

PROCEDURE FOR DEALING WITH COMPLAINTS
OF INAPPROPRIATE BEHAVIOUR

PROTOCOL FOR THE CONFIDENTIAL ADVISER

University of the Arts The Hague

Complaints Procedure for Inappropriate Behaviour, University of the Arts

The Board of Governors resolves,
having regard to article U-1 of the CAO-HBO,
to adopt the Complaints Procedure for Inappropriate Behaviour, which reads as follows:

Article 1. Definitions

The following definitions apply in this regulation:

- a. *Inappropriate behaviour*: behaviour that is generally regarded as undesirable or improper and felt to be inappropriate, intimidating, hurtful or threatening and therefore unacceptable. More specifically, forms of inappropriate behaviour include:
 1. Sexual harassment: undesirable sexual advances, requests for sexual favours or other verbal, non-verbal or physical conduct of a sexual nature;
 2. Aggression and violence: bullying, psychological or physical harassment, threats or attacks intended to cause mental or physical harm;
 3. Discrimination: in public, the intentional utterance, verbally, in writing or in an image, of offensive comments about a person or persons because of their race, religion, lifestyle, sexual nature or handicap, or making any distinction on the basis of those factors.It shall also be regarded as inappropriate behaviour if:
 1. the acceptance of such behaviour is implicitly or explicitly made a condition for a person's employment or enrolment as a student;
 2. such behaviour or a person's reaction to such behaviour forms the basis for decisions that affect that person's work or study;
 3. the aim or the consequence of such behaviour is to impair a person's work or academic performance and/or to create an intimidating, hostile or unpleasant work or academic environment.
- a. *Complaint*: a complaint of inappropriate behaviour submitted to the confidential adviser or the complaints committee.
- b. *Complainant*: the individual referred to in article 2 of this regulation.
- c. *Accused*: the individual whose behaviour is the subject of a complaint to the confidential adviser or the complaints committee.
- d. *Confidential adviser*: the individual referred to in article 4 of this regulation.
- e. *Complaints committee*: the committee referred to in article 5 of this regulation.

Article 2. Right of complaint

Employees and students of the University have the right to approach the confidential adviser or to lodge a complaint with the complaints committee if they are confronted with inappropriate behaviour by a fellow employee or student. The parents or guardians of students who are still minors may also act as complainants.

Article 3. Confidentiality and secrecy

1. Any person with knowledge of facts and documents relating to a (possible) case of inappropriate behaviour by virtue of this regulation is obliged to observe confidentiality with respect to those facts and documents.
2. Failure to comply with the duty of confidentiality by an employee of the University shall be regarded as neglect of duty within the meaning of article E-2 of the CAO-HBO.

Article 4. Confidential adviser

1. The Board of Governors will appoint one or more confidential advisers. Their appointment will in principle be for a period of five years.
2. The duties of the confidential advisers are laid down in the Protocol for the Confidential Adviser adopted by the Board of Governors, which is attached as an appendix to this regulation.
3. In principle, the confidential advisers will perform their tasks in addition to their regular work. The Board of Governors will ensure that the individual's tasks as confidential adviser and regular duties can be properly combined.

Article 5. Complaints committee

1. The University has a complaints committee consisting of three members. A deputy will be appointed for each member.
2. The members and the deputy members will be appointed by the Board of Governors for a period of three years. Members who are standing down may be reappointed.
3. Members of the Board of Governors, directors of faculties and confidential advisers may not be appointed to the complaints committee.
4. The committee will appoint a chairman and a secretary from among its members.
5. The complaints committee will keep records of the complaints it receives and how they are handled. These records are only accessible to members of the committee and the confidential adviser. The records will be destroyed after five years.
6. The complaints committee will report on its activities to the Board of Governors every year.

Article 6. Submission of a complaint

1. A complaint must be submitted to the complaints committee in writing and must include:
 - a. a description of the inappropriate behaviour, specifying the time, the place and the details of the incident as precisely as possible;
 - b. the name of the complainant;
 - c. the steps taken by the complainant and any relevant written documents; these documents must be submitted to the complaints committee.
2. The complaints committee may declare the complaint inadmissible if:
 - a. the complaint does not relate to inappropriate behaviour;
 - b. the complaint does not comply with the requirements listed in section 1;
 - c. the inappropriate behaviour occurred more than two years before the complaint was submitted;
 - d. the complaint is made anonymously.

3. The complainant may withdraw a complaint at any time. In that case, the complaints committee will immediately cease to handle the complaint.
4. The complainant and the accused may be assisted in the procedure before the complaints committee by a self-appointed adviser.

Article 7. Handling of the complaint

1. When the complaints committee has decided to handle a complaint, the complainant and the accused will be invited to attend a hearing.
2. The complaints committee will hear the complainant and the accused separately.
3. Every hearing of the complaints committee will be held in private.
4. The complainant and the accused are entitled to inspect the documents relating to the complaint. The complaint committee is free to make personal data invisible because of the confidentiality.
5. The complaints committee will gather any further information it considers necessary, including hearing witnesses and other individuals who may be able to provide information about the circumstances under which the inappropriate behaviour occurred.
6. A report will be made of every hearing. Individuals who are examined during the hearing will be given an opportunity to comment in writing on the report.

Article 8. Decision and recommendation

1. In its decision, the complaints committee will declare the complaint:
 - a. inadmissible, or
 - b. unfounded, or
 - c. well-founded.The decision will also include the grounds on which it is based.
2. If the complaints committee declares the complaint inadmissible, it will inform the complainant of its decision.
3. If the complaints committee declares the complaint unfounded or well-founded, it will inform the complainant, the accused and the Board of Governors of its decision.
4. If the complaints committee upholds the complaint, if possible it must issue advice on the measures that the Board of Governors is empowered to take. The complaints committee will also inform the complainant and the accused of its advice.
5. Measures recommended by the complaints committee will be guided by:
 - a. for students: the Education and Examination Regulations;
 - b. for employees: article P-4 of the CAO-HBO.

