

# UNDESIRABLE BEHAVIOUR COMPLAINTS PROCEDURE

Adopted with the consent of the Participational Council on 28 March 2018  
**Final version adopted in a meeting of the Executive Board on 24 April 2018**

## **Preamble**

Van Hall Larenstein University of Applied Sciences upholds the principle that all staff and students are required to deal with each other in a respectful and ethical manner, so as to enable them to operate within a socially safe work and study environment. The entire organisation subscribes to this approach and it is reflected in the university's institutional plan and code of conduct.

Van Hall Larenstein pursues a preventive policy aimed at preventing and combating undesirable behaviour, such as sexual or other intimidation, aggression, violence, discrimination and bullying. If a person experiences undesirable behaviour and is unable to resolve the matter, it is useful to have regulations that set out an individual's rights and carefully stipulates internal procedures. The complaints procedure set out below serves this purpose.

This complaints procedure represents the implementation of Section 7.57 of the Higher Education and Research Act (WHW) and Chapter U of the collective labour agreement for universities of applied sciences. In relation to staff the legal basis for this procedure may be found in the Working Conditions Act [*Arbowet*] and the Equal Treatment (Men and Women) Act [*Algemene Wet Gelijke Behandeling*].

## Chapter 1. General

### Article 1. Definitions

For the purposes of this complaints procedure pursuant to the collective labour agreement for higher professional education the following terms bear the meaning assigned to them.

*Accused:* a person against whom a report or complaint is directed.

*Aggression and violence:* Aggression is a wide-ranging concept. Aggression occurs where a person suffers material harm, injury or psychiatric harm within a work-related environment. It does not only include physical violence but also verbal and non-verbal forms of aggressive violence. Aggression may also occur where a person feels threatened.

*Bullying:* bullying is intimidatory behaviour of a structural nature against which the person bullied is unable to defend themselves. A person may be bullied by an individual or a group. Repetition represents an important component of this definition. If such undesirable behaviour occurs structurally, we are dealing with bullying.

*Collective labour agreement:* the collective labour agreement for higher education.

*Complainant:* a student or member of staff at the university who experiences undesirable behaviour and has reported it to a confidential counsellor and/or has submitted a complaint to the complaints board.

*Complaint:* any report submitted to the complaints board by a member of staff or a student alleging undesirable behaviour.

*Complaints board:* an external complaints board established by the Executive Board.

*Complaints officer:* an officer appointed by the Executive Board who is responsible for the provision of administrative support for the purposes of dealing with a complaint. The position of complaints officer is irreconcilable with the role of a confidential counsellor.

*Confidential counsellor:* an independent person whom the Executive Board has appointed and whom a student or staff member may approach with a report concerning undesirable behaviour.

*Discrimination:* discrimination occurs where a person is treated differently from someone else in a similar situation. This may occur on the basis of religion, personal beliefs, political leanings, race, gender, nationality, sexual orientation, marital status, age, disability or chronic illness.

*Executive Board:* the Executive Board of Van Hall Larenstein University of Applied Sciences.

*Mediator:* a mediator is a person whom a complainant and an accused party accept for the purposes of finding an appropriate solution.

*Member of staff/Staff member:* a member of staff or staff member is deemed to refer to any person who is employed by Van Hall Larenstein University of Applied Sciences in accordance with an employment contract. This also refers to employment agency workers, wage earners, interns, seconded personnel and volunteers. Former staff members who were party to an employment contract with Van Hall Larenstein within no more than three (3) years ago may also invoke this complaints procedure.

*Organisation:* Van Hall Larenstein University of Applied Sciences.

*Report:* a report is a statement made by a student or member of staff to a confidential counsellor alleging undesirable behaviour.

*Sexual or other intimidation:* under the Working Conditions Act sexual or other intimidation is deemed to refer to all forms of verbal, non-verbal or physical conduct with sexual overtones that affect a person's dignity or whose purpose is to affect someone's dignity. In this respect the Working Conditions Act focuses particularly on threatening, insulting, humiliating or offensive situations.

