Regulations on Undesirable Behaviour

Preamble

In order to promote well-being in the study and working environment, Radboud University Nijmegen wishes to eliminate undesirable behaviour. To prevent and deter such behaviour the executive board, with the consent of the works council and the student council, has adopted these Regulations on Undesirable Behaviour.

Everyone at this university has a shared responsibility to maintain a pleasant social atmosphere. Employees and students are expected to behave in a proper manner by respecting the rights of others at all times. Even if an employee/student does not experience any form of undesirable behaviour himself/herself, he/she can act responsibly by pointing out any such behaviour he/she witnesses.

A complaint in the context of the Regulations on Undesirable Behaviour can be lodged with the executive board or the complaints committee for Undesirable Behaviour. If a complaint is lodged directly with the committee, the executive board will not be informed of the existence of the complaint until the committee – after a formal assessment – proceeds to assess the substance of the complaint.

These regulations were drawn up in accordance with the statutory provisions on equal treatment and the obligations of employers as laid down in the Dutch Working Conditions Act with a view to implementing policy for the prevention and reduction of psychosocial work stress, including undesirable behaviour. These regulations also implement Article 1.12 of the ‘CAO Nederlandse Universiteiten’ (collective labour agreement of the Dutch universities).

Article 1 Definitions

1.1. Undesirable behaviour:
- Intimidation/bullying: any form of verbal, non-verbal or physical behaviour aimed at or resulting in the violation of a person's dignity and when a threatening, hostile, insulting, humiliating or hurtful environment is created, which is in any event understood to be the case when a person is subjected to or rejects such behaviour and this is used in decisions which affect the person concerned;
- Sexual harassment: any form of verbal, non-verbal or physical behaviour with a sexual connotation aimed at or resulting in the violation of a person's dignity, in particular when a threatening, hostile, insulting, humiliating or hurtful environment is created, which is in any event understood to be the case when a person is subjected to or rejects such behaviour and this is used in decisions which affect the person concerned;
- Aggression and violence: verbally, psychologically or physically harassing, threatening or attacking others;
- Discrimination: making any remarks in whatever form about, performing acts in respect of, making decisions about or discriminating against a person on the grounds of religion, beliefs, political affinity, race, gender, nationality, heterosexual or homosexual orientation, marital status, age or disability, aimed at or resulting in the violation of a person's dignity or the violation of a person's rights and/or resulting in a person being adversely affected by this in any other manner whatsoever.

1.2. Confidential adviser: the person appointed by the executive board as adviser on undesirable behaviour.

1.3. Complaints committee: the committee appointed by the executive board to handle complaints about undesirable behaviour.

1.4. Employee: a person who, in whatever capacity, is employed by or performs work for Radboud University Nijmegen or who was employed or performed work for the university at the time of the occurrence or last occurrence of undesirable behaviour.

1.5. Student: a person who is, will be or was a student or external student at Radboud University Nijmegen at the time of the occurrence or last occurrence of undesirable behaviour.

1.6. Complaint: a written or electronic complaint about undesirable behaviour, lodged with the executive board or directly with the complaints committee.

1.7. Complainant: the employee or student who lodges a complaint with the executive board, complaints committee, confidential adviser or board of the Foundation about undesirable behaviour that he/she has personally experienced.
1.8. The accused: the employee or student concerning whose behaviour a complaint has been lodged.
1.9. Executive board: the executive board of Radboud University Nijmegen.
1.10. Board of the Foundation: the board of Stichting Katholieke Universiteit.

