate disciplinary actions are dependent on the type and severity of the misconduct or unacceptable behaviour. Disciplinary actions are an essential component of promoting ethical behaviour and enforcing WUAS's policy on ethical behaviour. Non-compliance with the codes referred to in Chapter 1 can therefore lead to the following disciplinary actions (non-exhaustive):

- Verbal warning; this is the mildest form of disciplinary action, it should include a warning that repetition of the behaviour/misconduct may call for further disciplinary measures,
- Letter of warning; a formal warning will be given, including the warning that repetition of the behaviour/misconduct may call for further disciplinary measures. This letter will be kept in the personnel's file,
- Writing an action plan to improve behaviour,
- Loss of privileges; in this case certain privileges, such as working from home, freedom to decide on working time, will be revoked,
- Fine; a penalty to repay damage occurred due to the staff member's behaviour,
- Withholding annual increments and/or demotion,
- Temporary suspension, with or without entitlement to salaries. This may also be imposed pending a complaints procedure, depending on the seriousness of the complaint, and the impact on the organisation,
- Discharge or dismissal; leading to termination of the employment agreement.