*Student:* a student is deemed to refer to anyone who is registered as a student or trainee with Van Hall Larenstein. Former students who studied at Van Hall Larenstein no more than three (3) years ago may also invoke this complaints procedure.

*Undesirable behaviour:* Discrimination, sexual or other intimidation, bullying, aggression, violence and any other such factors in one's work or study environment that occasion stress.

*WHW:* the Higher Education and Research Act.

**Article 2. Access to this complaints procedure** This complaints procedure is a public document that is available to both the university's students and staff. This document may be consulted on the Van Hall Larenstein website, studentnet and intranet.

## **Chapter 2. Special provisions**

### **Article 3. Prejudice**

One may not prejudice a person on the grounds that they have invoked this complaints procedure, have provided assistance in this respect or have been examined as a witness.

### **Article 4. Opportunity to perform duties properly**

The Executive Board shall afford a confidential counsellor and the member of the complaints board an opportunity to perform their duties properly.

### **Article 5. Confidentiality**

5.1 Anyone who is directly or indirectly involved in a complaints procedure shall have a duty of non-disclosure for the purposes of safeguarding the privacy of the complainant and the accused. This duty shall not apply in relation to a doctor or a judicial officer.

5.2 Anyone who is directly or indirectly involved shall exercise the utmost care in relation to the confidentiality of any information that comes to their attention. A person's name shall only be mentioned in a report or elsewhere provided that the complaints board deems it necessary to do so. Correspondence shall be marked 'Personal and confidential'.

## **Chapter 3. Reporting and dealing with a complaint.**

### **Article 6. Reporting**

6.1 Every current or former staff member or student of Van Hall Larenstein who has to contend with undesirable behaviour in a work or study environment may report this to a confidential counsellor.

6.2 Undesirable behaviour shall be reported as soon as possible after a confrontation but at any rate within a reasonable period of time.

6.3 A report may be made in verbal or written form but never anonymously.

### **Article 7. Complaints**

7.1 Every current or former staff member or student of Van Hall Larenstein who has to contend with undesirable behaviour in a work or study environment may submit a complaint to the complaints board. A complaint shall be presented directly to the independent external complaints board through the complaints officer (in the case of staff) or a complaints office (in the case of students).

7.2 A complaint shall be submitted as soon as possible after a confrontation but at any rate within a reasonable period of time.

7.3 A report may be made in verbal or written form but never anonymously.

7.4 The complaints board shall notify the Executive Board in confidence of the fact that a complaint has been filed against a particular person.

## **Chapter 4. Procedure before a confidential counsellor**

### **Article 8. Confidential counsellor**

8.1 The Executive Board shall appoint a separate confidential counsellor for staff and students in the case of each location (Velp and Leeuwarden).

8.2 A confidential counsellor shall be arranged externally.

### **Article 9. A confidential counsellor's duties**

A confidential counsellor's duties shall include:

- a. acting as a contact person for staff and students who have to contend with undesirable behaviour;
- b. assisting staff and students, providing them with support and referring them on where necessary;
- c. informing a staff member or student about the complaints procedure set out here and its implications;
- d. providing a staff member or student with advice concerning any steps to be taken;

- e. providing assistance and support to a staff member or student who is considering whether to submit a complaint to the complaints board;
- f. seeking a mediator or another solution at the request of a staff member or student;
- g whether solicited or unsolicited, providing advice to the Executive Board or any other business unit in relation to preventing and combatting undesirable behaviour;
- h. presenting an annual anonymised report to the Executive Board concerning the number of reports and their nature;
- i. acting on behalf of a complainant before the complaints board in exceptional circumstances at the request of the relevant staff member or student.

#### **Article 10. A confidential counsellor's powers**

A confidential counsellor shall have the power to:

- a. mediate between a complainant and the accused;
- b. consult one or more of the other confidential counsellors and/or the complaints board in relation to the manner in which a report may be dealt with;
- c. submit a complaint in the organisation's interests;
- d. gain access to any part of the organisation and to talk to any staff or students;
- e. request any personal information. Where a staff member's privacy-sensitive information is involved, this shall occur in close consultation with the policy manager. Where a student's privacy-sensitive information is involved, this shall occur in close consultation with a student counsellor associated with the relevant organisation;
- f. draw the Executive Board's attention to a case where the confidential counsellor receives one (1) or more complaint(s) that the complainant(s) does or do not present, or has or have not presented to the complaints board. A confidential counsellor shall consult the policy manager about this beforehand.