**Article 2  General**

2.1. An employee or student who has experienced undesirable behaviour has the right to lodge a complaint, either directly or through the confidential adviser, with:
   a) the executive board. The executive board will forward the complaint immediately to the complaints committee for advice;
   b) the complaints committee.
2.2. A complaint must be lodged in writing, including a date and signature, within two years of the occurrence of undesirable behaviour and must in any case state the following:
   a) the name and address of the complainant;
   b) a description of the undesirable behaviour, and if possible:
   c) the name of the accused;
   d) the date, time, place and circumstances;
   e) a description of the steps already taken by the complainant and the relevant documents;
   f) the names and addresses of any witnesses or details of any other evidence.
2.3. The executive board will inform the dean or director concerned about the existence of the complaint as soon as the complaints committee has announced that it will start assessing the substance of the complaint (see 4.5(e) and (f)).
2.4. If the complaint concerns a member of the executive board, the complaint will be lodged – either directly or through the confidential adviser – with the board of the Foundation or directly with the complaints committee. In that case, the complaints committee will provide advice to the board of the Foundation and the latter will exercise the powers vested in the executive board in accordance with these regulations.
2.5. Without prejudice to statutory provisions or other binding regulations, every person is obliged, within the reasonable period specified, to render the confidential adviser and the complaints committee every assistance they may reasonably request in exercising their powers.
2.6. Any person involved in the handling of a complaint is obliged to preserve the confidentiality of all the information he or she has become aware of in the course of the complaints procedure, with the exception of the provisions of Articles 3.3 and 4.9 of these regulations.

**Article 3  Confidential advisor**

3.1. Appointment
   a) The executive board will appoint at least four confidential advisers on undesirable behaviour – two for the employees and two for the students – for a period of four years. Reappointment is possible.
   b) The executive board may remove a confidential adviser from office:
      i) at the confidential adviser's request;
      ii) if the confidential adviser's performance is unsatisfactory.
   c) Members of the board of the Foundation, the executive board and the executive committee, the deans and vice deans of the faculties, the administrative directors of the faculties, the cluster directors, the secretary general of the university and the directors of teaching and research institutes are not eligible for appointment as confidential adviser.
3.2. Duties
   a) The confidential adviser is the point of contact for questions and complaints about undesirable behaviour.
   b) The confidential adviser provides care, assistance and advice to the person who contacts him/her. The confidential adviser may furthermore assist in seeking an informal solution.
   c) The confidential adviser will only act on behalf of the complainant or the accused if this person has given him/her permission to do so. The confidential adviser may not act for both the complainant and the accused at the same time.
   d) The confidential person will point out to the complainant the possibility of lodging a complaint with the executive board, the board of the Foundation or the complaints committee.
   e) The confidential adviser provides information about undesirable behaviour.
   f) The confidential adviser advises the executive board and the responsible management (on request or otherwise) about the prevention and deterrence of undesirable behaviour.
   g) The confidential adviser will manage the archive records held by him/her in accordance with the current legislation and will destroy these when they are no longer relevant.
3.3. Accountability
   a) The confidential adviser will render account for his/her activities afterwards to the executive board in an
annual report, in which the matters that he/she has dealt with and the activities he/she has carried out will be reported on in general terms. The report must be in anonymized form. An oral explanation of the report will be given to the executive board. The report will then be communicated to the Works Council and the University Student Council.

b) The confidential adviser has a duty of confidentiality with regard to the facts that have come to his/her knowledge in his/her capacity as confidential adviser. This may only be departed from with the explicit permission of the complainant and the accused.

c) The provisions under (b) do not apply if statutory provisions provide otherwise.

Article 4 Complaints committee for undesirable behaviour

4.1. Appointment and composition
a) The executive board will appoint a complaints committee for undesirable behaviour. This committee will consist of
b) a chairman, a deputy chairman and at least six members.
c) The chairman and deputy chairman are not employed by Radboud University Nijmegen and have a legal background.
d) Two of the members are experts in the field of undesirable behaviour. At least two members are members of staff and at least two members are students at Radboud University Nijmegen. The members who are members of staff and students will be appointed after consultation with the works council and the student council. The provisions of Article 3.1(b) and (c) apply by analogy.
e) The executive board will appoint the chairman, deputy chairman and the expert members for a period of four years. The other members of the complaints committee will be appointed for a period of two years. Reappointment is possible.
f) In appointing members, the aim is have an even distribution of male and female members.
g) A confidential adviser is not eligible for appointment as member or chairman of the complaints committee.
h) For the investigation of a complaint, the number of members of the complaints committee may be increased with ad hoc advisers, who may or may not be associated with the university.
i) The complaints committee will be supported officially by a lawyer, who will act as secretary of the committee.