Article 9. Decision of the Board of Governors

1. Within three weeks of receiving the decision of the complaints committee, as referred to in article 8, paragraph 3, and the advice – if any – of the complaints committee, as referred to in article 8, paragraph 4, the Board of Governors will make a decision.
2. The Board of Governors must give reasons for its decision if it departs from the recommendations of the complaints committee.
3. The complainant, the accused and the complaints committee will be notified of the decision of the Board of Governors.

Article 10. Review

1. Both parties may ask the complaints committee to review a decision and/or recommendation on the grounds of facts or circumstances that have emerged later and which, had they been known earlier, might have led to a different decision and/or recommendation.

2. In principal the review will be executed by the same complaint committee.
3. The possibility to request a review will lapse one year after the complaints committee has rendered its decision.

Article 11. Entry into force and title

This regulation is an update of the version of January 2011 and will enter into force from May 2019. The regulation can be cited as the Complaints Procedure for Inappropriate Behaviour, University of the Arts The Hague.

Protocol for Confidential Adviser

The Board of Governors resolves,
having regard to article U-1 of the CAO-HBO and article 4 of the Complaints Procedure for Inappropriate Behaviour, to adopt the Protocol for Confidential Adviser, which reads as follows:

Preamble

The confidential adviser is the first person for students or staff to go to with personal, work or study-related problems, or if they feel unsafe or have complaints about transgressive behaviour. The confidential adviser offers a listening ear, asks questions to clarify the problem, can offer guidance or advice, may refer you on to others and in the event of a complaint can discuss with you the best way of dealing with this.

The strength of the confidential adviser is that he/she approaches the matter with care, makes and keeps records in accordance with the privacy act and in principle does not share with anyone the information that he/she has been given in a confidential interview as part of his/her job. Confidentiality is in principle mandatory. In exceptional cases however the confidential adviser is statutorily obliged to notify a complaint to the management of the institution in the case of a sexual offence committed by a member of staff of the university. The mandatory confidentiality may also be waived in the case of any other serious criminal act (e.g. assault) and if the confidential adviser is convinced that this will largely prevent or contain any resulting damage.

In the case of complaints about the content and arrangements for the teaching, the organisation and the general running of affairs it is the role of the confidential adviser to be objective and informative. The role involves providing information and if necessary referral. The confidential adviser in such instances points out the procedures and explains them. No systematic personal guidance is provided.

In the case of complaints about undesirable behaviour and matters of integrity the confidential adviser plays an important role in providing help, support and guidance.

It is not the role of confidential adviser to act as mediator between the complainant and the accused but he/she may arrange mediation.

The protocol for confidential adviser lays down the duties and powers of the confidential adviser, as well as rules concerning the handling of confidential information by the confidential adviser.

This protocol is part of the Complaints Procedure for Inappropriate Behaviour, University of the Arts The Hague. The definitions in that regulation apply *mutatis mutandis* to this protocol.

Duties of the confidential adviser

1. Dealing with problems of employees and students that fall within the scope of the Complaints Procedure for Inappropriate Behaviour, including:
 - a. providing assistance, counselling and advice to a complainant in order to facilitate discussion and management of the problem;
 - b. trying to find a solution to the problem or terminate the inappropriate behaviour;
 - c. assisting the complainant in submitting a complaint to the complaints committee;
 - d. providing follow-up care and, if necessary, referring the complainant to external experts.The confidential adviser will carry out these duties only with the express consent of the complainant.
2. Providing information to employees, students and their parents/guardians about the code of conduct for standards of behaviour, the confidential adviser and the Complaints Procedure for Inappropriate Behaviour.
3. Identifying actual or potential problems in the University and making proposals for resolving them to the Board of Governors and/or the faculty directors.
4. The confidential adviser is accountable to the Board of Governors for the performance of his or her duties.
5. The confidential adviser will report annually to the Board of Governors on the number and the nature of the cases handled. The confidential adviser may include recommendations for preventing inappropriate behaviour in this report.

Powers of the confidential adviser

1. To conduct interviews and collect information from employees, students, management and the Board of Governors.
2. To request mediation by individuals or agencies.
3. To refer complainants to other counsellors and social services.
4. To consult internal and external experts.

Handling of complaints by the confidential adviser

1. The relationship between the confidential adviser and the complainant and any other persons who rely on him or her or whom he or she approaches is confidential. The confidential adviser promises to maintain confidentiality concerning anything he or she learns relating to the individuals concerned in the performance of his or her duties as confidential adviser.
2. The confidential adviser will keep a record of the requests for assistance that he or she receives and deals with. No information from those records will be provided to third parties other than with the express consent of the individuals concerned or if there are serious reasons as defined in section 3. The records will be destroyed after five years.
3. In the absence of the express consent of the individual concerned to provide information to third parties, the confidential adviser may only consider himself or herself relieved of the duty of confidentiality if at least all of the following conditions are met:
 - a. If the confidential adviser faces a moral dilemma by maintaining confidentiality;
 - b. Everything possible has been done to secure the consent of the individual concerned;
 - c. There is no alternative way of resolving the problem than by breaching confidentiality;
 - d. Not breaching confidentiality will almost certainly cause demonstrable and serious harm to the persons concerned or others;
 - e. The confidential adviser is convinced that breaching confidentiality will substantially avert or limit that harm.
4. If a situation as described in section 3 occurs, before actually breaching confidentiality, the confidential adviser will inform the individuals concerned of his or her intention to do so.