#### **Article 11. Confidential counsellor's annual report**

A confidential counsellor shall keep anonymous records of the nature and scope of the cases that they deal with and the outcome of any mediation. This information shall be included in the relevant annual report. Based on an annual report, the Executive Board and a confidential counsellor shall consult each other no less than once every year. The Executive Board shall take the initiative for this purpose.

#### **Article 12. Inadmissibility of a report**

A report may be declared inadmissible on the following grounds:

- a. a conflict of interests;
- b. personal and/or factual circumstances;
- c. in the event that such report does not relate directly to any undesirable behaviour as provided for in this procedure. Should such a situation occur, the relevant confidential counsellor shall be referred to another party or body that is able to deal with the report in question.

#### **Article 13. Facilities and support**

The Executive Board shall be responsible for any facilities that are required to ensure that a confidential counsellor is able to perform their duties properly. Furthermore, the Executive Board shall be responsible for the provision of appropriate information.

## **Chapter 5. Procedure before the complaints board**

### **Article 14. Appointment and membership**

Van Hall Larenstein shall have an external complaints board, which shall consist of no fewer than two (2) members, a chair and a deputy chair. They shall possess appropriate expertise in relation to the law and undesirable behaviour. The complaints board shall receive support in the form of an external secretary who is not a member of the board and whose duty shall be recordkeeping and the preparation of preliminary advice. The members of the complaints board may not be directly or indirectly associated with the organisation in any way whatsoever.

### **Article 15. The duties of the complaints board**

The complaints board's duties shall include:

- a. ruling on the admissibility of a complaint;
- b. investigating a complaint or complaints concerning undesirable behaviour;
- c. presenting advice in respect of any complaint to the Executive Board.

### **Article 16. Submission of a complaint**

16.1 As stipulated in Article 7.1, a complaint shall be received by the complaints officer (in the case of staff) or a complaints office (in the case of students). They shall ensure that the complaints board's external secretary receives any complaint and they shall send the complainant a notice confirming receipt and a copy of this 'Undesirable Behaviour Complaints Procedure'.

16.2 A complaint shall at least contain the following:

- a. a description of the complaint, including the period during which the relevant behaviour occurred;
- b. the name of the accused person(s);
- c. a description of any steps that the complainant has already taken;
- d. the complainant's name and address;
- e. the date of the complaint.

16.3 In principle, a complaint may be submitted within a period of two (2) years as of the time when the relevant undesirable behaviour occurs. The chair may decide to derogate from this deadline where the circumstances constitute grounds for doing so.

### **Article 17. Investigation and hearing both sides**

17.1 The complaints board shall hear the complainant within ten (10) working days after the relevant complaint has been received.

17.2 Following up on Article 17.1, the accused shall be examined along with any other person if necessary.

17.3 The secretary and two (2) members of the complaints board, including its chair, shall attend every hearing. The hearings of the complaints board shall be closed. The secretary shall prepare a written record of every hearing.

17.4 The following shall apply in respect of a hearing:

- a. the complainant and the accused shall not be examined in each other's presence, unless both explicitly give notice that they wish to be heard in each other's presence;
- b. anyone involved who works within the organisation shall have a duty to attend;
- c. the complainant and the accused shall be entitled to inspect all of the documents pertaining to the relevant complaint.

17.5 The complainant and the accused may arrange to be assisted by an adviser and/or someone from within or outside the organisation but not their partner or a member of their family.

### **Article 18. Conclusion and advice**

18.1 An investigation must be completed within thirty (30) working days.

In the event that an investigation is not completed within a period of thirty (30) days, the complaints board shall report on its findings to date to the Executive Board. A request for an extension of the aforementioned deadline by no more than thirty (30) days shall be enclosed or attached.