4.2. Duties
The complaints committee will investigate the complaint and provide advice about it to the executive board.

4.3. Powers
Without prejudice to statutory provisions or other binding regulations, the complaints committee will at any time while handling the complaint be authorized to:
a) obtain information from all employees, students and university bodies;
b) request access to all documentation and correspondence it deems relevant to the assessment of the complaint;
c) consult experts or other third parties, whether or not associated with the university.

4.4. Working procedure
a) In so far as the working procedure of the committee has not been laid down in these or later regulations, it will be decided on by the chairman.
b) The chairman and two members will in any case be involved in the handling of a complaint and possibly consultants. The chairman will decide on the composition of the committee on a case-by-case basis, with the proviso that at least one expert member and one member who is a member of staff or a student will serve on the committee.
c) Members of the complaints committee who are in any way whatsoever involved with the persons to whom or the facts to which the complaints relate will not be permitted to handle a complaint.
d) The complaints committee will manage the archive records held by it in accordance with current legislation and will destroy these when they are no longer relevant.

4.5. Formal assessment of the complaint
a) After receiving a complaint, the complaints committee will inform the complainant and the accused within ten working days and in writing that it has received the complaint and will inform them of the procedure it will follow. The accused will also be informed of the substance of the complaint.
b) The complaints committee will advise the executive board to declare a complaint inadmissible if it does not meet the conditions stated in Article 2.2(a) or (b) and fails to do so after the complainant has been requested to rectify this within a period to be specified by the committee.
c) The complaints committee may advise that a complaint should not be handled if, in the committee's opinion, the complaint concerns behaviour
i. that does not come under a form of undesirable behaviour defined in Article 1.1;
ii. in respect of which a complaint has already been lodged and handled on the grounds of these or similar regulations;
iii. which occurred more than 2 years prior to the complaint being lodged;
iv. against which the complainant has or could have objected or an appeal can be or could have been lodged;
v. which is or was submitted to the judgment of a judicial body due to legal proceedings having been instituted, or
vi. concerning which an investigation ordered by the public prosecutor or legal action is pending, or if the behaviour forms part of the investigation or legal action of a criminal offence concerning which an investigation ordered by the public prosecutor or legal action is pending.
d) The complaints committee may advise that a complaint should not be handled if, in the committee's opinion, the interest of the complainant or the seriousness of the behaviour is clearly insufficient.
e) If the complaints committee arrives at the opinion that the complaint is inadmissible or cannot be handled, it will inform the complainant. The complainant can then, if he/she so wishes, withdraw the complaint, following which the complaints committee will end the procedure and communicate this to the complainant and the accused. If the complainant does not withdraw the complaint at that point in time or if the complaint has been lodged with the executive board, the complaints committee will immediately provide advice to the executive board.
f) If the complaints committee arrives at the opinion that the complaint is admissible and can be handled, it will proceed with the assessment of the substance of the complaint. If the complaint has been lodged directly with the committee, it will inform the executive board of the existence of the complaint.

4.6. Assessment of the substance of the complaint
a) If the complaints committee proceeds to assess the substance of the complaint, it will hear those persons involved in the complaint who it considers relevant. The complaints committee will in any case give the complainant and the accused the opportunity to be heard.
b) A written report will be drawn up of each hearing, in which the essence of what has been said will be stated. The report will be sent to and signed by the parties that were heard. The complaints committee will process or state in its report of findings the comments on the report made within a period set by the complaints committee by the parties that were heard. If a person who has been heard refuses to sign the report, this will be stated in the report and reasons given if necessary.
c) During the hearing the complainant and the accused may be represented by counsel. The committee must point out to them that they have this option of legal representation.
d) The complaints committee will hear the complainant and the accused in each other's presence, unless the chairman decides that there are compelling reasons not to do so.
e) If each person is heard separately, the committee will inform the complainant and the accused of the proceedings at the hearing during their absence by sending them the written report.
f) The complaints committee may hear witnesses and experts or request experts to provide an experts' report.
g) The hearings of the complaints committee will not be held in public.

4.7. Withdrawal of the complaint
The complainant may at any time during the investigation withdraw the complaint by sending a written statement to the complaints committee. If the complaint was lodged directly with the committee and is withdrawn before the committee has advised the executive board to declare the complaint inadmissible or not to handle the complaint, the complaints committee will end the procedure and communicate this to the complainant and the accused. If the complaint is withdrawn after the complaints committee has advised the executive board as stated in the previous sentence or is withdrawn while the substance of the complaint is being assessed, the complaints committee will immediately communicate this to the executive board, the accused and any other persons involved.

4.8. Report and advice of the complaints committee
a) The chairman of the complaints committee will ensure that the investigation is concluded within eight weeks (forty working days) of receipt of the complaint and that the committee has given its report and advice to the executive board.
b) The report of the committee will in any case contain the reports of the hearings, all the documents relevant to the complaint, the findings of the committee and the conclusions it has drawn from these findings.
c) The advice will include the assessment of the complaint by the complaints committee (whether it is well-founded or unfounded).
d) Before sending the report to the executive board, the complaints committee will inform the complainant and the accused of the conclusions of this report. The complaints committee will process or state in its report the comments made by the complainant and the accused within a period set by the complaints committee.
e) Neither the advice nor the report will be open to the public.

4.9. Accountability
The complaints committee will render account for its activities afterwards and in general terms to the executive board in an annual report. The executive board will send this report, in confidence, to the University Council for information purposes.
Article 5  Decision of the executive board

5.1. The executive board will take a decision within two weeks (ten working days) of receipt of the advice of the complaints committee.

5.2. The total period of ten weeks for handling the complaint can be extended once by four weeks; if the executive board does so, it must inform the complainant, the accused, the complaints committee and the dean or director involved, in a decision supported by reasons.

5.3. Further deferment is possible in so far as the complainant agrees to this in writing.

5.4. The executive board will decide:
a) to declare the complaint inadmissible (see 4.5(b)), or
b) not to handle the complaint (see 4.5(c)), or
c) to declare the complaint well-founded, or
d) to declare the complaint unfounded.

5.5. The executive board will, immediately and in writing, inform the complainant and the accused, as well as any confidential adviser involved, of the decision it has taken. The findings and conclusions, as well as the advice of the committee, will be sent together with the decision.

5.6. The executive board will only depart from the advice of the complaints committee in a decision supported by reasons.

5.7. The executive committee will, immediately and in writing, inform the dean or director involved of the decision it has taken.

Article 6  Protection of those involved

The complainant cannot suffer any disadvantage whatsoever, either directly or indirectly, from lodging a complaint in accordance with these regulations, unless the complainant has not acted in good faith. Neither can acting as a witness, expert, confidential adviser or member of the complaints committee result in the person concerned suffering any disadvantage whatsoever, either directly or indirectly, unless such person has not acted in good faith. The executive committee will ensure this to the best of its ability.

Article 7  Unforeseen cases

In cases not provided for by these regulations, the executive committee will decide. An exception to this is that which is provided for in Article 4.4(a) with regard to the working procedure of the committee.

Article 8  Final provisions

8.1. These regulations will come into force on 15 October 2015 and will replace all previous complaints regulations concerning undesirable behaviour.

8.2. These regulations are published on the website of Radboud University.