18.2 Once an investigation has been completed, the complaints board shall present the Executive Board with advice citing grounds for it. Such advice shall at any rate include the following points;

- a. the nature of the complaint;
- b. the person affected by the undesirable behaviour;
- c. whether or not there are grounds for the complaint;
- d. a recommendation of action to be taken by the Executive Board should there be grounds for the complaint concerned.

18.3 In the event that the complaints board's advice pertains to a member of the Executive Board, the advice shall be addressed to the supervisory board.

### **Article 19. Measures**

19.1 The complaints board may recommend that the Executive Board take the following action against the accused where a member of staff is involved:

- a. to issue them with a written reprimand;
- b. to transfer them;
- c. to suspend them;
- d. to dismiss them.

19.2 The complaints board may recommend that the Executive Board take the following action against the accused where a student is involved:

- a. to issue them with a warning;
- b. to issue them with a written reprimand;
- c. to transfer them to a different group;
- d. to deny them full or partial access to the university's buildings and grounds or to suspend their registration for a period of no more than one (1) year;
- e. to deny them admission into the university or to terminate their registration permanently.

### **Article 20. Executive Board decision**

20.1 Within ten (10) working days after receiving advice from the complaints board, the Executive Board shall make a written decision in respect of the complaint concerned. The chair of the complaints board shall be consulted before it makes a decision where it intends to derogate from the relevant advice. In the event that the Executive Board does not act in accordance with the complaints board's advice, the relevant decision shall be recorded along with the grounds for it.

20.2 The Executive Board's decision shall be communicated to the complaints officer, the members of the complaints board, the complainant and the accused along with the complaints board's advice and the records of the hearings.

20.3 Both before and while a complaint is dealt with, the Executive Board may provide temporary relief at the request of the complainant and/or the complaints board, namely:

- a. where it is necessary to do so for the complainant's welfare; and/or
- b. in the case of an untenable situation affecting one (1) of more of those directly involved.

20.4 After declaring that a complaint is well-founded, the Executive Board may decide to take action for the benefit of the complainant as set out in the complaints board's advice.

20.5 After declaring that a complaint is well-founded, the Executive Board may decide to take the action stipulated in Article 19 against the accused. Depending on the concrete situation and nature of the complaint, the nature of such action may be both preventive and corrective.

#### **Article 21. Inadmissibility of a complaint**

The complaints board may declare a complaint to be inadmissible on the following grounds:

- d. where a complaint does not relate directly to any undesirable behaviour as provided for in this procedure;
- a. should the deadline for submitting a complaint have expired;
- b. where a complaint is submitted anonymously;
- c. in the event that the board has already dealt with the relevant complaint, unless there are any new facts and/or circumstances;
- d. where legal proceedings are current or have been completed in relation to a complaint, unless they pertain to labour law.

#### **Article 22. Informal procedure or withdrawal of complaint**

22.1 A complaint may be withdrawn at any time.

22. Should a complainant and the accused consent to this, the complaints board may suspend its investigation in anticipation of the initiation of an informal procedure, for example, in the form of mediation. An informal procedure may lead to a complaint being withdrawn.

#### **Article 23. Objections and appeals**

23.1 In accordance with Chapter 5 of the collective labour agreement for higher professional education, staff may lodge an appeal against a decision of the Executive Board as provided for in the foregoing article with the Appeals Board.

23.2 In accordance with Chapter 5 of the collective labour agreement for higher professional education, students may lodge an appeal against a decision of the Executive Board as provided for in the foregoing article with the Dispute Resolution Board.

#### **Article 24. Reporting**

The complaints officer shall keep records of the nature and scope of the cases that are submitted and dealt with. This information shall be included in the relevant annual report.

## **Chapter 6. Final provisions**

#### **Article 25. Citation**

This procedure may be cited as the 'Undesirable Behaviour Complaints Procedure'.

#### **Article 26. Adoption**

This procedure shall be adopted by the Executive Board after the approval of the Participational Council has been obtained.

#### **Article 27. Effective date**

This procedure shall come into effect on 28 March 2018. Any previous version of this complaints procedure shall cease to apply by virtue of this.